



**Republic v Land Disputes Appeals Committee (R.V.P) & another;
Muniu (Exparte Applicant) (Judicial Review Miscellaneous Application
14 of 2008) [2024] KEHC 2758 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 14 OF 2008
HM NYAGA, J
MARCH 13, 2024
IN THE MATTER OF LAND DISPUTE APPEALS COMMITTEE
CASE NO. 57 OF 2006 BETWEEN JOHN MWANGI MUNIU VS CHARLES KARANJA
AND
THE DECISION OF THE APPEALS TRIBUNAL R.V.P SITTING AT NAKURU**

BETWEEN

REPUBLIC APPLICANT

AND

LAND DISPUTES APPEALS COMMITTEE (R.V.P) 1ST RESPONDENT

**AGNES WAIRIMU KARANJA (SUED AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF CHARLES KARANJA MWAURA) 2ND RESPONDENT**

AND

JOHN MWANGI MUNIU EXPARTE APPLICANT

RULING

1. By a Notice of Motion dated 19th July,2008, the applicant moved this court seeking for orders:-
 - i. That the Honourable Court be pleased to issue an Order for prohibition and certiorari to remove into this Honourable Court and quash proceedings and judgement by Land Dispute Appeals Committee (R.V.P) L.D.A.C No. 57 of 2006 delivered on 22nd April, 2008.
 - ii. That all consequential directions be given.
 - iii. That costs of this Application be provided for.



2. The Application is based on grounds that the requirements of the Land Dispute Tribunal Act were not followed and that the tribunal does not have jurisdiction to determine issues of land registered land under the Registered Land Act.
3. The Application is supported by an affidavit of the exparte Applicant sworn on the even date.
4. It is the applicant's case that he is the registered owner of all that parcel of land known as NAKURU/MOLO/KAPSITA /132.
5. That on 26th June, 2007, the respondents herein sat as complainants in Land Disputes Appeals Committee and proceeded to hear a dispute over the ownership of the said land. He was present and had challenged the jurisdiction of the tribunal to hear matters of registered land but the appeal proceeded.
6. He avers that despite being aware of the above, the alleged tribunal proceeded to hear the dispute and concluded that the land registrar should nullify his title deed to the above-said parcel of land which decision was thereafter filed for adoption before C.M. Court, Nakuru as Land Dispute No. 17 of 2008.
7. For the foregoing reasons, he prays the decision and proposed adoption should not be allowed to stand.
8. The 2nd Respondent after being duly substituted in place of the deceased 2nd respondent did not file any response to the Application.
9. The application was canvassed through written submissions.

Applicant's Submissions

10. It is the Applicant's submissions that he is the registered owner of the suit land known as Nakuru/Molo/Kapsita 132 measuring 1.55 hectares having purchased the same from one John Njeru Kamweti and that following an ownership dispute between him and the 2nd respondent, the matter was referred to land Dispute Committee for determination.
11. He states that the land tribunal ruled in favour of the 2nd Respondent and his appeal against the said verdict to the Land dispute appeal committee, was disallowed.
12. He submits that the land dispute committee ordered nullification of his title deed and a new title to be issued to the 2nd respondent and this verdict was adopted in the chief's magistrate court.
13. He argues that pursuant to Section 159 of the Repealed Registered Land Act Cap 300 and Section 3 of the Land Dispute Tribunal Act, the Land Tribunal Committee lacked jurisdiction to determine the ownership of the suit land and further nullify his the title deed and as such the verdict by the land dispute tribunal appeal committee and the order by the chief magistrates court are null and void.
14. In support of his submissions the applicant cites the case of Julius M. Sandi & another vs Chairman Provincial Disputes Tribunal Appeal Committes & another [2017] eKLR where the court held inter alia that the Provincial Dispute Tribunal Appeal Committee had no mandate to give orders touching on cancellation of title.

Analysis and determination

15. The sole issue for determination is whether this court should grant the orders sought.
16. The issue of this Court's jurisdiction has not been addressed by the Applicant. However, I find it prudent to address it first.



17. In Words and Phrases Legally Defined Vol. 3, John Beecroft Saunders defines jurisdiction as follows:

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

18. That, jurisdiction is so central in judicial proceedings, is a well settled principle in law. A Court acting without jurisdiction is acting in vain. All it engages in is nullity. Nyarangi, JA, in Owners of Motor Vessel ‘Lillian S’ vs Caltex Oil (Kenya) Limited [1989] KLR 1 expressed himself as follows on the issue of jurisdiction: -

“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...”

