



**Republic v Inspector General of Police & 3 others; Asanyo & another (Exparte Applicants) (Environment and Land Judicial Review Case E002 of 2024) [2025] KEELC 1260 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1260 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2024  
MN MWANYALE, J  
MARCH 17, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS .... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**THE CHIEF MAGISTRATE’S COURT AT KILGORIS ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**GEOFFREY MAKANA ASANYO ..... EXPARTE APPLICANT**

**WANGUI KATHYRN KIMANI ..... EXPARTE APPLICANT**

**RULING**

1. Pursuant to leave granted on 19.11.2024 the Exparte Applicants, Geoffrey Makana Asanyo and Wangui Kathryn Kimani filed the substantive Notice of Motion application dated 26.11.2024 seeking Judicial Review orders against the Respondents, being;
  - i. The Inspector General of Police.
  - ii. Directorate of Criminal Investigations.
  - iii. The Director of Public Prosecutions.



- iv The Chief Magistrates Court Kilgoris as well as Angeline Naisiano Nkoimo and John Naisoni Nkoimo (the legal Administrators of the Estate of Stanley Lemoiyo Nkoima, being the interested parties herein.
2. In their said application, the Exparte Applicants sought for orders as herefollows; -
- a. Spent.
- b. That the Applicants be granted leave to apply for an order ceortararia to remove into this court quashing and to quash the decision of the 3<sup>rd</sup> Respondent made on 24<sup>th</sup> September 2024 and all subsequent decisions based thereon to charge the Applicants over the subdivision of L.R Transmara/Intona 3 into two portions and the Agreement for sale dated 25<sup>th</sup> March 1992 which have been the subject of i) Kilgoris ELC E005 of 2022 Angeline Nkoimo (suing as the legal administrator of the Estate of late Stanley Lemoiyo Nkoima) v Geoffrey Asanyo, Vincent Kantet suing as the legal representative of John Lemuta Nairuran Intona Investments Co. Limited, Chairman Transmara Land Control Board and the District Land Registrar Transmara ii) Nakuru Court of Appeal, Civil Appeal Application No. E018 of 2023 Angeline Nkoimo (suing as the legal Administrator of the late Stanley Lemoiyo Nkoima) v Geoffrey Asanyo, Vincent Kantet (suing as the legal Representative of John Lemuta Nairura, Intona Investments Company Limited, Chairman Transmara Land Control Board and District Land Registrar Transmara, iii) Nakuru Court of Appeal Civil Application No. E005 of 2024 Angeline Nkoimo (suing as the legal Administrator of the Estate of late Stanley Lemoiyo Nkoima) v John Lemuta Nairura (deceased) and iv) Kilgoris ELC Misc. E003/2022 Republic v District Land Registrar Transmara East, West and South Districts and Intona Investments Limited Exparte Angeline Nkoimo.
- c. That the Applicants be granted leave to apply for an order of prohibition to prohibit the 3<sup>rd</sup> Respondent from Prosecution of the Applicants over the subdivision of L.R No. Transmara/Intona/3 into two portions and the agreement for sale dated 25<sup>th</sup> March 1992, which have been subject of i) Kilgoris ELC E005.2022, between Angeline Nkoimo (suing a the legal Administrator of the Estate of Late Stanley Lemoiyo Nkoima) v Geoffrey Asanyo, Vincent Kantet (suing as the legal representative of John Lemuta Naireran, Intona Investments Co. Ltd, Chairman, Transmara Land Control Board and the District Land Registrar Transmara, ii) Nakuru Court of Appeal, Civil Appeal Application No. E018/2023 between Angeline Nkoimo (suing a the legal Administrator of the Estate of the Late Stanley Lemoiyo Nkoima) v Geoffrey Asanyo, Vincent Kantet (suing a the legal representative of John Lemuta Nairuran, Intona Investments Co. Ltd, Chairman Transmara Land Control Board and District Land Registrar Transmara iii) Nakuru Court of Appeal Civil Application No. E005/2024 Angeline Nkoimo (suing as the legal administrator of the Estate of the Late Stanley Lemoiyo Nkoima v John Lemuta Nairuran (Deceased) and iv) Kilgoris ELC Misc E003 of 2022 Republic v District Land Registrar Transmara East, West and South Districts and Intona Investments Limited Exparte Angeline Nkoimo.
- d. That the Applicants be granted leave to apply for an order of ceortarari to remove into this court for quashing and to quash the proceedings in Kilgoris Chief Magistrate's Court Criminal Case No. E087/2024, Republic v Geoffrey Makana Asanyo and Wangui Katryn Kimani.
- e. That the Applicants be granted leave to apply for an order of prohibition to prohibit the 4<sup>th</sup> Respondents from proceeding with the hearing of Kilgoris Chief Magistrates Court Criminal Case No. E087/2024 Republic v Geoffrey Makana Asanyo and Wangui Katryn Kimani.



