

**A presentation made at the Southern and  
Eastern Africa Chief Justices' Forum  
Conference and Annual General Meeting  
At Speke Resort Munyonyo Kampala, Uganda  
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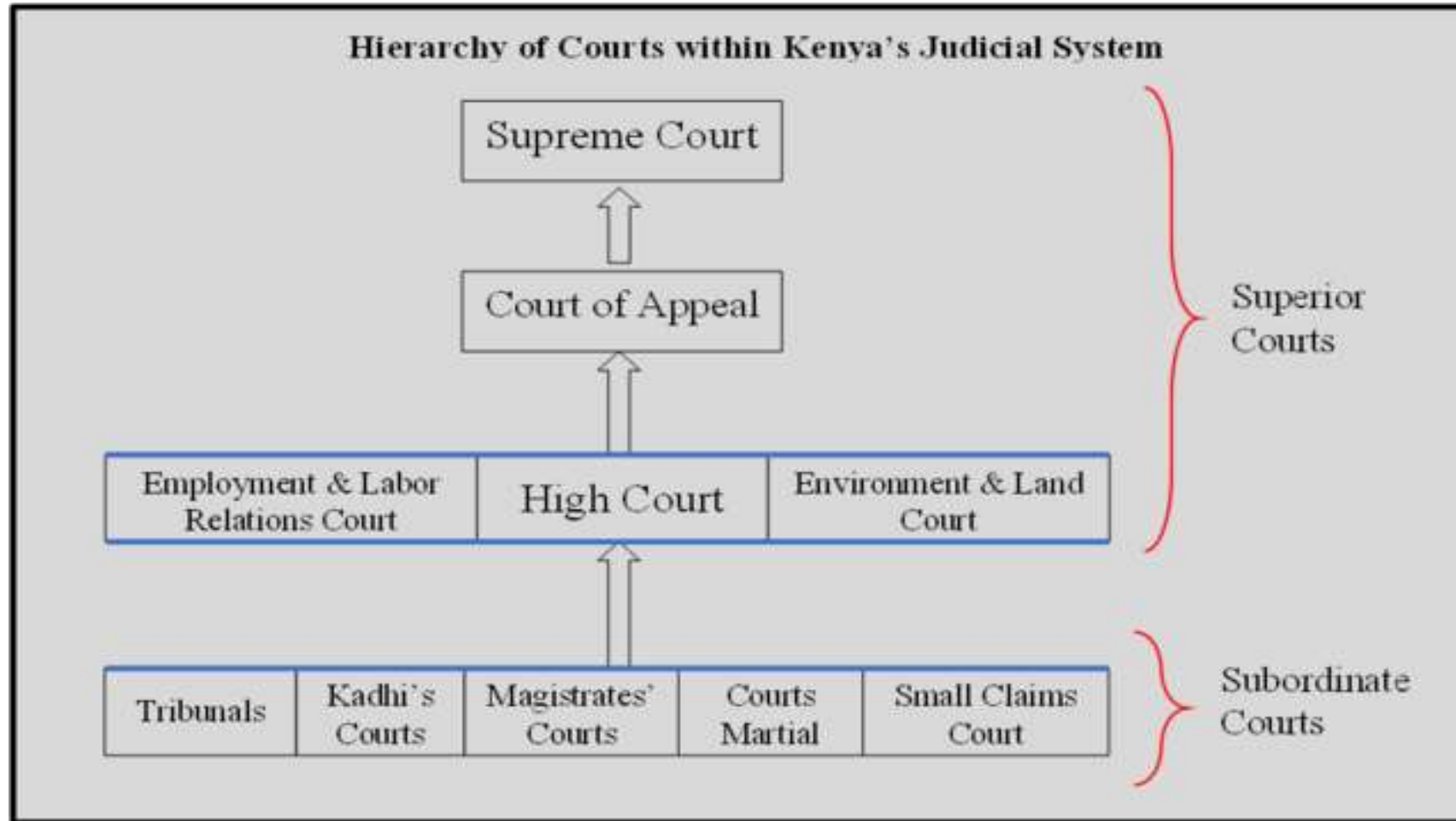
**By**

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# Presentation outline

- Hierarchy of Courts in Kenya
- Origin of the Environment and Land Court {ELC}
- Jurisdiction of the ELC
- Structure of the ELC
- Achievements of ELC in 12 years
- Challenges
- Conclusion

# Hierarchy of courts in Kenya



# Origin of the Environment and Land Court {ELC}

- The Environment and Land Court of Kenya is a creature of the Constitution of Kenya promulgated in August, 2010 and the Environment and Land Court Act, CAP 8D. The ELC was established in the year 2012 pursuant to Article 162{2}{b} of the Constitution.
- The Act outlines the jurisdiction and institutional structure of the Court. The Court was operationalized in 2012 following the appointment of 15 judges.
- Kenya has had a multiplicity of land laws and a complicated history of land disputes.
- Land disputes constitute a huge percentage of suits filed in Kenyan courts.

# Origin of the Environment and Land Court {ELC}

Growing litigation in land and environment arena

Need to tackle backlog of land cases.

