



**Nzioka & another v Akoko (Environment and Land Appeal  
E024 of 2023) [2025] KEELC 4346 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4346 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL E024 OF 2023**

**AY KOROSS, J  
JUNE 10, 2025**

**BETWEEN**

**FLORENCE M NZIOKA ..... 1<sup>ST</sup> APPELLANT**

**DAVID NZIOKA NDUBA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**GEORGE ODHIAMBO AKOKO ..... RESPONDENT**

*(This is an appeal from the judgment of PM Hon. D. N. Sure,  
delivered on 9/10/2023 in Kangundo CM ELC Case No. E027 of 2020)*

**RULING**

1. This matter was scheduled for judgment today; however, having considered the nature of the dispute that was before the lower court, it is the considered view of this court that it has to determine whether it has jurisdiction to entertain the appeal.
2. The jurisdiction of the High Court and this court is respectively established under Articles 165 and 162(2)(b) of the *Constitution* of Kenya. In these provisions of the law, the jurisdiction of the High Court is very wide, and Article 165 (5) thereof categorically states the limitations to its jurisdiction in the following manner: -

“The High Court shall not have jurisdiction in respect of matters—

- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
- (b) falling within the jurisdiction of the courts contemplated in Article 162(2).”



3. As for Article 162(2)(b) thereof, parliament established this court, which is a court of equal status to the High Court, whose jurisdiction is to hear and determine disputes relating to the environment and the use and occupation of and title to land.
4. When these 2 provisions of the Constitution are read together, it means that the High Court has no jurisdiction whatsoever over matters that fall within the jurisdiction of the Environment and Land Court (ELC) or vice versa, as they each have exclusive jurisdiction over the matters for which those courts have been established for.
5. Concerning contracts and deciding which court has jurisdiction to hear and determine them, this court has benefited from the wisdom of the judges of the Court Appeal who in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR) who had this say on the tests to be applied in making such a determination;

“Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be understood within the context of the court’s jurisdiction to deal with disputes connected to ‘use’ of land as discussed herein above. Such contracts, in our view, ought to be incidental to the ‘use’ of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.”

6. It suffices from this decision that, though the ELC has jurisdiction to handle disputes over contracts, its jurisdiction on such contracts is restricted to matters dealing with the environment and the use and occupation of and title to land.
7. This court has had a chance to peruse the entire lower court record and when put together, the issue in dispute was over a contract executed between the parties whereby the respondent had been commissioned by the appellants to construct a structure for them and a dispute arose as to whether there was breach of the contract and the sums due and owing between the parties.
8. The dominant issue between the parties was the settlement of amounts owing between them on account of a contractual relationship of contractor and contractee which is not a dispute within the ELC whose jurisdiction is limited to the areas qualified under Article 162 of the Constitution, Section 13 of the ELC Act and Section 150 of the Land Act.
9. Instead, the jurisdiction of the High Court to deal with accounts over contractual obligations for those that do not deal with the environment and the use and occupation of and title to land is undoubtedly found in Article 165(3) (a) of the Constitution which provides that the High Court has unlimited original jurisdiction in civil matters.
10. In conclusion, this court finds it does not have jurisdiction to entertain the appeal. Since it is settled that jurisdiction is everything, and without which a court has no power to make one more step, this court hereby downs its tools. Nevertheless, for ends of justice to be met, it is prudent to have this matter transferred to the High Court, Machakos, for determination.
11. In the end, this court hereby issues the following final disposal orders: -
  - a. This file be and is hereby transferred to the Machakos High Court.
  - b. The deputy registrar of this court is directed to transmit this file to the deputy registrar of the High Court, Machakos, for onward placement before the Presiding Judge, High Court, on an appropriate date for directions.



Orders shall be issued accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 10<sup>TH</sup> DAY OF JUNE, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**10.06.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Muema for appellant.

Mr. Odhiambo for respondent.

Ms Kanja- Court Assistant

