



**South Eastern University College v Registrar of Titles & 2 others (Petition
96 of 2012) [2025] KEHC 6799 (KLR) (Civ) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

PETITION 96 OF 2012

AB MWAMUYE, J

MAY 15, 2025

BETWEEN

SOUTH EASTERN UNIVERSITY COLLEGE PETITIONER

AND

THE REGISTRAR OF TITLES 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

UKAMBANI AGRICULTURAL INSTITUTE LIMITED 3RD RESPONDENT

JUDGMENT

1. This petition concerns the ownership and title of L.R. No. 209/10350. The Petitioner claims that by virtue of Gazette Notice No. 102 of 2008 it succeeded to all assets and liabilities of the former Ukamba Agricultural Institute Ltd (UKAI), including the land in issue. It alleges that it holds the original Certificate of Title to LR 209/10350 and that only its Board of Trustees can lawfully dispose of the land. The Petitioner further contends that its constitutional rights—particularly the right to own property (Article 40) and to fair administrative action (Article 47)—have been infringed by the 1st Respondent’s actions or failures concerning that land.
2. The 1st and 2nd Respondents have raised a preliminary objection under Articles 162(2)(b) and 165(5)(b) of *the Constitution*, submitting that the subject matter (title to land) lies exclusively within the jurisdiction of the Environment and Land Court (the “ELC”). They argue that this Court has no authority to hear disputes that fall under the ELC’s constitutionally-mandated remit. The 3rd Respondent has not opposed the petition.



3. The issues fall into two broad categories. First, whether this Court has jurisdiction to hear the petition or whether it must be heard in the Environment and Land Court. This raises the question of forum-shopping and the predominant-purpose doctrine.

Whether this Honourable Court has jurisdiction to hear and determine the Petition under Article 165(5)(b) of the Constitution

4. The first and most fundamental issue for determination is whether this Honourable Court has jurisdiction to entertain the Petition, considering the objection raised by the 1st and 2nd Respondents. The objection is premised on the provisions of Article 165(5)(b) of the Constitution, read together with Article 162(2)(b) and Section 13 of the Environment and Land Court Act, 2011. It is contended that the dispute, being one involving the title and ownership of land known as L.R. No. 209/10350, falls within the exclusive jurisdiction of the Environment and Land Court.
5. Article 162(2)(b) of the Constitution mandates Parliament to establish a court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Pursuant to that mandate, Parliament enacted the Environment and Land Court Act, which under Section 13(1) vests the ELC with original and appellate jurisdiction to hear and determine all disputes relating to land, including disputes concerning title to land, tenure, boundaries, rates, rents, valuations, and land administration. Article 165(5)(b) of the Constitution in turn provides that the High Court shall not have jurisdiction in respect of matters reserved for the courts contemplated under Article 162(2). The effect of this framework is to oust the jurisdiction of the High Court over disputes which are, by their nature and content, within the statutory and constitutional mandate of the ELC.
6. The jurisprudence of our superior courts has consistently upheld this division of jurisdiction. In *Republic v National Land Commission & another Ex parte Fidelity Commercial Bank Ltd* [2018] eKLR, it was held that any matter that touches on the title to land falls within the exclusive jurisdiction of the Environment and Land Court. Similarly, in *Lydia Nyambura Mbugua v Diamond Trust Bank (K) Ltd & another* [2018] eKLR, Munyao J. emphasized that it is the nature of the dispute, rather than the reliefs sought or the form of the action, that determines which court has jurisdiction. The Court therein stated that where the issue concerns ownership, use or occupation of land, it is the ELC and not the High Court that has jurisdiction to entertain the matter.
7. The Court of Appeal reinforced this position in *Equity Bank Limited v Bruce Mutie Mutuku t/ a Diani Tour Travel* [2016] eKLR, where it declared that it would be illegal for the High Court to transfer a suit filed in a court without jurisdiction to one with jurisdiction. The Court held that there is no competent suit to transfer where jurisdiction is lacking ab initio, and that parties cannot confer jurisdiction by consent, nor can courts invoke the overriding objective or the provisions of Article 159 of the Constitution to salvage a suit that was improperly filed. This principle is rooted in the maxim laid out in *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, that "jurisdiction is everything," and a court must down its tools once it holds that it has no jurisdiction to proceed.
8. To resolve instances where a petition may raise both constitutional and statutory claims, the courts have adopted the "predominant purpose" test. In *Benson Makori Makworo v Nairobi Metropolitan Services & 2 others* [2022] eKLR, the Court of Appeal held that in a matter where constitutional issues arise incidentally to a dispute whose core is land use or title, the ELC remains the proper forum. The Court noted that "the predominant issue is the nature of the land and its use," and that alleged infringements of constitutional rights were ancillary.
9. In the present case, the Petitioner's grievance arises from the alleged unlawful interference with or mismanagement of its proprietary interest in L.R. No. 209/10350. It asserts ownership of the said



land and claims violations of its rights under Articles 40 and 47 of *the Constitution*. However, upon examination of the pleadings and affidavits on record, it is evident that the dominant question in this matter is the rightful ownership of land, including the validity of the title registered in the land registry. As such, the cause of action falls within the subject matter contemplated under Article 162(2)(b) and Section 13 of the ELC Act.

10. Further guidance may be drawn from *Omar Tahir Said v Registrar of Titles & 2 others* [2016] eKLR, where the High Court held that disputes concerning the legality of titles and administrative actions by the Registrar fall squarely within the ELC's mandate. Section 13(3) of the *Environment and Land Court Act* explicitly empowers the ELC to deal with claims for violations of constitutional rights relating to land and the environment. Consequently, even the constitutional dimensions of the claim, including the alleged infringement of Article 40 and 47 rights, are matters that can and ought to be adjudicated by the ELC.
11. Lastly, the Court notes with concern the risk of forum shopping in constitutional litigation. In *Rodgers Muema Nzioka & 2 others v Attorney General* [2009] eKLR, the High Court cautioned against the tendency of litigants to pursue constitutional redress as a shortcut to avoid statutory mechanisms or to obtain parallel remedies. This principle is echoed in the Privy Council's decision in *Harrikisson v Attorney General* [1980] AC 265, which underscored that the constitutional court should not be approached where alternative remedies exist unless there are exceptional circumstances. In the present matter, the Petitioner had an available forum—namely, the Environment and Land Court—and it ought to have pursued its claims there.
12. In the result, this Court finds and holds that the dispute, being one concerning title to land and related constitutional questions, falls within the exclusive jurisdiction of the Environment and Land Court as contemplated under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. Pursuant to Article 165(5)(b), this Court lacks jurisdiction to entertain the Petition and must accordingly decline to proceed further with it.
13. For the foregoing reasons, the Petition cannot be maintained in this Court. The subject matter is one that Article 165(5)(b) reserves to the Environment and Land Court. The preliminary objection is therefore upheld. This Court is without jurisdiction to hear the case, and must decline to consider the substantive relief sought.
14. The Petition is dismissed for want of jurisdiction. In view of the constitutional nature of the dispute, I make no orders as to costs. File closed accordingly.

Orders accordingly.

DATED, SIGNED, AND DELIVERED ON THIS 15TH DAY OF MAY 2025.

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BAHATI MWAMUYE.

JUDGE.

