



Kamicha & 7 others v Del Monte Kenya Limited; Directorate of Criminal Services & 2 others (Interested Parties) (Environment & Land Case E044 of 2024) [2025] KEELC 3420 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E044 OF 2024**

**JM ONYANGO, J
APRIL 29, 2025**

BETWEEN

**ELIZABETH WAMBUI KAMICHA 1ST PLAINTIFF
MARIONNE WACHEKE THIONG'O 2ND PLAINTIFF
APPOLLO GITHINJI THUNGURI 3RD PLAINTIFF
CHARLES MBATE GITHUA 4TH PLAINTIFF
MARGARET WANJIRA WANJIRU 5TH PLAINTIFF
NELSON MAKUNA THIONG'O 6TH PLAINTIFF
JOYCE NYAMBURA IRUNGU 7TH PLAINTIFF
BRENDA WANJIRU KAREE 8TH PLAINTIFF**

AND

DEL MONTE KENYA LIMITED DEFENDANT

AND

**DIRECTORATE OF CRIMINAL SERVICES INTERESTED PARTY
COUNTY GOVERNMENT OF MURANG'A INTERESTED PARTY
DEPUTY COUNTY COMMISSIONER ITHANGA INTERESTED PARTY**

RULING

1. By Notice of Motion dated 24th February, 2025, the Defendant/Applicant sought the following orders: -



- a. Spent.
 - b. That pending inter partes hearing and determination of this Application, this court be pleased to stay the order given by the Honourable Lady Justice J. M. Onyango on 6th February 2025 and issued on 10th February 2025.
 - c. That pending inter partes hearing and determination of this Application, an Injunction Order do issue restraining the Plaintiffs, their agents, servants, employees or any other person claiming under them from entering, occupying, using, carrying out any rock drilling, rock blasting, rock extraction, tree-felling or quarry mining operations in the Parcel of Land known as Land Reference Number 12157/10 situated in Ithanga-Kakuzi Sub County or in any other manner interfering with the Defendant's quiet possession and enjoyment of Land Reference Number 12157/10 situated in Ithanga-Kakuzi Sub County.
 - d. That pending hearing and determination of this suit, an Injunction Order do issue restraining the Plaintiffs, their agents, servants, employees or any other person claiming under them from entering, occupying, using, carrying out any rock drilling, rock blasting, rock extraction, tree-felling or quarry mining operations in the Parcel of Land Known as Land Reference Number 12157/10 situated in Ithanga-Kakuzi Sub County or in any other manner interfering with the Defendant's quiet possession and enjoyment of Land Reference Number 12157/10 situated in Ithanga-Kakuzi Sub County.
 - e. That the court be pleased to set aside order given by the Honourable Lady Justice J.M Onyango on 6th February 2025 and issued on 10th February 2025, in its entirety.
 - f. That this Honourable Court be pleased to issue an environmental preservation order prohibiting further environmental degradation on the suit property.
 - g. That the Plaintiff's Process Server, Mr Amos Chege Kanoga, be summoned to court for cross-examination.
 - h. That the suit be transferred to the Environment and Land Court at Murang'a for final hearing and determination.
 - i. That the Officer Commanding Ngati Police Station (OCS, Ngati) to enforce the Orders of the court herein.
 - j. That costs of this Application be borne by the Plaintiffs, jointly and severally, in any event.
2. The application is based on the 24 grounds set out on the face of the Notice of Motion and the Supporting and Supplementary Affidavits sworn by Harry Odondi, the Legal Officer of the Applicant, on 24th February 2025 and 11th March 2025, respectively.
 3. He explained that the Applicant is the owner of Land Reference Number 12157/10 (hereinafter referred to as the suit property) situated in Ithanga-Kakuzi Sub-County, hence the Applicant is entitled to quiet, peaceful and exclusive use and enjoyment of the suit property. He faulted the Plaintiffs/Respondents for relying on a court order issued by this court referring to the suit property as "unsurveyed plots in Thika Municipality" to trespass onto the suit property and carry out quarrying activities. He added that the Respondents felled trees and purported to make a road through the Applicant's pineapple plantation situated on the suit property.