19. The issue of jurisdiction such that it can be raised at any stage of the proceedings. The Court of Appeal in Jamal Salim vs Yusuf Abdulahi Abdi & Another Civil Appeal No. 103 of 2016 [2018] eKLR stated as follows: -

“Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in Adero & Another vs. Ulinzi Sacco Society Limited [2002] 1 KLR 577, as follows;

- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.

20. On the centrality of jurisdiction, the Court of Appeal in Kakuta Maimai Hamisi vs Peris Pesi Tobiko & 2 Others (2013) eKLR stated that: -

“So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cui-de-sac. Courts, like nature, must not sit in vain.”



21. On the source of a Court’s jurisdiction, the Supreme Court of Kenya in 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. 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.”

22. In *Orange Democratic Movement vs Yusuf Ali Mohamed & 5 others* [2018] eKLR, the Court of Appeal further stated: -

“(44) ... a party cannot through its pleadings confer jurisdiction to a court when none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court...”

23. In light of the above, it is patent that a Court’s jurisdiction is derived from *the Constitution*, an Act of Parliament or both.

24. I am aware that there has been a lot of confusion on the question of which court, between the High Court and the Environment and Land Court (ELC) has the jurisdiction to handle this kind of case and especially where the suit was filed before the establishment of the ELC through the enactment of The *Environment and Land Court Act*, 2012.

25. Article 165(1) of *the Constitution* vests vast powers in the High Court including the power to;

“determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened” and;

“to hear any question respecting the interpretation of *the Constitution*.”

Article 23 (1) provides that the High Court has jurisdiction to;

“hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.”



26. The limitation of this court's powers is provided for under Article 165 (5) which states that the high court shall not have jurisdiction in respect of matters: -

- “(a)
- (b) falling within the jurisdiction of the courts contemplated in Article 162 (2) (a) & (b).

27. Matters under the said Article 162 (2) (b) relates to; the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes.

28. Section 13 of the Environment and Court Act, was enacted to give effect to this Article. It provides that:-

- “(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.
- (7) 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;
- (g) restitution;
- (h) declaration; or
- (i) costs”

29. As per Section 13(3) of the Act the other jurisdiction of the Environment and Land Court (ELC) to deal with issues relating to constitutional interpretation and enforcement of constitutional remedies in respect to matters which fall within the ambit of the Environment and Land Court and under Section (7) (b), the ELC can entertain this Judicial Review application challenging the decision of the Respondent nullifying its title to land and grant the prerogative reliefs sought.
30. Odunga J. (as he then was), while dealing with a similar issue in *Republic vs National Land Commission & another Ex parte Cecilia Chepkoech Leting & 2 others* [2018] eKLR held as follows:-

“Where however, it is clear that the Court has no jurisdiction, it would be improper for the Court to give itself jurisdiction based on convenience. As was held in by Justice Mohammed Ibrahim in *Yusuf Gitau Abdallah vs. Building Centre (K) Ltd & 4 others* [2014] eKLR:

Whereas this Court had in the past entertained disputes wherein the core issue was that of jurisdiction of the National Land Commission, since the determination of the Supreme Court in *Petition No. 5 of 2015- Republic vs. Karisa Chengo & 2 Others* it has become clear that such matters ought to be dealt with by the specialized courts, when the Court expressed itself inter alia as hereunder:-

“it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court’s operation...Article 162(3) of *the Constitution*, Parliament enacted the *Environment and Land Court Act* and the *Employment and Labour Relations Act* and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of Courts, with *suis generis* jurisdiction, is provided for. 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.”

In this case, it is clear that even if this Court were to hear this matter the substratum of the dispute would remain unresolved. However, it is my view that the dispute herein falls squarely within the provisions of section 13(2) of the Act. The reliefs sought herein arise out of a determination of the issues falling within the said provision which



basically deal with interests in land. In my view the applicant's contended right to be heard stem from their yet to be determined interest in the suit land.

