



**IN THE COURT OF APPEAL**

**AT ELDORET**

**(CORAM: E. M. GITHINJI, H. OKWENGU & J. MOHAMMED, JJ. A)**

**CIVIL APPEAL NO. 71 OF 2016**

**BETWEEN**

**CHRISTOPHER WAFULA MUTORO.....APPELLANT**

**AND**

**RICHARD LORDIA LOKERE.....RESPONDENT**

*(An appeal from the Ruling of the High Court of Kenya, Environment and Land Court at Kitale, (Obaga, J) dated 27<sup>th</sup> June, 2016*

in

**E & L MISC. APPL. NO 43 OF 2015)**

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**JUDGMENT OF THE COURT**

[1] This is an appeal from the ruling of the Environment and Land Court (ELC) whereby the ELC dismissed an application for review of the Court's earlier ruling dated 14<sup>th</sup> October 2015.

[2] From the documents in the appeal record, the Kwanza Land Disputes Tribunal awarded parcels of land to Richard Lordia Lokere, the respondent herein and 14 other persons from the appellant's land Title No. Kwanza/Kwanza Block 3/Luhya/52. The award of the tribunal was filed in the Chief Magistrate's Court as Land Case No. 9 of 2011 and adopted as a judgment of the Court on 8<sup>th</sup> April, 2011.

[3] The appellant being dissatisfied with the decision of the tribunal filed an appeal in the Rift Valley Provincial Land Disputes Appeal Committee at Nakuru on 5<sup>th</sup> May, 2011. The appeal was given Serial Number 26 of 2011.

However, the Land Disputes Tribunal Act, No. 18 of 1990, which had given the Lands Disputes Tribunal jurisdiction to hear land disputes specified in Section 3 (1) of the Act was repealed by Section 31 of the Environment and Land Court Act, No. 19 of 2011 which commenced on 30<sup>th</sup> August, 2011.

[4] The ELC was established pursuant to Article 162 (2) (b) of the Constitution of Kenya, 2010 which conferred power on Parliament to establish a court with the status of a High Court to hear and determine disputes relating to environment and the use, and occupation of, and title to land. Section 13 (1) of the

ELC Act has given ELC original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) and the provisions of the ELC Act and any other written law relating to environment and land.

[5] Section 30 (1) of the ELC Act which contains the transitional provisions provides;

***“All proceedings relating to the environment or to the use and occupation of, and title to land pending in any Court or land tribunal of competent jurisdiction shall continue to be heard and determined by the same Court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.”***

By Legal Notice No. 5178 published on 28<sup>th</sup> July, 2014 the Chief Justice issued “**PRACTICE DIRECTIONS**” on proceedings in the Environment and Land Courts under various provisions of the law including Section 30 (1) of the ELC Act Practice Directions No. 7 provided;

***“All proceedings which were pending before the Magistrate’s Court having been transferred thereto from now defunct District Land Disputes Tribunal shall continue to be heard and determined by the same Court.”***

[6] By a Miscellaneous Application No. 43 of 2015 mainly made under Section 30 of the ELC Act, the appellant applied to the ELC for an Order that the Court be pleased;

***“To call Land Case No. 26 of 2011 being an appeal to this Court for hearing and determination on the ground that it is only ELC which is seized with power to hear and determine the matter.”***

Although the application was opposed, the ELC (Obaga J) agreed that the Court had jurisdiction to recall the appeal file but reasoned that the practice directions issued by the Chief Justice required that the proceedings pending before the defunct Land Disputes tribunals were to be transferred to the Magistrate’s Courts and heard by the Magistrate’s Courts. Accordingly, the ELC ordered the appeal file to be transferred to the Chief Magistrate’s Court Kitale for disposal.

[7] The appellant filed a review application six months thereafter. The appellant deponed in support of the application, amongst other things, that, when the appeal file was forwarded to the Chief Magistrate’s Court Kitale, the registry was unable to register it as it was an appeal and that the Chief Magistrate Court had no jurisdiction to hear the appeal.