4. It was his contention that the suit property was surveyed and a title had been issued in favour of the Applicant in 1973. It was his further contention that the Applicant's lease over the suit property was renewed in 2022.
5. He asserted that upon being unsuccessful in getting the Respondents to leave the suit property, the Applicant reported the dispute to the local administration, including the police and the director of surveys, with the hope of resolving the dispute amicably. However, unbeknownst to the Applicant, the Respondents had filed this suit and concealed that fact from the Applicant. He further asserted that at the time of filing this application, the Applicant had neither been served with the summons and pleadings in this suit nor the court order given on 6th February 2025. He added that the Applicant only learnt of this suit on 21st February 2025 when police officers from Ngati Police Station shared a copy of the said order.
6. He stated that the Respondents deliberately misled this court by stating that the suit property is situated in Thika Municipality in Kiambu County when in fact it was situated in Muranga County.
7. Further, he stated that the Applicant has demonstrated a prima facie case with a probability of success. He added that the Applicant was suffering immense irreparable losses and damages.
8. He contended that the Respondents' actions were harmful to the environment, hence they needed to be stopped. In conclusion, he stated that the Respondents would not be prejudiced if the orders sought were granted.
9. The Respondents opposed the application through a Replying Affidavit sworn by the 1st Respondent on 3rd March 2025. She dismissed the application as being misconceived and an abuse of the court process, given that the Applicant had no prima facie case.
10. It was her claim that the suit property was allotted to the Respondents by the Government through allotment letter reference number PDP No. TKA 4/99/57. She added that Land Reference Number 12157 was an amalgamation of Land Reference Numbers 10735,10733 and 921311/1 formerly in possession of the Agro-French (Kenya Cannery) before the Applicant.
11. She denied allegations that there had been an amalgamation of Land Reference Number 12157, its subdivisions and the Government Land known as PDP No. TKA 4/99/57. She asserted that the suit land and the neighbouring land that make up part of the Government Land known as PDP No. TKA 4/99/57 and PDP No. TKA 4/99/58 have never been part of the Applicant's land.
12. It was her averment that the Applicant's application for extension of lease in 2022 did not comprise any amalgamation with Government land.
13. On the issue of service of pleadings in the suit, she contended that they forwarded all documents to a licensed process server who duly served the Applicant and prepared various Affidavits of Service. She further contended that the court (Eboso J) on 25th July 2024 ordered them to serve the Applicant by way of substituted service, which they did through the Standard Newspaper of 25th July 2024.
14. She averred that the Applicant had no prima facie case given that they had trespassed on Government Land allotted to the Respondents and third parties who were not party to the suit.
15. It was her contention that they obtained a license and an Impact Assessment Evaluation done by the National Environment Management Authority (NEMA) before commencing the quarry activities on the suit property.



16. In response to the allegation that this court lacked geographical jurisdiction to determine the matter, she stated that this court possessed jurisdiction given that the Letters of Allotment read “Thika Municipality”. In conclusion, she urged the court to dismiss this application with costs.
17. The application was canvassed by way of written submissions. The Applicant filed written submissions dated 24th March 2025 through M/s Njroge Regeru Advocates, while the Respondents filed written submissions dated 8th April 2025 through Ms Simuyu Kasimu Advocates.