- f. That the leave granted herein do operate as a stay of the decision of the Respondent made on 20<sup>th</sup> September 2024 and all subsequent decisions based thereon to charge the Applicants over the subdivision of L.R No. Transmara/Intona/3 into two portion and the agreement dated 25<sup>th</sup> March 1992 which was subject of the cases i) Kilgoris ELC E005.2022, between Angeline Nkoimo (suing a the legal Administrator of the Estate of Late Stanley Lemoiyo Nkoima) v Geoffrey Asanyo, Vincent Kantet (suing as the legal representative of John Lemuta Naireran, Intona Investments Co. Ltd, Chairman, Transmara Land Control Board and the District Land Registrar Transmara, ii) Nakuru Court of Appeal, Civil Appeal Application No. E018/2023 between Angeline Nkoimo (suing a the legal Administrator of the Estate of the Late Stanley Lemoiyo Nkoima) v Geoffrey Asanyo, Vincent Kantet (suing a the legal representative of John Lemuta Nairuran, Intona Investments Co. Ltd, Chairman Transmara Land Control Board and District Land Registrar Transmara iii) Nakuru Court of Appeal Civil Application No. E005/2024 Angeline Nkoimo (suing as the legal administrator of the Estate of the Late Stanley Lemoiyo Nkoima v John Lemuta Nairuran (Deceased) and iv) Kilgoris ELC Misc E003 of 2022 Republic v District Land Registrar Transmara East, West and South Districts and Intona Investments Limited Exparte Angeline Nkoimo.
- g. That the Respondents and the interested party do pay the Applicants costs of the application.
3. Directions in respect of the Notice of Motion were issued requiring the Respondents and the interested parties to file and serve their Responses within 14 days, and a hearing date of 19.12.2024 was given.
4. The interested parties filed a Notice of Preliminary Objection dated 8<sup>th</sup> November 2024, on the grounds
- h. That the Environment and Land Court lacked jurisdiction to hear and determine the Motion as
- i. It exercised jurisdiction on disputes set out under Article 162 (2) (b) of *the Constitution* and Section 13 of the Environment and *Land Act*.
- ii. The suit seeks to challenge the Director of Public Prosecution's decision to change mode on 20.09.2024 which decision was made pursuant to powers donated to the said office by Article 157 of *the Constitution*.
- iii. The Environment and Land Court does not have jurisdiction to check the exercise of powers donated to the office of Director of Public Prosecution by Article 157 of *the Constitution*.
5. The interested parties again filed a second Notice of Preliminary Objections dated 10<sup>th</sup> December 2024 which was Similarly worded as the Preliminary Objection dated 8<sup>th</sup> November 2024 but with an additional ground, that the instant suit does not pertain to the Environment or the use Occupation of and or title to land. The 3<sup>rd</sup> respondent equally filled a Notice of Preliminary Objection dated 13.12.2024 challenging the jurisdiction of this court.
6. Directions were issued for the Notices of Preliminary Objection dated 10.12.2024 and 13.12.2024 to be heard by way of written submissions, the Exparte Applicant, the 3<sup>rd</sup> Respondent as well as the Interested parties filed their submissions while the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents supported their Preliminary Objection but did not file submissions.
7. This Ruling is thus in respect of the said Notices of Preliminary Objection dated 10.12.2024 by the interested party and one dated 13.12.2024 by the 3<sup>rd</sup> Respondent.



## **Submissions in support of the Notice of Preliminary Objections**

8. The 3<sup>rd</sup> Respondent in its brief submissions placed reliance on the decision of the Supreme Court in the case of R. v Karisa Chengo and 2 Others on the proposition that an ELC Judge could not hear a Criminal Appeal, and that the matters before the Kilgoris CM's Court were purely criminal proceedings. The 3<sup>rd</sup> Respondent urged the court to uphold the preliminary objections.
9. On their part the interested party the interested parties framed and submitted on two issues;
  - i. Whether the Preliminary Objections dated 10<sup>th</sup> and 13<sup>th</sup> December 2024 constitute valid Preliminary Objections.
  - ii. Whether the Honourable Court has jurisdiction to hear and determine the instant Judicial Review proceedings.
10. On issue 1, the interested party submit that their objection being founded on jurisdiction is a proper preliminary objection as defined in the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd C.
11. That the issue of jurisdiction is a pure point of law and they placed reliance on the decision in the case of Mary Wambui Munene v Peter Gichuki Kingara and 2 Others (2014) eKLR.
12. On issue number 2, the interested party submit that jurisdiction is denied from *the constitution*, legislation or both.
13. They submit that the ELC Court is established by Article 162(2) and (3) of *the constitution* and that Section 13 of the ELC Act sets out its jurisdiction.
14. The interested parties submit that jurisdiction is determined on the basis of pleadings and not merits of the case, and to buttress this point the interested party, place reliance on the decision in the case of Ngengi Muigai v George Kangethe Waruhiu and 6 Others.
15. That based on the Notice of Motion application before court the orders sought relate to quashing and prohibition of criminal charges against the Exparte Applicants.
16. They further submit that the proceedings are not a contest about ownership nor title, occupation or use of land.
17. The proceedings are challenging the exercise of powers of the 3<sup>rd</sup> Respondent to institute Criminal proceedings under Article 157 of *the Constitution* of Kenya, and that it is the High Court which is vested with such powers under Article 165 (b) of *the Constitution*.
18. The interested party places reliance on the decision in the case of R. v Karisa Chengo as well as Asaa and 61 Others v OCS Malindi police station and 2 Others, Said and Another.
19. On the strength of the above the interested party submit that the Preliminary Objections be upheld.