By a ruling delivered on 27<sup>th</sup> June, 2016, the ELC dismissed the application reasoning that as the role of the magistrate under the repealed Land Disputes Tribunal Act was only to adopt the award, there was nothing wrong in the Chief Magistrate’s Court hearing the appeal from the Provincial Appeal Committee.

[8] The appeal is against that decision. There are two main grounds of appeal namely, failing to appreciate that the Chief Magistrate’s Court Kitale could not hear the appeal as that would amount to the Court sitting on its own appeal and secondly, that the learned Judge misapplied the law and thus reached the wrong decision. Miss Munialo, learned counsel for the appellant traced the history of the appeal and submitted that the Chief Magistrate’s Court either has no statutory jurisdiction to hear the appeal or to hear an appeal from the judgment that a court had adopted. The respondent who appeared in person submitted that he had no objection to either Court hearing the appeal.

[9] The jurisdiction of a Court is conferred either by the Constitution or by Statute. In this case, the Constitution by Article 162 (2) commanded the Parliament to establish a Court with the status of a High Court to hear and determine disputes relating to the environment and use, occupation and title to land and gave power to Parliament to determine the jurisdiction and functions of the Court.

Parliament duly enacted the Environment and Land Court Act which in Section 13 (1) gives the Court original and appellate jurisdiction to hear and determine all land disputes. The ELC Act repealed the Land Disputes Tribunal Act which had created administrative tribunals to hear and determine certain types of

land disputes. It follows that in the absence of the Land Disputes Appeal Committee before which the appellant's appeal was pending, the ELC has jurisdiction to hear and determine the appeal.

[10] Secondly, section 30 (1) of the ELC Act is a transitional provision. As expressly stated in that section, it operated until the ELC established under the Act comes into operation. The Act commenced on 30<sup>th</sup> August, 2011. As the ELC found, the Judges of the ELC were appointed on 1<sup>st</sup> October, 2012 and a judge posted to Kitale Court in November, 2012.

So, by 1<sup>st</sup> July, 2015 when the appellant made the first application for transfer of the appeal to the ELC, the Court was operational and the transitional provisions including the '**PRACTICE DIRECTIONS**' issued by the Chief Justice as they relate to Section 30 (1) had expired with the consequence that ELC had jurisdiction to entertain the pending appeal.

[11] Thirdly, practice directions No. 7 on which the Court relied did not, by its terms, encompass a pending appeal before the Provincial Land Disputes Appeals Committee. It refers to proceedings which were pending before a Magistrate's Court having been transferred thereto from the defunct District Land Disputes tribunals. The appellant's appeal had passed that stage. It had not even been transferred by the Land Disputes Appeals Committee to the Magistrate's Court.

[12] Fourthly, as section 23 (3) of the Interpretation and the General Provisions Act provides, the repeal of the Land Disputes Tribunal Act did not affect its previous operations or anything done under it nor affect a right, privilege, obligation or liability acquired, accrued or incurred under it unless a contrary intention appears. The ELC Act does not convey a contrary intention. That means, amongst other things, that the appellant was entitled to pursue his right to appeal which had accrued under the repealed Act before a competent Court.

[13] For those reasons, we are satisfied that the ELC erred in law in declining jurisdiction and should have reviewed its earlier ruling on grounds of apparent error of law on the face of the record. In the premises, the appeal is allowed, the ruling of the ELC Court appealed from is set aside. The application of the appellant dated 15<sup>th</sup> July, 2015 is allowed. The Provincial Land Disputes Appeal Cause No. 26 of 2011 shall be registered, heard and determined by the ELC Kitale. As the error of law was committed by the Court, we make no Orders as to the costs of the appeal.

**Dated and delivered at Eldoret this 5<sup>th</sup> day of October, 2017.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

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**JUDGE OF APPEAL**

I certify that this is a true

copy of the original.

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**DEPUTY REGISTRAR**