



REPUBLIC OF KENYA



**Onsongo v Onsongo & 6 others (Petition E010 of 2024)
[2025] KEHC 10499 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
PETITION E010 OF 2024**

WA OKWANY, J

JULY 3, 2025

BETWEEN

CHRISTOPHER MATARA ONSONGO PETITIONER

AND

ZACHARIA ONSONGO 1ST RESPONDENT

MARY MOCHUMBE 2ND RESPONDENT

MINISTRY OF LANDS 3RD RESPONDENT

LAND REGISTRAR, NYAMIRA COUNTY 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

ESTATE OF THE LATE JERUSH NYATICHI 6TH RESPONDENT

SETTLEMENT FUND TRUSTEES 7TH RESPONDENT

RULING

1. This ruling is in respect to the Application dated 14th October 2024 wherein the Applicant seeks the following Orders: -
 1. Spent
 2. That the Court be pleased to issue an Order of temporary injunction pending the determination of the Application and the Petition against the Defendants, either by themselves, agents, servants and/or employees and/or any person acting under their instructions from selling by public auction or by any other manner whatsoever and/or otherwise interfering with the property herein referred to as: -
 - a. Land parcel reference number manga settlement scheme/277.



- b. Land parcel reference number manga settlement scheme/963.
 - c. Land parcel reference number manga settlement scheme/964.
 - d. Land parcel reference number manga settlement scheme/965.
 3. That this Court be pleased to issue an order of temporary injunction pending the determination of this suit against the Defendants, either by themselves, agents, servants and/or employees and/or any person acting under their instructions from entering or by any other manner whatsoever and/or otherwise interfering with the property herein referred as: -
 - a. Land parcel reference number manga settlement scheme/277.
 - b. Land parcel reference number manga settlement scheme/963.
 - c. Land parcel reference number manga settlement scheme/964.
 - d. Land parcel reference number manga settlement scheme/965.
 4. That costs of the Application be provided for.
2. The Application is brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* and Order 40 Rules 1 & 2 and Order 51 Rule 1 of the Civil Procedure Rules. It is supported by the Applicant's affidavit wherein he states, inter alia, that the properties in question are in danger of being dealt with in a manner that is adverse to the Applicant's interests. He further states that he has a prima facie case with high chances of success and that the balance of convenience tilts in his favour.
 3. The Applicant states that his father, the 1st Respondent herein, abandoned the family when he was still of tender age thus forcing him to pay for the entire purchase price for the land No. 277 through salary deductions. He states that he now stands the risk of losing the suit property, without compensation, if the orders sought are not granted since the land remains registered in the 1st Respondent's name.
 4. The 2nd Respondent opposed the Application through a Replying Affidavit in which she avers; that the matter is sub judice as there is an ongoing suit in Nyamira ELC No. E006 of 2024; that the issues raised in the Application fall under the jurisdiction of the Environment and Land Court; that the 1st Respondent is the registered owner of LR. No. Manga Settlement Scheme/277 and that he subdivided it into Nos. 963 and 964. She states that she purchased land parcel No. 964 together with her husband, which parcel is registered in the name of her co-wife one Jerusha Nyatichi Onsongo. She further states that the 1st Respondent set aside land parcel No. 963 for the children in the first family and subdivided it into three portions, to wit, Nos. 1347, 1348 and 1349. She adds that the Applicant had also been charged and convicted in Keroka CR 576/2004 Republic vs. Christopher Matara for the offence of malicious damage to property in a case where his father, the 1st Respondent, was the complainant.
 5. She states that the court in Nyamira lifted a caution lodged by the Petitioner over the said land after entering judgment in Nyamira Misc Civil Application No. 10 of 2024 in favour of the 1st Respondent. She further avers that this Application is a clever strategy to mislead the Court into issuing the said orders of eviction against her, at an interlocutory stage, under the pretext of injunctive orders.
 6. The 2nd Respondent also filed a Notice of Preliminary Objection (PO) dated 3rd February 2025, which is the subject of this Ruling. She listed the following grounds in the PO: -
 1. That the Court is devoid of jurisdiction to entertain the Petition and the Application dated 14th October 2024 and both the Petition and the Application should be dismissed ex-debito justitiae