Applicant’s Submissions

18. Learned counsel for the Applicant identified the following two issues for determination: (i) whether the Applicant’s application dated 24th February 2025 was merited; and (ii) who should bear the costs of the application. Counsel submitted that the Applicant had met the threshold for grant of an injunction. He further submitted that the Applicant had established a prima facie case by producing a certificate of lease dated 9th September 2022 confirming that he is the registered owner of the suit property.
19. Counsel discredited the Letters of Allotment under PDP TKA/4/99/57 relied on by the Respondents as proof of ownership of the suit property. He specifically stated that: (i) the PDP did not have authority or the signature of the Commissioner of Lands; (ii) the document was not signed by the Director of Physical Planning; and (iii) that it neither had a reference number nor a plan number.
20. With regards to the letter of allotment, counsel submitted that there was no evidence that the same was formally accepted, requisite payments made and all conditions fulfilled. Counsel further submitted that although the letter of allotment is alleged to have been issued in 1998, the land had not been surveyed or titles issued 25 years later. He added that the letter of allotment did not refer to the PDP they were allegedly based on. Counsel faulted the Respondents for failing to pay land rates.
21. Counsel further argued that the suit property was private land registered in the name of the Applicant, therefore it was not available for allocation. Counsel further argued that even if the suit property was to be considered public land, the Commissioner of Lands lacked authority to allocate public land to private developers.
22. Counsel submitted that if the Respondents are allowed to continue with the quarrying activities, they would damage the environment irredeemably, preventing the Applicant from planting pineapples on the said land, therefore causing them irreparable loss.
23. He further submitted that the Applicant is the true and indefeasible owner of the suit property, having been issued with a title in 1973 and their lease having been extended in 2022. He added that the Applicant has been in occupation of the suit property since 1973 and had established a pineapple plantation therein. He argued that the balance of convenience therefore tilted in favour of the Applicant, who was not only the legal owner of the suit property but had also been in actual possession for over 52 years.
24. On the prayer to set aside the orders of the court given on 6th February 2025, counsel relied on Order 40 Rule 7, which grants the court power to set aside injunctive orders. Counsel submitted that the impugned orders were obtained illegally on account of failure by the Respondents to serve the Applicant with the appropriate pleadings. Counsel further faulted the Respondents for failing to comply with the court’s directions on substituted service by putting the advert in a small corner of the newspaper as opposed to putting a prominent notice as directed. Counsel added that the Respondents’ claim that they served the Applicant through a process was a blatant lie. He urged the court to summon the Respondents’ process server, one Amos Chege Kenoga, for cross-examination.



25. On whether this suit should be transferred to the Environment and Land Court at Murang'a, counsel submitted that it is well known that the boundary between Kiambu and Murang'a counties is the Chania/Thika river, with Murang'a being to the north of the river while Kiambu, including the Thika Municipality being to the south of the river.
26. Counsel further submitted that the Respondents conducted their quarrying activities to the north of the river, which falls within Murang'a County. Counsel added that the aforementioned position was confirmed by the Respondents' documents, including the sketch referred to as PDP.
27. Counsel added that the Deed Plan Number 458195 dated 28th April 2022 showed that the Applicant owned the last property in that area, North of the river. Counsel further argued that the following factors demonstrated that this suit ought to be transferred to the Murang'a ELC court: (i) The PDP (sketch) relied on by the Respondents indicates that the land claimed by the Respondents is to the north of river Chania; (ii) The Respondents' process server claimed to have effected service on the Applicant in their offices in Gatanga which is situated in Murang'a County. However, counsel clarified that the Applicant's offices were located in Kakuzi, which is still in Murang'a County; (iii) The Respondents relied on a forest produce movement permit which stated that the forest produce would be sourced from Maragua District located in Murang'a County; (iv) The Rates Clearance Certificate dated 28th October 2024 adduced by the Respondents was issued by the Murang'a County Government; (v) NEMA licence relied on by the Respondents referred to land located in Gatanga sub-county. He added that the license had numerous references to Murang'a County.
28. Despite submitting that the Murang'a ELC Court was the court clothed with jurisdiction to determine the suit, counsel urged this court to issue the reliefs sought in this application in order to meet the ends of justice.
29. On the issue of costs, counsel relied on the principle that costs follow the event to urge the court to allow the application and award the Applicant the costs thereof.

