



Kimani & another v Kanyi & 5 others (Judicial Review Application E298 of 2025) [2025] KEHC 13240 (KLR) (22 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW APPLICATION E298 OF 2025
RE ABURILI, J
SEPTEMBER 22, 2025**

BETWEEN

JOEL KANYI KIMANI 1ST EX PARTE

JOSPEPHINE NJERI NGUGI 2ND EX PARTE

AND

HON SAM KAGO KANYI 1ST RESPONDENT

PLANNING AND HOUSING 2ND RESPONDENT

THE SECTORAL COMMITTEE ON LANDS PLANNING AND HOUSING 3RD RESPONDENT

COUNTY EXECUTIVE COMMITTEED FOR BUILT EVIRONMENT AND URBAN PLANNING COUNTY GOVERNMENT OF NAIROBI CITY 4TH RESPONDENT

THE NAIROBI COUNTY ATTORNEY 5TH RESPONDENT

COUNTY GOVERNMENT OF NAIROBI 6TH RESPONDENT

RULING

1. The Chamber Summons dated 19th September 2025 is brought under certificate of urgency. I have certified it as urgent and asked the applicant’s Counsel to appear and urge the application exparte.
2. The applicant seeks leave of this court under Order 53 Rule 1 of the Civil Procedure Rules and Sections 8 and 9 of the *Law Reform Act*, to apply for Judicial Review orders of certiorari, prohibition and a declaration challenging the Resolution made by Sectoral Committee on Lands, Planning and Housing of the County Assembly of Nairobi City made on 7/8/2025 authorizing the demolition and or removal of structures on the applicant’s parcel of land No.LR 9363/85 – IR 164369 now converted to



- No. Nairobi Block 221/1430 which the applicant's claim that they purchased through a public auction conducted by Mayfair CIB Bank of Kenya Ltd the charge at a consideration of Kshs.70,000,000 and a certificate of lease issued on 9/4/2025.
3. The applicants claim that they were never accorded a hearing prior to the impugned resolution being made thereby violating their rights to a fair hearing, fair administrative action and access to justice and that as a consequence, their right to the protection of their property as guaranteed under Article 40 of *the Constitution* was violated.
 4. Further, they allege that the impugned resolution is being implemented oblivious of the applicants' lawful ownership of the said property and without following any due process hence the resolution is arbitrary, illegal and unconstitutional.
 5. Upon perusal of the application and annexures thereto, I asked Counsel for the applicant to indicate whether this court is seized of jurisdiction to hear and determine the dispute and Counsel submitted on why the applicant is before this court, citing the constitutional provision and alleging violation of his client's fundamental rights guaranteed under *the Constitution*.
 6. Having heard the applicant's Counsel, I now pose the question of whether this court has jurisdiction to hear and determine the disclosed dispute.
 7. Jurisdiction is everything and any court of law seized of any matter must at all times inquire into whether it is possessed of jurisdiction to hear and determine the dispute before it can embark on the merits of the matter.
 8. Additionally, the requirement for leave in Judicial Review proceedings is to sieve out frivolous matter and to also establish if the court has jurisdiction and all that the applicant is expected to demonstrate is a prima facie case to warrant in depth investigation at the substantive stage.
 9. In the instant case, the dispute is clear. It relates to ownership, occupation and use of land which the applicants claim to be proprietors and which the Sectoral Committee is said to have arbitrarily resolved to possess and direct demolition or removal of structures constructed thereon.
 10. Article 162(2)(b) of *the Constitution* establishes a specialized Environment and Land Court and clothes it with jurisdiction to hear and determine disputes relating to ownership, occupation and use of land.
 11. The jurisdiction of the court is also conferred by various statutes including the *Environment and Land Court Act* at Section 13(1)(2)(3). Under Section 13(5). the Court in the exercise of its jurisdiction under the Act has power to make any order and grant any relief as the court deems fit and just, including interim or permanent preservation orders including injunctions; (b) prerogative orders; and (g) declaration or costs.
 12. Similarly, on jurisdiction, the High Court is expressly barred by Article 165(5)(b) of *the Constitution* from hearing and determining disputes which are reserved for the Environment and Land Court.
 13. As stated above, jurisdiction is everything without which a court of law acts in vain and the moment the court finds that it has no jurisdiction, it must down its tools. See Nyarangi J in *The Owners of Motor Vessel 'Lilian S' vs. Caltex Oil Kenya Limited* (1989) 1 KLR 1.
 14. Jurisdiction is conferred by *the Constitution* and Statutes and no court can arrogate itself jurisdiction. Equally, parties cannot by consent confer jurisdiction on the court.
 15. The Supreme Court of Kenya in Civil Application No. 11 of 2016 Hon. (Lady) Justice Kalpana H. Rawal vs. Judicial Service Commission & Others in elucidating jurisdiction quoted from the decision



in Supreme Court of Nigeria Supreme Court Case No. 11 of 2012 Ocheja Emmanuel Dangana vs. Hon. Atai Aidoko Aliusman & 4 Others where Walter Samuel Nkanu Onnoghen, JSC expressed himself as follows: -

...It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever. That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost...

Regarding the source of a court's jurisdiction, the Supreme Court of Kenya in the case of Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR stated as follows:

“ 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”.

16. This court, upon perusal of the pleadings, it has reached a conclusion that the Court with jurisdiction to hear and determine the dispute herein is the Environment and Land Court, not the High Court.
17. For the above reasons and for want of jurisdiction, I down my tools and strike out the application dated 19/9/2025 with no orders, as to costs, the matter being in the initial stage and having been considered *exparte* in the first instance.
18. This file is closed.
19. I so order.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2025

R.E. ABURILI

JUDGE