## **The Exparte Applicants submissions.**

20. It is the exparte applicants submit that the ELC court has previously assumed jurisdiction and checked the decision to charge by the 3<sup>rd</sup> Respondent and have cited the court's decision in the cases of;
  - I) Republic v Inspector General of Police, National Police Service, Director Fraud Investigations Department and Chief Land Registrar Mombasa service Respondents Exparte National Bank of



Kenya Limited ELC Judicial Review Case 1 Of 2029 2019 KEELC 1003; where the JR application was allowed.

ii) Republic v District Criminal Investigations Officer Rongo, Inspector General, Director of Public Prosecutions and Senior Resident Magistrates Court Rongo, Ex parte Philp Odera Makabongo ELC Judicial Review case no 2017 2021 KEELC 2324;

iii) Michael Mwangeka *v Director of Public Prosecutions and Director of Criminal INVESTIGATIONS Voi ELC judicial Review case NO 11 of 2020* 2021 KEELC 2787; where the court held inter alia "the question that therefore needs to be answered by this court is whether the criminal proceedings against the ex parte Applicant were brought in abuse of the respondents' powers, were unreasonable or were motivated by improper motives. In this respect it is not disputed that there was a civil case filed by the ex parte applicant over the subject matter of the prosecution. That civil case is said to be partly heard and was due for a defence hearing when the ex parte applicant was arrested and prosecuted. It is thus proper and justified in the circumstances to conclude that the prosecution of the ex parte applicant was an abuse of the prosecutorial powers and unreasonable. In my view the prosecution of the ex parte applicant was undertaken for the improper motive and ulterior motive of unprocedurally circumventing and the undermining of civil cases but also to coerce him to withdraw that suit."

21. The ex parte applicants thus submit that this court as a court of equal status with the High Court having previously assumed jurisdiction and prohibited prosecution thus has the requisite jurisdiction in view of the expanded relief of judicial review to grant the reliefs sought. They thus urged the court to dismiss the preliminary objections and set the substantive motions for trial.

#### **Issues For Determination.**

22. Having analyzed the Notice of Preliminary Objections, the submissions by the parties and considered the law, the court frames the following issues for determination:
- i. Whether or not the Notices of Preliminary Objections as filed met the threshold of Preliminary Objections
  - ii. What orders ought to issue.

#### **Analysis And Determination.**

23. Both Notices of Preliminary Objections filed are based on the issue of jurisdiction. In *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors* a Preliminary Objection was held to be inter alia "a preliminary objection consists of a point of law which has been pleaded or which arises by clear implications out of pleadings and if argued as a point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."
24. It follows from the above definition and examples given that a preliminary objection founded on the issue of jurisdiction raises pure points of law and meets the threshold of a preliminary objection. Since both Notices are founded on jurisdiction the court finds that the Preliminary Objection as drafted are competent.
25. The court answers issue No. 1 in the affirmative.
26. The gravamen of the Notices of Preliminary Objections to this court's jurisdiction is that this court cannot question the decision to charge made by the 3<sup>rd</sup> Respondent as that relates to issues touching on the criminal justice system outside the jurisdiction of this court under Article 162(2) of *the Constitution*



and Section 13 of the ELC Act, and that the issues of Criminal proceedings are preserve of the High Court as was stated in the Karisa Chengo’s case.