Respondents' Submissions

30. Counsel for the Respondents identified the following five issues for determination: (i) whether the Plaintiffs hold a legitimate interest in the suit property; (ii) whether the Defendant's acts constitute trespass and unlawful interference with the Plaintiff's quiet possession of the property; (iii) whether the Plaintiffs and their assigns have complied with legal and regulatory requirements regarding land use, particularly in relation to quarrying and environmental concerns; (iv) whether the Defendant was properly served with the pleadings in this matter and whether its allegations on non-service hold any merit; (v) whether this honourable court has the requisite jurisdiction to hear and determine this matter; and (vi) whether the Defendant has established a prima facie case and whether the balance of convenience tilts in favour of the Plaintiffs.
31. With regards to the first issue, counsel for the Respondents submitted that Section 5 (1) of the *Land Act* 2012 recognizes interest in land which includes rights conferred by allotment, lease or other agreements that comply with the law. Counsel further submitted that Section 12 of the said Act provided that public land may be allocated through various methods, including allocation, leasehold or freehold. Counsel relied on the case of *Torino Enterprises Limited vs Attorney General* [2023]eKLR, where the Supreme Court held that a letter of allotment by itself does not confer a transferable title. The court added that an allottee must fulfil all conditions and complete the registration process to acquire a legitimate interest in the land. Counsel argued that while the formal transfer of title may not occur until all conditions for allotment are fully met, the payment for ground rent and other requisite fees (such as rates) could give rise to an equitable interest in land. Counsel relied on the cases of Kenya Railways



Corporation vs Wambugu [2017]eKLR, Mungai & 7 Others vs County Government of Kiambu [2022]eKLR and Nairobi City Council vs Thabiti Ltd [2015]eKLR to buttress his submission.

32. Counsel contended that the suit property was lawfully allotted to the Respondents by the Government under PDP No. TKA 4/99/58 in 1998 at which point the Respondents paid the prescribed amounts. Counsel added that the Respondents had acquired an enforceable interest in the suit property, having duly paid ground rent, standing premiums and county rates in relation to the allotted land. Counsel further argued that the Applicant could not claim that the government land allotted to the Respondents is its private land devoid of any evidence of cancellation/revocation of the Letter of Allotment issued to the Respondents and amalgamation of the suit property.
33. On the question of whether the suit property was surveyed or not, counsel submitted that land that is already planned and surveyed was allotted as a surveyed plot and vice versa. Counsel explained that the initials “UNS” on an allotment letter signified that the land was allotted unsurveyed. Counsel argued that the imposition of a survey without the consent of the Respondents amounted to disregarding their interests. Counsel added that the allotment to the Respondents was lawfully issued in respect of an unsurveyed parcel and that any amalgamation thereafter without the proper legal process or consent was irregular, void ab initio ad constituted encroachment.
34. On whether the Applicant’s actions constituted trespass, counsel contended that the unauthorised entry upon another’s land without lawful justification constituted an act of trespass. Counsel added that the Applicant has repeatedly engaged in unlawful acts aimed at frustrating the peaceful occupation of the suit property by the Respondents, including blocking access roads, engaging in acts of intimidation and forcefully attempting to amalgamate the suit premises with its land without any legal basis. Counsel stated that the unlawful acts by the Applicant ought to be restrained by this court.
35. On whether the Respondents were in compliance with the legal and regulatory requirements, counsel submitted that the Respondents have at all times complied with all legal and regulatory provisions governing land use and quarrying. Counsel further submitted that the lessees operating on the land duly obtained the requisite NEMA licenses and that an Environmental Impact Assessment (EIA) was conducted in accordance with the provisions of the Environmental Management and Coordination Act, 1999.
36. On whether the Applicant was duly served with the pleadings in this suit, counsel maintained that the Applicant was duly served in compliance with the provisions of Order 5 of the Civil Procedure Rules, 2010. Counsel asserted that the Respondents filed various Affidavits of Service detailing the manner, place, and time of service and the individual who received the pleadings on behalf of the Applicant.
37. Counsel further contended that service was further effected through substituted means upon the Respondents obtaining leave of this court. Counsel added that once leave for substituted service is granted and such service is carried out as directed by the court, it has the same effect as personal service. Counsel relied on the cases of Kenya Commercial Bank Limited vs Kenya Planters Co-operative Union [2005]eKLR, Ogada vs Mollin [2009]eKLR and Re Estate of Shem Wakungu (Deceased) [2021]eKLR to buttress his submission.
38. On the issue of jurisdiction, counsel relied on the case of Owners of the Motor Vessel “Lilian S” vs Caltex Oil Kenya Ltd [1989] KLR 1 to submit that jurisdiction is the foundation of judicial authority. Counsel further submitted that the Environment and Land Court is vested with the exclusive jurisdiction to hear and determine disputes relating to occupation, use and title to land as provided under Article 162 (2) (b) of *the Constitution* of Kenya and Section 13 of the *Environment and Land Court Act*. Counsel added that this court is seized with the requisite jurisdiction to adjudicate over the dispute. However, counsel contended that the Respondents were not opposed to the transfer



of the suit to the Murang'a Environment and Land Court due to the geographical assertions claimed by the Applicant.

