



REPUBLIC OF KENYA



**Kioko v Muteti & 4 others (Miscellaneous Application E001 of 2025)
[2025] KEELC 3589 (KLR) (Environment and Land) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3589 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
MISCELLANEOUS APPLICATION E001 OF 2025**

EK WABWOTO, J

MAY 8, 2025

BETWEEN

ALOICE MWANGANGI KIOKO APPLICANT

AND

PETER MARUELI MUTETI 1ST RESPONDENT

TAVETA LAND ADJUDICATION OFFICER 2ND RESPONDENT

TAITA-TAVETA DISTRICT SURVEYOR 3RD RESPONDENT

LAND REGISTRAR, WUNDANYI REGISTRY 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The Applicant moved this court vide a Notice of Motion application dated 6th September 2024 seeking the following orders:-
 - i. Spent...
 - ii. That there be a stay of proceedings in Criminal Case No. E153 of 2023 filed in the Magistrate Court at Taveta pending the hearing and determination of the current application.
 - iii. That there be a stay of proceedings in Criminal Case No. E153 of 2023 filed in the Magistrate's Court at Taveta pending the hearing and determination of Civil Case No. E006 of 2023 filed in the Magistrate Court at Taveta.
 - iv. That costs of this application be in the cause.
2. The application was premised on the grounds that:-



- a. The subject matter of this case being Ziwani Settlement Scheme Phase I/196 (hereinafter called the “suit property”) has ongoing criminal proceedings in Republic =Versus= Aloice Mwangangi Kioko Criminal Case No. E153 of 2023.
 - b. The Plaintiff/Applicant vide the charge sheet dated 13th February 2023 has been accused of breaching peace by illegally possessing the suit property which allegedly belongs to the 1st Defendant/Respondent.
 - c. The criminal case has now been slated for hearing on 9th September 2024 before Honourable Ndungi at Taita-Taveta.
 - d. That the court in Civil Case No. E006 of 2023 is yet to determine who the owner of Ziwani Settlement Scheme Phase I/196 is i.e. whether it belongs to the Plaintiff/Applicant or the 1st Defendant/Respondent.
 - e. That the decision of the Court on who the proprietor is will have an impact on the criminal case because if it is ruled in the Plaintiff/Applicant’s favour, the criminal proceedings would be rendered unnecessary.
 - f. The criminal proceedings were commenced with a view to assist the complainant to illegally retain the suit property notwithstanding that there was a civil suit being Civil Case No. E006 of 2023 touching on the same subject land.
 - g. If the criminal proceedings are not stayed, the Plaintiff/Applicant might be subjected to unnecessary and tedious criminal process, proceedings which won’t be necessary if the civil proceedings are ruled in the affirmative.
 - h. The application has been filed timeously and no inordinate delay has been occasioned to the Honourable Court and the Defendants/Respondents.
 - i. The Defendants/Respondents would not be prejudiced in any way if the Orders sought herein are granted.
 - j. The Plaintiff/Applicant stand to suffer substantial harm, injury or loss if the application herein is not allowed and the criminal case proceeds before the civil case is determined and the owner of the suit property deciphered.
 - k. From the foregoing, it is in the interests of justice that the application be heard expeditiously and orders sought herein be allowed.
3. Pursuant to the directions issued by this court, it was directed that the application be canvassed by way of written submissions. The Applicant filed written submissions dated 27th March 2025. No response nor written submissions were filed by the Respondents.
 4. It was submitted inter alia that the suit property is a scheme involving 800 squatters who similarly have bought multiple suits to be recognized as beneficiary of the scheme popularly known as Ziwani Scheme.
 5. It was also submitted that the Applicant has demonstrated a prima facie case with high chances of probability of success in the civil case hence if the Magistrate Court finds that indeed the Applicant is a beneficiary of the scheme, the criminal case against the Applicant would be rendered nugatory since one cannot be a forcible detainer to a parcel of land that it is his/hers. Once the civil court determines who the beneficiaries are, the criminal matter would be rendered baseless.



6. The court has considered the application and written submissions made and the following are the salient issues for consideration herein:-
 - i. Whether the Environment and Land Court is seized of the requisite jurisdiction to stay proceedings in Criminal Case No. E153 of 2023.
 - ii. Whether this application is properly before court.
7. The Applicant seeks to stay the criminal proceedings in Taveta Criminal Case No. E153 of 2023 pending the hearing and determination of Taveta Civil Case No. E006 of 2023 which is expected to determine the issue of ownership.
8. Article 162(2) b of the [Constitution](#) and Section 13 (2) of the Environment & Land Court Act, which states; -
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of the [Constitution](#), the Court shall have power to hear and determine disputes——
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e) any other dispute relating to environment and land
9. The Applicant herein is seeking the Court’s intervention in staying criminal proceedings before the Magistrate’s court, and the staying of criminal proceedings is not among the issue that the ELC, has been empowered to exercise over by dint of Article 162(2) b of the [Constitution](#) and Section 13 of the ELC Act.
10. In the case of Samuel Kamau Macharia & another vs Kenya Commercial Bank Ltd & 2 others [2012]eKLR, the Supreme court held as follows; -

“A court’s jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
11. Therefore, it is trite that jurisdiction is everything, and where there is no Jurisdiction, the court cannot move further with the matter, as it has no authority to do so. Further, it is evident that jurisdiction flows from the [Constitution](#), Legislation or both, and a court cannot arrogate itself jurisdiction.
12. In view of the foregoing, the Environment and Land Court does not have the jurisdiction to stay criminal proceedings. The same falls squarely with the High Court as stipulated under Article 165(3) of the [Constitution](#).
13. In the premises, the final orders that commend themselves to the court are as hereunder: -
 - i. The Environment and Land Court is devoid and divested of the requisite jurisdiction to entertain the application.



ii. The application dated 6th September 2024, is hereby struck out.

iii. Each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 8TH DAY OF MAY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

.....for the Applicant.

.....for the 1st Respondent.

.....for the 2nd to 5th Respondents.

Court Assistant: Mary Ngoira.

