



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L MISCELLANEOUS APPLICATION NO. 1 OF 2014**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 10 OF 1990(REPEALED)**

**IN THE MATTER OF ITEN PRINCIPAL MAGISTRATE COURT LDT NO. 6 OF 2009.**

**AND**

**IN THE MATTER OF NAKURU PROVINCIAL LAND DISPUTES TRIBUNAL APPEAL NO. 20  
OF 2010**

**BETWEEN**

**JAMES BETT CHELANGA.....1ST APPLICANT**

**BEN SUTER.....2ND APPLICANT**

**VERSUS**

**PATRICK MAIYO.....1ST RESPONDENT**

**JOSEPH CHEBII.....2ND RESPONDENT**

**RULING**

The application before court is dated 23/1/2014 the applicant seeks orders that this application is certified as urgent and the same be dispensed with in the first instance. The Honourable court be pleased to transfer and issue directions for the hearing and determination of Nakuru Provincial Land Disputes Tribunal Appeal NO. 20 of 2010 between James Bett Chelanga and Ben Suter and Patrick Maiyo and Joseph Chebii and prays for costs of this application. The application is based on grounds that the said appeal was part heard before the defunct appeal tribunal.

That due to the changes in the law all matters touching on use, ownership, occupation and title to land have to be heard by the Land and Environment Court.

That no party will suffer prejudice as a result of the transfer of the said appeal.

That the applicants did appear before Tirap land elders' dispute tribunal of all that parcel of land known as Kipkonyos B on the 2nd June 2009 which was heard and determined. That the subject award was read and adopted by Iten Principal Magistrate on the 9th of December 2009 and subsequently judgment and decree was issued.

That the applicants were aggrieved by the said decision of the tribunal and the subsequent adoption and

did appeal at the Rift Valley Provincial Appeals' Committee in Appeal No. 20 of 2010. The said appeal was admitted for hearing and it was partly heard until the time when the Land Disputes Tribunal Act was repealed. That witnesses had testified and only very few witnesses were remaining for the matter to be determined.

That the applicants have indeed suffered great loss and damage owing to the dissolution and thus the coming before this Honourable court for directions for the end of justice to be realized.

That the trial court in Iten Land Disputes Tribunal case no. 2009 had issued injunctive orders pending the hearing and determination of Rift Valley Provincial Appeals' Committees' appeal No. 20 of 2010.

That the said orders subsisted until the respondents through their counsel applied for stay of the orders pending the hearing and determination interparties. That it is the applicants case that owing to the repeal of the Land Disputes Tribunal Act no 18 of 1990, the chances of success of the application in the lower court is zero owing to the fact that no appeal is proceeding as earlier on appreciated by the court. That the respondents have threatened to demarcate the said parcel of land an act that will cause subsequent harm, loss and danger to the applicants it being their ancestral land for over 62 years. He believes that this Honourable court has jurisdiction to grant the orders sought since by operation of law all matters pending before the tribunal are triable by this court. He states that the prayers are sought in good faith for the ends of justice to be realized.

The application is supported by the affidavit of **James Bet Chelanga** and **Ben Suter** who state that they are legal owners of all that parcel of land known as Kipkonyos B within Tirap location being their ancestral land. That the respondents are their cousins who have their own ancestral land which they are duly utilizing. That the respondents did threaten to take their land with the aid of the 2nd respondent their cousin brother culminating in their filing in the tribunal of the case on 2nd June 2009. The proceedings of the tribunal were unfair as the same was chaired by the chief who was biased as against them. That they were thus not satisfied with the elders' award againstt which they appealed at Appeals' Committee at Nakuru and pursuant to the said appeal they did secure injunctive orders as against the respondents which order still subsists but same has been overtaken by events due to the fact that there is no appeal pending unless directed by this honourable court.

That the said appeal raises triable issues and thus they do pray that the same be heard by this honourable court and they be allowed to move this honourable court for other orders since the respondents have threatened to disinherit them by virtue of the said award. That they are desirous of concluding the said appeal for justice to be done.

The application is opposed by the respondents vide the the affidavit of **Patrick Maiyo** filed on 28/3/2014.

**Mr. Cheptarus** submits that the appeal was part-heard before the Provincial Appeals' Committee in Nakuru. There is no dispute that the appeal was filed. He relies on rules 1, 13 and 40 of the Practice directions on proceedings in the Environment and Land courts and on proceedings relating to the environment, and the use and occupation of, and title to land and proceedings in other courts.

I have considered the application and the submissions by the counsel for applicant, the replying affidavit and the submission by the counsel for the respondent and do find that the issue before court is whether an appeal pending before the Provincial Appeals' Committee can be transferred to this court for purposes of determination. ***In exercise of the powers conferred to the Chief Justice by the sixth schedule part 5 section 22 and Article 161, (2) (a) of the Constitution of Kenya 2010 and in pursuance of section 24 section 30 (1) (2) of the ELC Act (No 19 of 2011) of the Laws of Kenya as read with section 31 of the Act and section 5 (1) and (2) c of the Judicial service Act (No 1of 2011), the Chief Justice made practice directions following the establishment of the Environment and land court.***

The overriding objective of proceedings in the environment and land court is guided by Article 159 of the Constitution, section 1 A and 1B of the Civil Procedure Act and, and section 3 of the Environment and Land Court Act No. 19 of 2011 so as to facilitate a a fast, expeditious proportionate and accessible

resolutions of disputes.

Direction No. 13 of the practice rules provide for jurisdiction of the Environment and Land Court to hear appeals from the Magistrates court and the Tribunals. A liberal interpretation of this direction presupposes that since the decision of the Land Disputes Tribunal is subsumed in the decree of the Magistrate Court, then all appeals envisaged from the Magistrates Court, and those pending in the defunct Appeals' Committees in respect of Awards of Land Dispute Tribunals as adopted by the Magistrate's Court should be handled by the Environment and Land Court.

Any ambiguity in directions No. 13 is cured by the overriding objective envisaged in direction no. 1. There is no dispute that Nakuru Provincial Appeals' Committee land case No. 20 of 2010 between James Bett Chelanga and Ben Suter and Patrick Maiyo and Joseph Chebii is pending before the Appeals' Committee.

The upshot of the above is that this court directs that the said appeal be transferred to this court for purposes of hearing and determination. It is so ordered

*DATED AT ELDORET THIS 1ST DAY OF OCTOBER 2015*

*ANTONY OMBWAYO*

**JUDGE**