39. On whether the Applicant has established a prima facie case and whether the balance of convenience tilts in favour of the Respondents, counsel relied on the principles espoused in the cases of *East African Industries vs Trufoods* [1972] EA 420 and *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 as restated by the court in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] to submit that the Applicant has failed to establish a prima facie case. Counsel added that the suit property was lawfully allotted to the Respondents and has never been part of the Applicant's land.
40. In conclusion, counsel submitted that this application is devoid of merit, therefore, it ought to be dismissed with costs. Counsel urged this court to reinstate the interim orders granted on 10th February 2025 and order the transfer of the suit to the Murang'a Environment and Land Court. Counsel further urged this court to affirm the continued occupation and use of the suit property by the Respondents pending the full resolution of the suit.

Analysis and Determination

41. This court is of the considered opinion that the main issues for determination are as follows:-
 - a. Whether this court has jurisdiction to adjudicate over the suit.
 - b. Whether proper service of pleadings was effected on the Applicant.
 - c. Whether the prayer for setting aside the orders of 6th February 2025 is tenable,
 - d. Whether the Applicant has made out a case for granting of temporary injunctive Orders,
 - e. Whether the Applicant has made out a case for granting an environmental preservation order.

Whether this court has jurisdiction to adjudicate over the suit

42. Before proceeding to determine the issues raised herein, it is important that this court determines whether it has jurisdiction to hear and determine the issues raised herein. In *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1, Nyarangi, JA expressed himself as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake both of these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given...Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other



evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

43. It is not in dispute that this court has jurisdiction under Section 4 of the *Environment and Land Court Act, Act No. 19 of 2011*, to determine the dispute in the matter. The issue for determination is the question of geographical jurisdiction. Section 4 (3) of the *Environment and Land Court Act* states that the ELC court can exercise jurisdiction throughout Kenya. There is no limitation to only determining cases within a particular county or region.
44. However, Hon. Justice Mutunga, the former Chief Justice in exercise of his powers under the *Environment and Land Court Act*, drafted Practice Directions on Proceedings in the Environment and Land Court, which were published under Gazette Notice No. 5178 of 25th July, 2014. Paragraph 14 of the said directions provides as follows:-
- “All new cases relating to the environment and the use and occupation of, and title to land not falling under paragraph 8 above shall be filed in the nearest Environment and Land Court for hearing and determination by the said court and must be within the purview of the jurisdiction conferred upon the Environment and Land Court with particular regard to the jurisdictional limitations set under Article 162(2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* No. 19, 2011.”
45. The *Environment and Land Court Act* stipulates that the court is bound by the provisions of the *Civil Procedure Act*. Provisions of the *Civil Procedure Act* (Section 12 and 15) provide that suits have to be instituted within the local limits where the property is situated and where the Defendant reside.
46. In the instant case, the Applicant contended that the suit property is situated in Kakuzi within Murang’a County, where their offices are also located. In any case, the Respondents are not opposed to the Applicant’s request to have the suit transferred to the Environment and Land Court in Murang’a.
47. The court is in agreement with the parties that, for administrative convenience, the suit should be adjudicated upon at the Environment and Land Court in Murang’a. The other limbs of the application shall be determined by the Honourable ELC Judge, Muranga.
48. Accordingly, I make the following orders;
- a. This suit is hereby transferred to the Environment and Land Court at Murang’a for hearing and final disposal.
 - b. The orders issued on 27.2.25 are extended until the application is heard and determined.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29TH DAY OF APRIL 2025.

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J. M ONYANGO

JUDGE

In presence of:

Miss Kasimu for the Plaintiffs

Mr Thuo appearing alongside Mr. Oduor for the Defendant

Mr. Matu for the Intended Interested Parties

Court Assistant: Hinga

