



**Onditi & another v Directorate of Criminal Investigations- Rongai & another
(Criminal Revision E017 of 2025) [2025] KEHC 5254 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E017 OF 2025**

PN GICHOHI, J

APRIL 24, 2025

**IN THE MATTER OF AN APPLICATION FOR REVIEW AND SETTING
ASIDE OF EX PARTE ORDERS ISSUED ON 6TH FEBRUARY, 2025**

AND

IN THE MATTER OF SECTIONS 362 AND 364 OF THE CRIMINAL PROCEDURE CODE

BETWEEN

KENNEDY ONDITI 1ST APPLICANT

EMILY NYABISI 2ND APPLICANT

AND

**DIRECTORATE OF CRIMINAL INVESTIGATIONS- RONGAI 1ST
RESPONDENT**

CHIEF LAND REGISTRAR, NAKURU COUNTY 2ND RESPONDENT

RULING

1. The Applicants herein Kennedy Ondoiti and Emily Nyabisi (herein referred to as the 1st and 2nd Applicant respectively) filed a Notice of Motion dated 13th February, 2025, under certificate of urgency pursuant to Sections 362 and 364 of the *Criminal Procedure Code*, Articles 47 and 50 of *the Constitution* and all other enabling provision of the law, seeking for Orders that: -
 1. Spent.
 2. Spent.
 3. This Honourable Court be pleased to call for, review, vary and or set aside the ex parte Orders issued on 6th February, 2025 requiring the Applicants to surrender the Original title deed.



4. This Honourable Court finds and declares that the criminal miscellaneous application is inappropriate as it involves a land dispute, which should be determined under the *Environment and Land Court Act*.
 5. The Court finds that the Ex parte Orders issued violates the Applicant's right to a fair hearing under Article 50 of *the Constitution*.
 6. This Honourable Court finds that the matter is sub judice, as it is already pending in Nakuru CMELC No. 60 of 2020 and the criminal Application amounts to forum shopping and abuse of process.
 7. The Honourable Court finds the impugned Orders were issued without a valid legal basis and the Directorate of Criminal Investigations (DCI) cannot be used to enforce Civil claims.
 8. In the alternative, this Honourable Court orders a retrial of the matter before a competent Court, ensuring the Applicants are accorded a fair hearing in accordance with Article 50 of *the Constitution*.
 9. Further in the alternative, the Applicants be granted leave to file their responses to the miscellaneous Application and allowed to defend themselves.
 10. This Honourable court do make any such further Orders as it may deem just and expedient.
 11. The costs of this Application be provided for.
2. The grounds are on the face of the application and Supporting Affidavit sworn by Kennedy Onditi (the 1st Applicant) on 13th February, 2025. He states that the trial court case being Criminal Miscellaneous Application No. E019 of 2025 is inappropriate as the Orders relate to land ownership which is a civil matter that should be determined by Environment and Land Court.
 3. He contends that they were not served with the application and the supporting documents in Molo Miscellaneous criminal case No. E019 of 2025 and further, they were not given any opportunity to defend the case against them.
 4. He states that the dispute over Shawa/Gicheha Block 5/67 (Ex-Margaret) is already pending before the Chief Magistrate Court at Nakuru being CMELC No. 60 of 2020 and therefore, the criminal application amounts to forum shopping and an abuse of Court process.
 5. He maintains that they are the lawful owners of the disputed land and that no evidence was presented before Court on any criminal activity perpetuated by them. They therefore urge that the application be allowed as prayed.
 6. The Application is opposed by the 1st Respondent who filed a Replying Affidavit sworn on 25th February, 2025 by Boniface Mukala, a police officer attached to Directorate of Criminal Investigation, Rongai Police Station.
 7. In the Affidavit, Boniface Mukala states that he is the Investigating Officer in Criminal Inquiry Number 1/2024, which was lodged vide a complaint raised on allegations that Kennedy Onditi and Emily Nyabisi (The Applicants herein) fraudulently obtained Title Deed(s) to land parcel number Shawa/ Gicheha Block 5/67 (Ex- Margaret) on 14th February, 2020 and 20th November, 2024.
 8. Following that complaint, an inquiry commenced that leading to the arrest of the 1st Applicant on 23rd January, 2025. He was charged with the offense of house breaking and stealing.



