**Karani v Chief Magistrate, Milimani Law Courts & another; Wairimu (Interested Party) (Petition E518 of 2024) [2025] KEHC 13222 (KLR) (Constitutional and Human Rights) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13222 (KLR)

**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E518 OF 2024**

**LN MUGAMBI, J**

**SEPTEMBER 19, 2025**

**BETWEEN**

**PATRICK KARANI ..... PETITIONER**

**AND**

**CHIEF MAGISTRATE, MILIMANI LAW COURTS ..... 1ST RESPONDENT**

**ATTORNEY GENERAL ..... 2ND RESPONDENT**

**AND**

**ANN WAIRIMU ..... INTERESTED PARTY**

**RULING**

## Introduction

1. The Petitioner filed the instant Petition on 30th September 2024. The origin of this Petition stems from suit MCELC No.10248 of 2018; Ann Wairimu v Patrick Karani where the Interested Party herein sought an eviction order against the Petitioner in suit property Plot No.6845/184/4 at Utawala.

2. The previous suit concerned the ownership of the property which was the subject of the eviction notice.

3. Aggrieved by the initiation of the said Court proceedings, the Petitioner filed the instant Petition contending that the Interested Party had not disclosed the whole truth concerning the subject property and that his right to a fair trial had been curtailed in the trial thereof. On 4th October 2024, the trial Court entered Judgment in favour of the Interested Party.

4. The Interested Party in response filed a Notice of Preliminary Objection dated 16th October 2024 on the ground that:

> The Application and Petition both dated 30th September 2024 are incompetent,incurable, fatally defective, and ought to be struck out as this Court lacks the requisite jurisdiction and suitability to entertain, hear and determine the instant Application and Petition in its entirety pursuant to the Provisions of Article 22, 23, 162 (2) (b) and 165(5)(b) of *the Constitution* of Kenya as well as Section 4, 13 of the *Environment and Land Court Act*, No. 19 of 2011.

**The Petitioner's and Respondents' Case**

5. These Parties response and submissions to the Preliminary Objection are not in the Court file and Court Online Platform (CTS). Meaning that Petitioner and Respondent did not file submissions in respect to this Preliminary Objection.

**Interested Party's Submissions**

6. The Interested Party in support of her Preliminary Objection through Brian Njau and Company Advocates filed submissions dated 17th November 2024.

7. Counsel submitted that the Petition was before the wrong forum as this Court lacks jurisdiction to entertain and determine the issues herein. According to Counsel, the jurisdiction to entertain the issues raised is bestowed on the Environment and Land Court (ELC) established under Article 162 (2) (b) of *the Constitution*. Considering this, this Court's exercise of jurisdiction is prohibited by Article 165(5) (b) of *the Constitution*.

8. In view of the foregoing, Counsel submitted that Article 162(2)(b) of *the Constitution* as read with Section 13(4) of the *Environment and Land Court Act*, vests supervisory jurisdiction over magistrate court's exercising powers and functions relating to matters touching on environment, occupation and use of land on the Environment and Land Court.This Court cannot thus sit as an appellate or review Court in place of the ELC.

9. Additionally, Counsel asserted that the special courts can competently issue constitutional remedies under Article 23 of *the Constitution* in matters falling under their jurisdiction. Reliance was placed in Samuel Kamau Macharia vs Kenya Commercial Bank & 2 Others [2012] eKLR where it was held:

> " A Court's Jurisdiction flows from either *the constitution* 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... the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation."

10. Comparable reliance was placed in Supreme Court Petition No. E007 of 2023 – Nicholas v Attorney General & 7 others, National Environmental Complaints Committee & 5 others (Interested Parties), Supreme Court Petition 16 of 2020 – Kenya Hotel Properties Ltd v Attorney General & 5 others, aniel N Mugendi v Kenyatta University & 3 others (2013)eKLR, Marsabit Constitutional Petition No. 2 of 2020 - Ali Jarso Wako & another v Ministry of Interior & Coordination of National Government & 5 others and Public Service Commission & 5 others (Interested Parties) [2020]eKLR.

11. In sum, Counsel argued that the Petition is defective and bad in law and further cannot also be transferred to another Court. To buttress this point reliance was placed in Macfoy Vs United Africa Ltd (1961) 3 All F.R. 1169 where it was held that:

> " If an Act is void, then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad. There is no need for an order of the court to set it up aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expert it to stay there. It will collapse."