27. In the Karisa Chengo’s case the Supreme Court observed interalia;
- “.....By being equal status, the High Court therefore does not have jurisdiction to supritend, supervise, direct, guide, shepherd and or review the mistakes real or perceived of the ELRC and ELC administratively or judiciously as was the case in the past.
- “.....To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialized jurisdiction but they are not the High Court...”
28. From the above it follows that the ELC Court can hear and determine judicial review matters, just like the High Court and the ELRC being co-equal courts and indeed the Lariak properties Limited v Metro Pharmaceuticals E & L Miscellaneous case No. E019/2022 the stated “that it exercises judicial review jurisdiction in matters pertaining to Environment and Land”.
29. The question now is whether in exercise of its powers to hear and determine judicial review matters; the ELC can question the decision to charge by the DPP.
30. Ordinarily criminal matter and proceedings are the preserve of the High Court exercising it jurisdiction under Article 165 of *the Constitution*. However, the said jurisdiction is limited under Article 165(5) as was held in the case of
- i. High Court in United States International University v Attorney General, Nairobi Petition No. 170 of 2012 eKLR,
  - ii. The Court of Appeal in Chimeli Jangaa Mangale and 3 Others v Hamisi Mohammed Mwasasaa,
  - iii. By the Supreme Court in Nicholus v Attorney General and 7 Others; National Environment complaints committee and 5 Others where “the courts emphasized the limitation of the jurisdiction of the High Court concerning matters falling within the purview of the courts specified in Article 162(2) of *the constitution*; being the ELC and the ELRC.”
31. Having found that the ELC Court can hear and determine judicial review matters which the courts held to be a Constitutional supervision of public authorities involving a challenge to th legal validity of a decision as was held in the case of Republic v Speaker of Senate and Another Exparte Africon Export and Import Limited; where the court held interalia “court decision should boldly recognize *the constitution* as the basis for Judicial Review. Judicial review is now a constitutional supervision of public authorities involving a challenge to the legal validity of a decision”.
32. The Respondents being public bodies are amenable to Judicial Review, so as to challenge to the legal validity of decision to charge by public body in this case the 3<sup>rd</sup> Respondent.
33. In instances where the criminal charges for example relate to forgery of a title, and there is a parallel substantive civil suit, challenging the validity of the title it would be an appropriate case to challenge the decision to charge pending determination before the ELC Court or the Magistrates Court of the issue of the validity of title, and such a challenge can only be made before the ELC Court as the High Court would lack jurisdiction to inquire on the validity of a title under Article 165(5) of *the constitution*.
34. In arriving at the said finding I am guided by the decision in the Lariak properties case whereat paragraphs 38-45 of the said decision the learned Judge in expousing the jurisdictional limitation



observed in United States International University case and Article 165(5) reached the same conclusion as I have on the supervisory jurisdiction of the ELC.

35. Thus, the decisions cited by the Exparte Applicant in this case must be deemed to have been made in exercise of this judicial review jurisdiction over public bodies where there exist a parallel substantive civil suit pending before a trial court under the provisions of section 13 of the ELC Court and whose same set of facts, give rise to Criminal charges as was in the Michael Mwangeka case, cited by the Exparte Applicants.
36. It follows therefrom that in appropriate cases the ELC Court may hear and determine Judicial Review matters challenging the decision to charge moreso where there is a pending parallel substantive civil suit before the court.
37. In order to determine where the preliminary objections are merited, the court must examine the next question as to whether the present case is an appropriate case to challenge the validity of the decision to charge before the ELC.
38. When this matter came up on 03.02.2025 the court inquired from the learned counsels of the parties whether there was a parallel substantive civil suit pending before the ELC.
39. Mr. Konosi learned counsel for the Exparte Applicant as well as Mr. Muturi for the interested parties confirmed that the substantive matter giving rise to the criminal case before the ELC was concluded and there was a pending appeal before the Court of Appeal.
40. With the said confirmation the court finds that this is not an appropriate case to exercise the judicial review jurisdiction to question the validity of the decisions to charge by the 3<sup>rd</sup> Respondent for the reasons that
  - i. Firstly, the parallel substantive civil matter having been heard and determined, there is no pending suit for the court to inquire thus making the court functus officio.
  - ii. Secondly, the charges before the 4<sup>th</sup> Respondent have now transcended into pure criminal charges thus outsing the jurisdiction of this court.
  - iii. Thirdly, this court as a trial court cannot dwell into issues that the Court of Appeal is seized of.
41. It follows that the matters now being purely criminal in nature after the conclusion of the parallel substantive suit the Notice of Preliminary Objections are merited and are hereby allowed with costs.
42. The upshot is that the Preliminary Objections are here allowed and the Notice of Motion application dated 26.11.2024 is hereby dismissed with costs.

**DATED AND DELIVERED AT KILGORIS THIS 17<sup>TH</sup> DAY OF MARCH 2025.**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of;

C/A Emmanuel/Slyvia

Mr. Konosi for the Exparte Applicants

Ms. Osebe for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents

Mr. Muturi for the Interested Parties



N/A for Mr. Monda for the 3<sup>rd</sup> Respondent