9. In addition, one complainant named Penina Ngeno reported malicious damage to property vide police case no. 713/275/24 CF E 123/24.
10. He states that in another report, on 9th January, 2025, he was directed by Nakuru County Criminal Investigations Officer, Mr. Adan Mohammed (SSP) to investigate a case of land fraud involving issuance of two title deeds to the same parcel of land Shawa/Gicheha Block 5/67 (Ex -Margaret) dated 14th February, 2020 and 20th November, 2024 to the 1st and 2nd Applicants.
11. Consequently, he requested the Applicants herein to furnish him with the original title deeds to enable him carry out investigation on the claim of fraud. However, he was given copies of the title deeds instead of the original copied requested, which copies could not be subjected to forensic document examination.
12. With the Applicants having refused to furnish him with original copies required for purposes of subjecting to forensic documents examination at DCI Headquarters for signatures and stamp analysis, he made a Miscellaneous Application No. E002/ of 2025 to authorize the Land Registrar Nakuru to issue him with the certified documents on the subject land.
13. Contemporaneously, on 6th February, 2025, he made a miscellaneous Application No. E019/25 requesting to be furnished with original title documents to the subject parcel of land reference No. Shawa/Gicheha Block 5/67 (Ex -Margaret) for investigations purposes, which the trial Court granted the Orders as prayed.
14. He stated that the original title deed dated 16th January, 2014 is still in the name of Lillian Auma Oyoo. As per his investigations, Lillian Auma Oyoo had sold the subject parcel of land to Penina Ngeno by the sale Agreement of 6th September, 2018. Consequently, Penina Ngeno charged the said parcel of land to Equity Bank on 9th May, 2019 as security for loan secured. The same title was released back to Penina Ngeno on 7th January, 2025 by Equity Bank, Gate House Branch.
15. Further investigations reveal that after selling the subject parcel of land to Penina Ngeno, Lilian Auma Oyoo, went ahead to sale the same parcel of land to the 1st Applicant, Kennedy Onditi, on 31st January, 2020 for consideration of Kshs 1,100,000. This sale caused Lilian Auma Oyoo to be arrested and charged in MCCR Case No.E027 of 2020 (Police File Case No. 713/87/2020) with the offense of obtaining money by false pretences. Nevertheless, that the Applicants have obtained title deeds dated 14th February, 2020 and 20th November, 2024, which title deeds are questionable and subject of criminal investigations.
16. He stated that the former land Registrar, Eric Munene Nyamu, recalled the title deed dated 14th February, 2020, in presence of the 2nd Applicant, having realizing that it was not in the land registry record and destroyed the said title in presence of the 2nd Applicant, leaving the title deed issued on 20th November, 2024, which is the one subject of the criminal investigations.
17. It is on that basis that he states that since the original title deed was in custody of the Equity Bank, the subsequent Title Deeds are questionable and therefore require to be subjected to Forensic documents examiner to ascertain its authenticity.
18. He states that CMELC No. 60 of 2020 has no bearing on this criminal matter and, in In any event, they only became aware of this matter on 23rd January, 2025 when the 1st Applicant was arrested and further, the defendants in that civil matter are not aware of the said civil case.



19. He reiterates that the criminal investigations are still ongoing and setting aside the Orders of the trial Court will interfere with his investigation and not meet the ends of justice. Lastly, he prays that the application be disallowed.

Applicants Submissions

20. The Applicants submit that the application seeks a review of the Orders issued by the lower court directing the surrender of the original title documents of the suit property to the Directorate of Criminal investigations (DCI) for purposes of investigations, as the impugned Orders were issued without affording them an opportunity to be heard, thus amounting to a violation of the principles of natural justice and a miscarriage of justice.
21. Regarding their right to be heard, it is submitted that it is a fundamental principle of law that no party should be condemned unheard. On that note, they argue that they were not given an opportunity to present their case before the court issued the directive requiring them to surrender the original title documents, which act was in breach of Article 50(1) of *the Constitution* of Kenya.
22. In support of this view, reliance was placed on the case of Anyango Aba v Attorney General [1986] eKLR where the Court held that;-
- “a decision which affects the rights of an individual and is arrived at without giving that individual an opportunity to be heard is null and void.”
23. They also rely on the case of Pastoti v Kabale District Local Government Council & Others [2008] 2 EA 300, where the Court held that an order made in violation of the principles of natural justice is unlawful and should not stand.
24. In respect of the jurisdictional issue, the Applicants submit that the criminal court lacked the jurisdiction to issue orders requiring the surrender of the original title documents reason being that matters concerning land ownership fall within the exclusive jurisdiction of the Environment and Land Court (ELC), as stipulated under Article 162 (2) (b) of *the Constitution* and the *Environment and Land Court Act*.
25. In support of that argument, they rely on the case of Republic v Chief Magistrate's Court at Mombasa Ex-parte Ganijee & Another [2002] 2 KLR 703 and the case of Republic Vs Commissioner of Police & Another Ex-parte Mlichael Monori & Another [2012] eKLR, where the Court reaffirmed that criminal investigations cannot be used as a tool to resolve civil disputes or interfere with pending civil proceedings.
26. The Applicants argue that they are party to Nakuru CM ELC Case No. 60 of 2020, which case concerns the ownership of the suit property and the original title document is a crucial piece of evidence in the pending land dispute, and its surrender to the DCI at this stage would be prejudicial to the Applicants aimed at circumventing the ongoing land matter and interfere with the due process of the law. In support of this, reliance is placed on the case of Republic Vs inspector General of Police & Another Ex-parte Patrick King'ori Kamau [2017] eKLR.
27. He also relied on the case of Vincent Kibiego Saina v. The Attorney-General, as cited with approval in Republic v Chief Magistrate's Court at Mombssa Ex Parte Ganijee &, another [2002] eKLR ,where Kuloba J (as he then was) held that;-