2. The instant Notice of Motion is incurably defective, bad in law and a non-starter and thus should be struck out with costs.
7. The other respondents did not enter appearance or file any responses to the Application and the Preliminary Objection.
8. When the parties appeared before me on 17th February 2025, directions were issued that the Preliminary Objection be heard and determined on a priority basis before the main Application. Parties were also directed to file and exchange submissions to the PO.
9. The main issue for my determination is whether the Preliminary Objection is merited.
10. The law on Preliminary Objections is now well-settled. In *Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd* [1969] EA 696 the Court of Appeal of East Africa stated that a Preliminary Objection must be only on a point of law. Law J.A and Newbold P (both with whom Duffus V.P. agreed) respectively at 700 and 701 held as follows: -

Law J. A

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which is argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or plea of Limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Sir Newbold, P

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

11. The point of law raised in the Preliminary Objection is that the issues raised by the Applicant fall within the jurisdiction of the Environment and Land Court. It is trite that a court’s jurisdiction flows from either *the Constitution* or Statute. In *Samuel Kamau Macharia & another vs. Kenya Commercial Bank Limited & 2 others* (2012) eKLR, the Supreme Court held thus: -

“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. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”



12. *The Constitution* sets out the High Court’s jurisdiction under Article 165 as follows: -

- (3) Subject to clause (5), the High Court shall have—
 - a. unlimited original jurisdiction in criminal and civil matters;
 - b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - c. jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - d. jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - i. the question whether any law is inconsistent with or in contravention of this Constitution;
 - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - iv. a question relating to conflict of laws under Article 191; and
 - e. any other jurisdiction, original or appellate, conferred on it by legislation.
- (4) Any matter certified by the court as raising a substantial question of law under clause (3)(b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
- (5) 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).

13. *The Constitution* provides for specialized courts with concurrent jurisdiction as the High Court under Article 162 as follows: -

162. System of Courts

2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (a) employment and labour relations; and
 - (b) the environment and the use and occupation of, and title to, land.

14. *The Constitution* succinctly precludes the High Court from hearing and determining matters relating to the court contemplated under Article 162 (2) (b) which is the Environment and Land Court. The



Environment and Land Court's jurisdiction is further explained under Section 13 of the Environment and Land Act as follows: -

13. Jurisdiction of the Court
 1. The Court shall have 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 this Act or any other law applicable in Kenya relating to environment and land.
 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.
 3. Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.
 4. In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
 5. In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - a. interim or permanent preservation orders including injunctions;
 - b. prerogative orders;
 - c. award of damages;
 - d. compensation;
 - e. specific performance;
 - f. restitution;
 - g. declaration; or
 - h. costs.
15. I have considered the instant Application and the Petition together with the prayers sought therein and I find that they are centred on a dispute arising from the ownership of a Land Parcel Reference Number Manga Settlement Scheme/277. The Applicant contends that the 1st Respondent, who is his father, was first allotted the said parcel of land in 1963 by the government through a loan that was



payable every month. He states that he later abandoned his family and the Applicant shouldered the burden of repaying the loan and remained in occupation of the land with his mother and siblings for over 35 years.

16. He further states that the 1st Respondent through ill-will and malicious intention, opted to sell and subdivide the land in a bid to disinherit and disenfranchise them. He also contends that the title held by the 2nd Respondent herein is null and void and that should the 1st Respondent proceed with the disposal of the land as the registered proprietor, he should at the very least compensate him for the monies he sacrificially expended on securing the land by repaying the loan.
17. In my considered view, the facts of this case point to a matter that fall within the exclusive jurisdiction of the Environment and Land Court. It is trite that jurisdiction is everything without which a court cannot act. In the locus classicus Court of Appeal case of Owners of the Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Ltd [1989] KLR 1, Justice Nyarangi JA held as follows: -

“I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

18. Having regard to the findings and observations that I have made in this ruling, I find that this Court lacks the jurisdiction to hear and determine the Petition and Application. I find that the Preliminary Objection is merited and I therefore uphold it and strike out both the Petition and Application for want of jurisdiction.
19. Each party shall bear his/her own costs.
20. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 3RD DAY OF JULY 2025.

W. A. OKWANY

JUDGE

In the Presence of: -

Mr. Onkundi for the Petitioner

Mr. Kipyegon for the 2nd Respondent

C/A – Anita