Kenya's reliance on agriculture and the need to resolve environment & land disputes expeditiously & free the land to investment & development.

## Origin of the ELC, Cont'd

- It was appreciated by the Kenyan people that environment and land matters are technical in nature and require to be heard and determined by Judges with special expertise in the area.
- The Njonjo Land Commission of Inquiry into the Land Law system proposed constitutional and legislative principles and framework for governing land in Kenya.
- The Njonjo Commission was followed by the Commission of inquiry into illegal/irregular allocation of public land in Kenya {Ndungu Commission} which recommended that a Land Titles Tribunal be set up to handle the many land cases brought to the general Courts.

## Origin of the ELC, Cont'd

- The Judiciary set-up Land Divisions of the High Court in Nairobi and Mombasa. This did not help because the Judges handling these matters were not experts and we had land cases all over the country.
- It became clear that there was a need for a separate court for land and the environment that had the same status as the High Court.
- The Committee of Experts working on Kenya's Constitution in the year 2010 recommended that a specialized court for land and environment be set up.

## Jurisdiction of the ELC

- The ELC derives its jurisdiction from Article 162{2}{b} of the Constitution of Kenya which provides as follows;  
***“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-***
- ***{b} the environment and the use and occupation of, and title to, land.***
- The second source of jurisdiction for the ELC is Section 13 of Environment and Land Court Act, CAP 8D. It elaborates the jurisdiction to include the following areas of disputes



# Jurisdiction of the ELC

**1.****{a}** environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

**{b}** compulsory acquisition of land;

**{c}** land administration and management;

**{d}** public, private and community land contracts, choses in action and other instruments granting any enforceable interests in land;&

**{e}** any other dispute relating to environment and land.

**2.** Petitions for redress of, a denial, violation or infringement of, or threat to, rights or fundamental freedoms relating to a clean and healthy environment.

## Jurisdiction of the ELC, cont'd

**{3}** Appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.

**{4}** The court has power to grant the following reliefs

- (a) interim or permanent preservation orders including injunctions;*
- (b) prerogative orders;*
- (c) award of damages;*
- (d) compensation;*
- (e) specific performance;*
- (f) restitution;*
- (g) declaration;*
- (h) costs*

# Structure of the ELC

- ❑ Presiding Judge {PJ}- Elected by ELC Judges every 5 years. The PJ supervises all the ELC courts & reports to the Chief Justice.
- ❑ The PJ is assisted by a Registrar, Legal Researchers, Deputy Registrars and judicial staff who facilitate the court to discharge its mandate.
- ❑ Currently, there are 52 judges serving the court in 37 stations across the country.
- ❑ In July, 2023, the Court was subdivided into two divisions; (a) Environment and Planning Division and (b) the Land Division. This initiative was begun in Nairobi Station & it is expected that the rest of the stations will follow suit depending on the number of cases instituted.

# Achievements of the ELC in 12 years

- ❖ It is the principal avenue for peaceful resolution of conflicts over the environment, natural resources and land.
- ❖ Driver of green jurisprudence in Kenya.
- ❖ Development of a jurisprudence that is responsive to Kenya's social context of high prevalence of conflicts over land.
- ❖ Reduction of backlog of land cases from 27,242 in 2016 to 14,405 in 2021.
- ❖ Always highly ranked in the annual performance management evaluation.

# Achievements, cont'd

- ❖ The presence of the court in 37 out of Kenya's 47 counties has greatly enhanced access to justice for the disadvantaged and marginalized.
- ❖ It has created great public awareness of environment issues in the country
- ❖ It has enhanced the image of the Kenyan judiciary regionally & internationally and its decisions have been cited globally by other judiciaries & tribunals.

# Achievements, Cont'd

- ❖ In the year 2022, the court hosted its inaugural conference to celebrate 10 years of its existence. The conference brought together stakeholders in land, planning, and environment policy and justice chain through which they deliberated the court's achievements and challenges; shared their experiences and gave recommendations on how the court can improve and strengthen its services.
- ❖ Virtual proceedings have saved litigants and advocates time and costs as more than 90% of the court's business is conducted virtually.

# Challenges

- ❖ ICT Challenges for litigants who cannot read and write.
- ❖ Recording of evidence in long hand causes delay.
- ❖ Adjournments by litigants & advocates who are not keen on finalisation of their matters.
- ❖ Non-execution of court orders by government agencies at the national and devolved levels.
- ❖ Jurisdictional overlaps with the constitutional & commercial divisions of the High court lead to forum shopping, delays or duplication of resolution of disputes.

# Challenges, cont'd

- ❖ Justiciability of environmental issues owing to a lacklustre attitude in such matters slowing the pace in growth of jurisprudence in this area.
- ❖ Inadequate budgetary allocation
- ❖ Low uptake of AJS/ADR by litigants and advocates



# Conclusion

- ❖ *Overall, the presence of the court has been felt across the entire country and more so in Nairobi & environs where demolitions have been ordered in Njiru, Nairobi; Mavoko in Machakos and Kitengela in Kajiado of permanent buildings build on private and public land by trespassers. Land grabbers in Kenya are a worried lot.*

# Thank you

## Q & A