“It is not the purpose of a criminal investigation or a criminal charge or prosecution to help individuals in the advancement or frustration of their civil cases. That is an abuse of the



process of the court. No matter how serious the criminal charges may be, they should not be allowed to stand if their predominant purpose is to further some other and ulterior purpose. The sole purpose of criminal proceedings is not for the advancement and championing of a civil cause of one or both parties in a civil dispute, but it is to be impartially exercised in the interest of the general public interest.”

28. They urge this Court to allow their application as prayed.

1st Respondent’s Submissions

29. The 1st Respondent herein submits on the onset that the Orders granted by the lower court requiring the surrender of the Original Title deed for investigations purposes will not interfere with the ELC matter.

30. It is argued that the Original Title deed was requested to carry out forensic investigation on the authenticity of the said title documents pursuant to a complaint raised on allegation that the Applicants acquired fraudulent title to the said parcel of land.

31. He maintained that the criminal inquiry case, subject of the investigation is separate from the land issue case which can be handle concurrently without either interfering with the other. Lastly, he urged this Court to disallow the application as allowing it is tantamount to interfering with investigations on the complaints raised before it.

Analysis and Determination

32. The Revision Application herein is anchored under Section 362 and 364 of the *Criminal Procedure Code* as read with Article 47 and 50 of *the Constitution*.

33. Section 362 of the CPC provides for powers of the High Court to call for subordinate Court records thus: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

34. Section 364 of the CPC on the other hand provides for powers of the High Court on revision. Generally, Sections 362 and 364 of the *Criminal Procedure Code*, quoted above, as read with Article 165(6) of *the Constitution* grant the High Court supervisory powers over the subordinate Court. For, emphasis, Article 165(6) of *the Constitution* provides as follows:-

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

35. Supervisory and revisionary powers of the High Court empower it to effectively supervise subordinate courts with the objective of ascertaining itself on the correctness, legality or propriety of the lower court record as emphasised under Section 362 of the *Criminal Procedure Code*.

36. Vide the instant application, this Court has been called upon to examine the ruling of the trial court delivered on 6th February, 2025 and determine whether it was legal and correct to order the Applicants



herein to give the Investigating Officer (DCI) the Original title deed and other original documents for their investigations.

37. The 1st Respondent indicated before the trial Court that he had made several attempts to request for the Original Title deed for the sole purpose of carrying out investigation to ascertain authenticity of the said Title following a complaint lodged before it of fraud in the subject parcel of land.
38. The Applicants on the other hand are apprehensive that the 1st Respondent wants to take away their only evidence of ownership of the subject land, when a civil suit being ELC No. 60 of 2020 is ongoing before the Court.
39. Before the trial Court, Sergeant Boniface Mukala, the Investigating Officer, led evidence that a complaint lodged before it was that the Applicants fraudulently acquired title deeds in the subject parcel of land. He added that the former Nakuru land Registrar Mr. Eric Munene Nyamu believed that his signature was forged and further that there is no record in the Nakuru Land Registry showing the Applicants as the owners.
40. That it is on the basis of t that complaint and preliminary investigations that they required authorization to carry out Forensic Documents Examination on the original title deed and other title documents to settle the issues raised and complete investigations.
41. Based on the facts above and the application before this Court, the first issue of concern raised by the Applicants is whether the trial court had jurisdiction to handle the application. According to the Applicants, the issue raised in the application relates to ownership of the subject parcel of land which is not a criminal matter but a civil matter to be handled by the Environment and Land Court.
42. It is now settled that without jurisdiction, a court of law must down its tools as held in the celebrated case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989):-

“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...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
43. A perused of the Notice of Motion dated 6th February, 2025 before the trial court reveals that among the Orders sought by the 1st Respondent herein are that he be granted copies of original title documents in possession of the Applicants for the purposes of carrying out investigations into a fraud claim that had been lodged before it.
44. It’s clear from the application that the Director of Criminal Investigations (DCI) is not seeking to settle the issue of ownership as alleged by the Applicant herein but only for purposes of carrying our criminal investigations which is within their mandate and therefore, the trial court had jurisdiction to issue the Orders allowing the DCI to obtain original title documents for the purposes of carrying out investigations on allegations of fraud that had been raised before it.
45. In regard to the Applicant’s claim that the application before the lower court is sub judice for the reason that the ownership issue touching on the subject title deed is pending before the Environment and Land Court being ELC Case No. 60 of 2020, this Court notes that the matter before the trial Court and the matter before the Environment and Land Court are different.



