



**Republic v Director of Criminal Investigations & 4 others; Ibrahim (Exparte Applicant);
Wanjihia & another (Interested Parties) (Judicial Review Miscellaneous Application
E140 of 2023) [2025] KEHC 6416 (KLR) (Judicial Review) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E140 OF 2023**

**JM CHIGITI, J
MAY 16, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

**DIRECTOR OF CRIMINAL INVESTIGATIONS, NAIROBI
AREA 2ND RESPONDENT**

**INSPECTOR BABU OTIENO, NAIROBI AREA POLICE
STATION 3RD RESPONDENT**

**OFFICER COMMANDING STATION, NAIROBI AREA POLICE
STATION 4TH RESPONDENT**

DIRECTOR OF PUBLIC PROSECUTIONS 5TH RESPONDENT

AND

ABDIKADIR ALI IBRAHIM EXPARTE APPLICANT

AND

SAMUEL MAIN WANJIHIA INTERESTED PARTY

ABDIRAHMAN MUHAMED ABDI INTERESTED PARTY



JUDGMENT

1. The Application that is before this court for determination is the one dated 27th September 2023 wherein the applicant seeks the following orders:
 1. An order of Prohibition do issue to prohibit the Director of Criminal Investigations, the DCIO, Nairobi Area Police Station or any agencies or departments of police from arresting, detaining, summoning or requisitioning the Applicant based on the complaint by the 1st Interested Party regarding the property known as L.R No. 209/14389 (hereinafter referred to as “the suit property”)
 2. An order of Prohibition do issue to prohibit the Director of Public Prosecutions of the Republic of Kenya, the 5th Respondent herein from charging the Applicant based on the complaint by the 1st Interested Party regarding the suit property.
 3. An order of Certiorari do issue to quash the investigations currently being conducted by the 1st, 2nd, and 3rd Respondents and charges against the Applicants based on the complaint by the 1st Interested Party.
 4. Costs of this Application.

The Applicants case;

2. It is his case that he is the owner of the suit property known as L.R No. 209/14389 having purchased the same as a bona-fide purchaser from 2nd Interested Party herein via a sale agreement dated 30th December 2016.
3. The 2nd Interested Party herein is the 1st Judgment Debtor in Environment and Land Court Civil Case No. 1829 of 2007 (Formerly HCCC No. 318 of 2006).
4. It is his case that the Decree Holder, and the Interested Party herein, irregularly obtained an Exparte Judgment on 8th October 2020 and proceeded to instruct the National Police Service through their Nairobi Area Police Station to obtain vacant possession over the suit property on the strength of the said judgment delivered in his favour.
5. He argues that the 1st Interested Party is hell-bent on evicting him from the suit property where he has enjoyed quiet possession of the land from the date of acquiring the said property to date.
6. He filed a suit via an Application dated the 17th of May 2023 seeking inter alia, that the Honourable Court be pleased to stay execution and/or further execution of the Judgment, Decree and/or order delivered on 8th October 2020 and proceedings pending the hearing and determination of the Application.
7. On 7th June 2023 the court ordered that the prevailing status quo to be maintained until 30th October 2023 when the matter was to be mentioned.
8. In utter defiance and in contempt of the court orders issued, the 1st Interested Party and his agents forcefully gained entry to the suit property and attempted to forcefully evict him from the premises.
9. The 1st Interested Party has now filed a complaint with the 3rd and 4th Respondent who have subsequently charged him with the offence of forceful detainer.



10. The 1st Interested Party has filed a complaint with the 3rd and 4th Respondents and the Applicant is apprehensive that he will be charge the offense of forceful detainer, an offense which is false and utterly trumped up.
11. It is his case that the complaint lodged by the 1st Interested Party herein is malicious and an abuse of the criminal process and not in the interest of criminal justice.
12. He believes that the issue in contention is purely Civil in nature and should be addressed and resolved by the civil process.

