

Remedies Issued by the Environment and Land Court in Kenya

The Environment and Land Court (ELC) was established by the 2010 constitution, to determine all disputes relating to land and environment in Kenya. Before 2010, environment and land disputes were determined by either the High Court or the Land Disputes Tribunal, whose decisions were subsequently adopted as decisions of the Magistrates Courts. Due to the numerosity and complex nature of land cases, the court was established solely to determine land and environment cases. The court has the same status as the High Court. It determines disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources. It also determines disputes relating to compulsory acquisition of land, land administration and management, matters relating to public, private and community land and contracts, choses in action or other instruments granting any

enforceable interests in land. It also determines any other dispute relating to environment and land. Judges of the court must have at least ten years' experience in matters relating to environment or land.

The court can issue several remedies as set out below:

1. Interim or permanent preservation orders including injunctions

Preservation orders are court orders that compel a party to do or refrain from doing certain acts. Interim orders are awarded at the beginning or in the course of proceedings while permanent orders are mostly given at the end of trial. The purpose of interim injunctions is to maintain the status quo, pending the final determination of the case. They are meant to ensure that the final verdict of the court is not invalidated by the actions of either party. Injunctions in land and environment cases include an order for one party to refrain from interfering with another party's quiet possession of land, an order for a party to halt construction and an order for a party not to transfer or charge land, pending the final determination of the case.

2. Prerogative orders

Prerogative orders are usually granted in applications for Judicial Review. Judicial

Review Applications are made at the High Court, since the High Court supervises inferior courts and bodies. Prerogative orders can only be enforced against public bodies and not individuals. This is because most transactions between individuals are governed by contracts, which are made in accordance with the wishes of the parties. The three prerogative orders are Prohibition, Mandamus and Certiorari: They are explained below;

a) An order of Prohibition

This is an order from the court, preventing an inferior tribunal or body from continuing with its proceedings, if the proceedings are beyond its authority or in violation of the law. Such an order can be applied to prevent bodies such as the Business Premises Rent Tribunal or the National Environment Tribunal from determining a dispute, if it is established that the dispute is not within their authority.

b) An order of Mandamus

This is an order given by the High Court, to compel a public body to perform a duty imposed on it by law, where that body has failed to perform the duty to the disadvantage of a party, who has a legal right to expect the duty to be performed. The ELC can issue an order of Mandamus to compel the Registrar of Lands to cancel

or delete entries in the register or to make entries into the register.

c) **An order of Certiorari**

This is an order by the High Court, quashing a decision made by an inferior court, tribunal or a public authority. An application for this order has to be made within six (6) months of the authority's decision. Orders of certiorari have previously been applied by the ELC to quash the decisions of the Land Disputes Tribunal, where the tribunal had acted beyond the scope of its mandate.

3. Award of damages

Damages are awarded to bring a party to the position they were before a wrongful act was committed against them. For instance where a party fraudulently obtained land and the land has been transferred to innocent third parties, the court can order that the party who fraudulently transferred the land pay the rightful owner for the value of the land.

4. Compensation

Compensation is money awarded to a party due to a loss or injury suffered by them. Unlike damages, compensation is meant to alleviate a party's injury, rather than return them to the position they were before the wrongful act. Instances when the ELC can award

compensation include where a party has been wrongfully denied the use of his land or where the government intends to acquire a person's land for construction of public amenities.

5. Specific performance

Orders for specific performance are generally granted where monetary compensation is not sufficient. The court can give an order of specific performance only where there is a valid contract between the parties. Instances when the Environment and Land Court can give an order of specific performance include where a buyer has paid the purchase price for land but the seller is frustrating the process of transferring the land. The court can order that the seller provides all the documents needed to transfer the land.

6. Restitution

Restitution refers to restoration of a right in land to a party who has had such a right taken away. For example, the court can order that a party's name be restored in the register of lands, or that the revocation of a title be reversed.

7. Declarations

A declaration is a proclamation made by the court, stating whether an action is legal or illegal, procedural or unprocedural or whether a party to a suit acted lawfully and within its

powers. Once a court makes a declaration, it follows that it should make an order as to the next course of action for the parties. For instance, an aggrieved party can ask the court to declare the acquisition of his land by the government illegal. If the court makes such a declaration, it should state whether the government ought to stop any intended construction upon the land or to pay damages. Declarations are also made in constitutional petitions, determining land and environment rights.

8. Costs

The ELC has the power to award the cost of the entire case or part of it to either party. When a party is awarded costs, it is the opposing party who is required to pay for the cost of the other party's case, in addition to the cost of their own case. In most cases, it is the losing party who is required to pay for the cost of the winning party's case. The court can also order that each party pays for the cost of their own suit. Where no order for costs is made, the assumption is that each party will bear the cost of its own suit.