46. The ELC case is a civil matter focussing on the land ownership dispute while the trial court case, which is the subject of this revision, is a criminal matter seeking an order to enable the DCI carry out its investigations which is its mandate and therefore the claim of sub judice is without basis.
47. On whether the trial Court proceeded on the correct legal path in issuing the Orders of 6th February, 2025. The functions of the National Police Service enumerated in Section 24 of the National Police Service Act include; - (e) investigation of crimes; (g) prevention and detection of crime; (h) apprehension of offenders; (i) enforcement of all laws and regulations with which it is charged; and (j) performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.
48. Section 35 of the National Police Service Act lays out the functions of the Directorate of Criminal Investigations (1st Respondent herein). The DCI is legally obligated, once they witness or are informed of a crime, to investigate the offence. Section 35(g) provides for investigations to include undertaking forensic analysis.
49. Generally, the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law. These obligations arise from the Constitution and are affirmed by the National Police Service Act.
50. By undertaking investigations, the DCI would be acting within their constitutional and statutory duty and violation of the suspects rights may only occur in the manner in which the investigative mandate is executed. In that event, the Applicants would be under an obligation to demonstrate that his or her rights have been violated by the manner in which the investigation were carried out.
51. In the present case, the Applicants have not demonstrated any fault on the part of the Investigating Officers. They have only alleged that the title deed in issue is subject of Nakuru CMELC No. 60 of 2020, which is a civil matter and thus, the issues raised herein should be addressed in the ELC Court.
52. As already established hereinabove, the ELC matter is separate from the issue the subject of this application. Moreover, Section 193A of the Criminal Procedure Code provides that: -

“Notwithstanding the provisions of any other written law the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceeding.”
53. Evidently, the mere pendency of the civil proceedings is not a bar to continuation of the criminal proceedings. The law permits parallel criminal and civil proceedings. Therefore, the Environment and Land matter can proceed concurrently with the investigations by the DCI as none is interfering with the other.
54. The Applicants also argued that the ex-parte orders obtained by the 1st Respondent in the trial court were issued in violation of their right to be heard. A perusal of the trial court file reveals indeed the said Orders issued on 6th February, 2025 were ex-parte. The trial held:-“Application dated 6/2/2025 noted and found with merit. Orders to issue as prayed.”
55. Court directed the Investigating Officer (Applicant therein) to serve the 1st and 2nd Respondents with the Orders issued therein for compliance and in the application which was the subject of the said orders, the 1st Respondents were listed Kennedy Onditi & Emily Nyabisi while the 2nd Respondent was Chief Land Registrar Nakuru County.



56. It is clear that the ex-parte Orders as granted are final in nature and the Applicants were not granted any opportunity to be heard inter-partes to explain themselves on the issues raised in the application and in particular their refusal to surrender the original documents.
57. However, going by the arguments raised in this application, the apprehension by the Applicants herein are that release of the documents will circumvent their defence on ownership of the property. As earlier sated in this ruling, the release of the documents was for purposes of investigations into allegations of fraud and forgery among other complaints of criminal nature. It is only a court of law that can determine issue of ownership.
58. In the circumstances and considering the material before court, there was no prejudice caused in the issuance of the impugned Orders in regard to the Applicant's right under Article 50 of *the Constitution*. The only issue is that the trial court did not give timelines within which the investigations would be carried out and completed. It is now about two and a half months since the impugned Orders were issued.
59. Timelines should have been given and save for that omission, the Applicants have not established any grounds to warrant this Court's interference with the trial Court Orders.
60. In conclusion, this Court makes the following orders:-
1. The Notice of Motion dated 13th February, 2025 is hereby dismissed.
 2. The Applicants are directed to forthwith comply with the trial court's Orders issued on 6/2/2025 to enable the 1st Respondent herein complete investigations.
 3. Once the 1st Respondent gets the said original documents from the Applicants, he has 30 days to complete the investigations.
 4. The trial court's file is now remitted back to the trial court to ensure compliance.
 5. Mention before the trial court on 29th May 2025 for that purpose and for further directions.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF APRIL, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Abuya for Applicant

Mr. Kihara for Respondent

Ruto - Court Assistant