Respondents Case

13. The Respondents, through the Directorate of Criminal Investigation, Nairobi Regional Headquarters is investigating criminal offences of forcible detainer contrary to section 91 of the penal code, Chapter 63 Laws of Kenya as reported on 28th February 2018, by John Harun Mwau (the complainant), a director of Johnco Limited.
14. It is the Respondents' case that, the complainant reported that on the 27th day of February 2018, he got wind of illegal activities on his parcel of land LR 209/10735 and sent his agent to confirm the same whereby the said agent was turned away by the Exparte Applicant in company of his workers.
15. The Exparte Applicant had also made another report of trespass on LR 209/14389 whereby he accused Johnco Limited of trespass.
16. Investigations established that the parcel land LR 209/14389 claimed by the Exparte Applicant is non-existent in land records and that the deed plan 236626 dated 31st October 2001 which is alleged to support the said LR 209/14389 was cancelled before issue.
17. It is the Respondents' case that the investigation established that, LR 209/14389 measuring approximately 0.1696 Ha claimed by Exparte Applicant is purported to be an amalgamation of LR 209/10735 belonging to the complainant Johnco Limited with part of LR 209/10736 belonging to estate of Samwel Wanjihia (the 1st interested party).
18. The 1st interested party had filed a civil suit against Abdulrahman Muhamed Abdi (2nd interested party) vide civil suit ELC Suit No 1829 of 2007 and judgment delivered on 8th December 2020 in his favour directing that LR 209/14389 be cancelled and surrendered to Chief land registrar for cancellation.
19. It is their case that the Exparte Applicant is well known to the 2nd interested party and thus undertook dealings on the said land with full knowledge of the issues that was surrounding the said parcel of land.
20. The Exparte Applicant filed another suit being Civil Suit No 354 of 2018 against 1st interested party and the same was dismissed.
21. The Exparte Applicant despite evidence showing that he was duped into buying nonexistent land parcel by the 2nd Interested Party, has remained adamant and vowed to continue holding possession of LR 209/10735 belonging to the complainant Johnco Limited and part of LR 209/10736 belonging to the estate of Samwel Wanjihia (the 1st interested party).
22. It is their case that the purported transfer of land LR 209/14389 from 2nd interested party to Exparte Applicant has been confirmed to be a forgery of a signature and stamp of one Edwin Wafula, a land registrar.



23. It is their case that investigations established that the evidence so far gathered were sufficient to support the criminal charge of forcible detainer consequently we forwarded the police file to the office of the 5th respondents for directions and advice on the decision to charge.
24. Section 24 of the *National Police Service Act* mandates the police to investigate any complaint brought to their attention in order to determine whether a criminal offence has been committed against any person including the Exparte Applicant
25. Article 245 (4) (a) of *the constitution* guarantees independence of the inspector general of police in undertaking any on investigation.
26. Section 193A of the Criminal Procedure Act allows concurrency of both criminal and civil proceedings.
27. They argue that the decision to charge the Exparte Applicant is based on the sufficient evidence available in the file. The Exparte Applicant is yet to be arraigned in the court.
28. Under Article 157 sub Article 6, the Director of Public Prosecutions exercises State powers of prosecution and may Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.
29. Article 157(10) of *the Constitution*, the Director of Public Prosecutions acts independently and he does not require the consent of any person or authority for the commencement of criminal proceedings.
30. They argue that the Exparte Applicant has not raised any cogent allegations of violation of his rights, *the Constitution* or law to warrant this court's intervention, it is evident that Applicant is being investigated for an existent offence or an offence unknown in law.

1st Interested Party's case;

31. It is posited that pursuant to the prescribed environmental rules and guidelines, it is a requirement that a proponent of any project specified in the second schedule to EMCA undertakes and prepares environmental impact assessment project report and submits the report to the Authority prior to being issued with an Environmental Impact Assessment (EIA) License by the Authority. The Authority is tasked with issuing Environmental Impact Assessment Licenses for development projects after review of the submitted EIA report (s) as provided under the EMCA.
32. It is the 1st interested party's case that on 5th May 2014, it received from Shiloah Investments Limited an Environmental Impact Assessment Report dated March 2014 for proposed commercial and recreational development on LR No. 2951/434 along Ngecha Road in Kitusuru as required so as to receive approval from the Authority in accordance with section 58 of EMCA and responded vide it's letter dated 14th May 2014, stating that that it had reviewed the project report which revealed that the magnitude and uncertainties associated with project demands wider public consultation and in depth coverage of the foreseen impacts and mitigation measures. Pursuant to regulation IO (3) of the of the Environmental (Impact Assessment and Audit) Regulations 2003.
33. The proponent was then advised to initiate an Environmental Impact Assessment Study and develop a term of reference for approval and on 20th May 2014, the 1st interested party received from the proponent the terms of reference upon which the Environmental Impact Assessment Study would be prepared.
34. The project proponent, Shiloah Investments Limited thereafter on 23rd July 2014 submitted an application referenced NEMA/EIA/5/2/1165 to the 1st interested party an Environmental Impact



