



**Republic v County Assembly Clerk Baringo County & 2 others; Komen & another (Exparte)
(Judicial Review 1 of 2022) [2023] KEHC 1105 (KLR) (22 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
JUDICIAL REVIEW 1 OF 2022
HK CHEMITEI, J
FEBRUARY 22, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY ASSEMBLY CLERK BARINGO COUNTY 1ST RESPONDENT

**CHIEF OFFICER FINANCE BARINGO COUNTY GOVERNMENT 2ND
RESPONDENT**

**CHIEF OFFICER HEALTH BARINGO COUNTY GOVERNMENT 3RD
RESPONDENT**

AND

SAMSON KOMEN EXPARTE

KIPKOSIOM CHEPYEGON EXPARTE

RULING

1. The respondent's preliminary objection dated 18th July 2022 basically asserts that this court does not have jurisdiction to entertain this cause pursuant to the provisions of Article 162 (2) (b) of *the constitution* and Section 13 of the *Environment and Land Court Act*.
2. The parties were directed to file written submissions which they have complied and the court has perused the same with the attendant authorities.
3. The genesis of this matter is easy to appreciate. The applicants entered into a consent with the respondents vide Case No. Kabarnet ELC No. 22 of 2020 where the respondents were to pay to the applicants a sum of kshs.2.5 million within 45 days. It appears that the respondents did not pay the said amount and the applicants were forced to seek the orders of judicial review herein.



4. The court did grant them leave to file the same which they have complied. The respondents are of the view that since the matter emanated from the Environment and Land court they ought to have proceeded to the said court for the orders they have sought herein.
5. The respondents have relied in their submissions on various authorities notably *Republic v Karissa Chengo and 2 Others* [2017] eKLR.
6. The applicants on their part have opposed the said preliminary objection and relied heavily on the provisions of Section 2 of the Fair Administrative Act no 4 of 2015. They submitted that this court ought to ignore the same and deal with the matter without any regard to the technicalities which are being advanced by the respondent.
7. The court having perused the submissions and the entire pleadings is in agreement with the fact that the respondents owes the applicants the said sum of money as per the consent attached to the supporting affidavit. The said amount has never been settled despite reminders from the applicant's counsel.
8. Secondly it is true that the matter emanated from the Environment and Land court and the proper court ought to have been the said court as per the numerous decisions of this court and the Supreme Court. The Karissa Chengo (supra) decision by the Supreme court of Kenya settled the issue of the dichotomy between this court and the ELC court with finality. The same affirmed the position provided under Article 162 of *the Constitution*.
9. In the premises and for the reasons advanced above the preliminary objection is allowed. However, noting the provisions of Section 2 of the *Fair Administrative Action Act* no 4 of 2015, the provisions of Article 159 of *the constitution*, and the unique position of the Kabarnet court station i think it will be in order to transfer this matter to the ELC court and not to strike it out. This position is taken purely under the inherent powers of this court to ensure that justice is served expeditiously.
10. In the premises, this matter is transferred to the Environment and Land court at Kabarnet in the event that the judge is sent here by way of a circuit or alternatively and without prejudice to any other administrative action retransferred to Iten Environment and Land Court where the honourable judge shall be at liberty to deal with it as it may be appropriate.
11. Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 22ND DAY OF FEBRUARY 2023.

H. K. CHEMITEL.

JUDGE