**Analysis and Determination**

12. Having considered the pleadings and submissions of the parties, the issue that arises for determination is:

**Whether the Interested Party's Preliminary Objection is merited.**

13. The threshold of a preliminary objection was set out by the Court of Appeal in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696 as follows:

> " ...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit."

14. The Court went further to note that:

> " 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 preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop."

15. Likewise, the Court in Dismas Wambola v Cabinet Secretary, Treasury & 5 others [2017] KEHC 8777 (KLR) noted that:

> " A preliminary objection must first, raise a point of law based on ascertained facts and not on evidence. Secondly, if the objection is sustained, that should dispose of the matter. A preliminary objection is in the nature of a legal objection not based on the merits or facts of the case, but must be on pure points of law.
>
> It may be noted that preliminary objections are narrow in scope and cannot raise substantive issues raised in the pleadings that may have to be determined by the court after perusal of evidence...."

16. Equally, in Oraro v Mbaja [2005] KEHC 3182 (KLR) the Court observed that:

> " A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for

its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence."

17. An objection to the Court's jurisdiction is a pure point of law and if it is successfully argued it would lead to disposal of the entire matter. Moreover, the Preliminary Objection herein does not arouse any contested facts.

18. The Interested Party, contended going by the content of this Petition, that this is matter within the jurisdiction of the Environment and Land Court pursuant to Article 162(2) (b) of *the Constitution* which has the appellate jurisdiction in such matters over the subordinate court. The Petitioner on the other hand in the Petition argued that his right under Article 50(1) of *the Constitution* had been violated in the impugned proceedings.

19. Article 162(2)(b) of *the Constitution* provides as follows:

    (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.

    (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

20. Parliament as empowered by Article 162(3) of *the Constitution* enacted the *Environment and Land Court Act* which deals exclusively with matters falling within court's jurisdiction. The jurisdiction of the Court is defined in Section 13 of the Act as follows:

    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.

21. It is clear that the High Court has wide jurisdiction to entertain matters, including questions relating to *the Constitution* and the Bill of Rights under Article 165(3) (d) of *the Constitution*. However, it is also evident that this Article limits the High Court jurisdiction under Article 165(5) as follows:

    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).

22. The Supreme Court in Republic v Chengo & 2 others [2017] KESC 15 (KLR) guided as follows:

> "[50] It is against the above background, that Article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of *the Constitution* intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts. Concurring with this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of "equal rank and none has the jurisdiction to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other". Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these Courts is subject to supervision or direction from another. In their words:
>
> "By being of equal status, the High Court therefore does not have the jurisdiction to superintend, supervise, direct, guide, shepherd and/or review the mistakes, real or perceived, of the ELRC and ELC administratively or judiciously as was the case in the past. The converse equally applies. At the end of the day however, ELRC and ELC are not the High Court and vice versa. However, it needs to be emphasized that status is not the same thing as jurisdiction. *The Constitution* though does not define the word 'status'. The intentions of

the framers of *the Constitution* in that regard are obvious given the choice of... words they used; that the three Courts (High Court, ELRC and ELC) are of the same juridical hierarchy and therefore are of equal footing and standing. To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialised jurisdiction but they are not the High Court."

23. The Court went on to further state:

> "...[52] ...We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court."

24. It is apparent that the Petitioner's contention with reference to violation of Article 50(1) of *the Constitution* stems from the use of land with reference to Plot No.6845/184/4 at Utawala. Although the Petitioner purports violation of constitutional rights it is palpable that the substratum of this suit revolves around matters reserved for the ELC. It has been held severally that the Environment and Land Court has the jurisdiction to adjudicate violation of constitutional rights that arises in matters that relate to that Court's jurisdiction.

25. It is undisputed that the Petitioner's grievance is founded on the proceedings before the subordinate Court being MCELC No. 10248 of 2018; Ann Wairimu v Patrick Karani, hence is an environment and land court matter. The Act provides that the ELC under Section 13(4) has appellate jurisdiction over matters that flow from its jurisdiction, not this Court. This Petition is thus misconceived as it contravenes Article 162(2) (b) of *the Constitution* and read with Section 13 of the *Environment and Land Court Act*.

26. The Petition must thus inevitably fail as this Court lacks jurisdiction to entertain it. The Interested Party's Preliminary Objection is upheld. The Petition is thus struck out with costs to the Interested Party.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2025.**

**.....**

**L N MUGAMBI**

**JUDGE**