The 2nd Interested Party's case;

35. The 2nd Interested Party is established under section 3(1) of the [National Construction Authority Act](#) (hereinafter referred to as the Act) No. 41 of 2011 with a mandate to oversee the construction industry and coordinate its development.
36. It is its case that Section 5 (2) (g) of the said Act, further mandates the 2nd Interested Party to promote and ensure quality assurance in the construction industry.
37. It is posited that the National Construction Authority Regulations 2014 commenced on 6th June 2014 and under Legal Notice No. 74 and Regulation 17 of the said Regulations provides for registration of all construction works, contracts or projects either in public or private sector shall be registered with the Authority in accordance with the Act.
38. It is its case that in line with Section 23A and 23 (2) of the [National Construction Authority Act](#), on 26th April 2023, its Compliance Officers from Nairobi Region investigated the development on the property known as Plot Title No. 2951/434 Nairobi County and after the investigation it prepared a preliminary investigation report of the development on the property.
39. According to them, it was established that the site had complied with the seven (7) key checklist items. However, the Authority suspended the construction works until the issues raised by the Applicant and Respondent are resolved.

Analysis and determination;

The following are issues for determination;

1. Whether this Court has Jurisdiction.
2. Whether Applicant is entitled to the order sought.
40. The jurisdiction is everything. This is what power the courts have to render an order determining the issues that have been placed before it. Without the jurisdiction of the court is incapable of rendering a judgment or a determination that can be enforceable.
41. The Court has looked at the rival arguments and submissions by parties and noted that the matters that are in dispute revolve around the following items inter alia;

“the parcel of land known as LR. No. 2951/434 situated in Kitusuru Estate along Ngecha Road within the Nairobi City County (the Project Site).

The Applicant's case that upon acquiring the Project Site, it obtained all the necessary licenses, authorizations and approvals including but not limited to; - (i) obtaining a change of user from residential to commercial use, developing design works for the proposed development, project authorization by the Respondent and the National Construction Authority.”

42. There are also issues of compliance with the requirements of the [Environmental Management and Co-ordination Act](#) (EMCA), the application for an Environmental Impact Assessment (EIA) License the submission to the National Environmental Management Authority (NEMA) an Environmental



- Impact Assessment Study Report which NEMA. The findings of NEMA, the potential environmental impacts of the proposed development and duly issued the Applicant with an EIA License.
43. There is a question of the issuance of an Approval of Development Permission of the same date to develop a commercial development on the Project Land.
 44. There is a concern that on 17th March 2023, the Respondent stormed into the Applicant's project site and harassed the Respondent and unjustly and irregularly arrested and detained the Applicant's project foreman and that the Respondent's actions are irregular, unlawful, illegal and contrary to Articles 40 of *the Constitution*.
 45. Article 162 of *the Constitution* has created the courts known Environment and Land Court in the following terms. The Environment and Land Court is a superior court established by Article 162(2) of *the Constitution* of Kenya.
 46. The *Environment and Land Court Act* no.19 of 2011 (ELCA) gives effect to Article 162(2) of *the Constitution* and the court was established to hear and determine disputes relating to the environment and the use and occupation of, and title to land.
 47. The Environment and Land Court exercises jurisdiction throughout Kenya. It has original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of the Act or any other written law relating to environment and land.
 48. The Environment and Land Court has powers to deal with disputes relating to land administration and management. It is also empowered to hear cases relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land.
 49. It exercises appellate jurisdiction over the decisions of subordinate courts and local tribunals in respect to matters falling within its jurisdiction.
 50. This court is further guided by the case of Republic v Karisa Chengo & 2 others [2017] eKLR in which it upheld this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of *the Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters “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)”.

Disposition;

51. The Environment and Labour Court has the jurisdiction to grant any relief including as the Court prerogative orders.



52. This court lacks jurisdiction to determine this matter. Having found that this court lacks jurisdiction I hereby down its tools leaving the 2nd issue to be determined in line with the orders that flow.

Order;

This suit in is hereby transferred to the Environment and Land Court for determination.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MAY 2025

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J. CHIGITI (SC)

JUDGE