In this case, I am satisfied that the dispute can be properly dealt with by the ELC. This Court ought not to readily clothe itself with jurisdiction when other Constitutional organs have been bestowed with the jurisdiction to entertain the same. This was the position adopted in Peter Oduor Ngoge vs. Hon. Francis Ole Kaparo, SC Petition 2 of 2012,[para. 29-30] where it was held:

“The Supreme Court, as the ultimate judicial agency, ought in our opinion, to exercise its powers strictly within the jurisdictional limits prescribed; and it ought to safeguard the autonomous exercise of the respective jurisdictions of the other Courts and tribunals...In the interpretation of any law touching on the Supreme Court's appellate jurisdiction, the guiding principle is to be that the chain of Courts in the constitutional set-up, running up to the Court of Appeal, have the professional competence, and proper safety designs, to resolve all matters turning on the technical complexity of the law; and only cardinal issues of law or of jurisprudential moment, will deserve the further input of the Supreme Court...Consequently, this Court recognises that all courts have the constitutional competence to hear and determine matters that fall within their jurisdictions and the Supreme Court not being vested with ‘general’ original jurisdiction but only exclusive original jurisdiction in presidential petitions, will only hear those matters once they reach it through the laid down hierarchical framework”.

Similar sentiments were expressed in Constitutional Petition Number 359 of 2013 Diana Kethi Kilonzo vs. IEBC and 2 Others in which it was held that:

“We note that *the Constitution* allocated certain powers and functions to various bodies and tribunals. It is important that these bodies and tribunals should be given leeway to discharge the mandate bestowed upon them by *the Constitution* so long as they comply with *the Constitution* and national legislation. These bodies and institutions should be allowed to grow. The people of Kenya, in passing *the Constitution*, found it fit that the powers of decision-making be shared by different bodies. The decision of Kenyans must be respected, guarded and enforced. The courts should not



cross over to areas which Kenyans specifically reserved for other authorities.”

31. Similarly, in *Republic vs Chief Land Registrar & Another* [2019] eKLR the court was faced with a similar situation. It held as follows;

“The jurisdiction of the Environment and Land Court is limited to the disputes contemplated under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.^[14] In this regard, my view is that the intention of *the Constitution* is that if an issue arises touching on land in respect of its use, possession, control, title, compulsory acquisition or any other dispute touching on land, then this Court has no jurisdiction. My strong view is that this suit ought to have been transferred to the proper court the moment *the Constitution* of Kenya 2010 divested this court the jurisdiction to hear the case. Buttressed by the provisions of *the Constitution* and section 13 of the *Environment and Land Court Act*,^[15] I am clear in my mind that this court cannot properly entertain the application before me. <http://www.kenyalaw.org> - Page 4/16 *Republic v Chief Land Registrar & another* [2019] eKLR 15. It is beyond argument that a High Court may not determine matters falling squarely under the jurisdiction of the Employment and Labour Relations Court and the Land and Environment Court, whether it is a substantive hearing or an application such as the instant application. 16. Even with that clear-cut jurisdictional demarcation on paper, sometimes matters camouflaged in what may on the surface appear to be a serious constitutional issues or Judicial Review applications or other matters falling in other High Court divisions may, on a closer scrutiny reveal otherwise—that the germane of the application is actually a labour dispute or land issue falling squarely in the forbidden sphere of the specialized courts! Such is the nature of the application before me. A boundary dispute or enforcing an order relating to a boundary dispute falls squarely in the forbidden sphere of the specialized courts, namely, the Environment and Labour Court. The drafters of *the Constitution* were very clear on the limits of this court’s jurisdiction and the jurisdiction of the courts of equal status. 17. Where *the constitution* and legislation expressly confers jurisdiction to a court as in the present case invoking this courts vast jurisdiction is inappropriate. The jurisdictional boundaries of the High Court are clearly spelt out under *the Constitution*.”

32. Having considered the application herein, I find that the crux of the applicant's case reveals that the behind this Judicial Review application is an alleged land dispute. The applicant claims that he is the legitimate registered owner of the subject land and for this court to grant the orders sought it has to first establish the validity of the ownership of the parcel land.
33. From the foregoing, it is my opinion that the issue brought forth in the application falls squarely under the Jurisdiction of the ELC.
34. So what happens next?
35. Ordinarily if the court was to find that it has no jurisdiction the next logical step would be strike out the suit. But in this case the circumstances are different.
36. The matter was filed in 2008 before the creation of the Environment and Land Court (ELC), which came into operation in October 2012. The Act provided for the transitional provisions as follows;

“Transitional provisions



30 (1) All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

(2) The Chief Justice may, after the Court is established, refer part-heard cases, where appropriate, to the Court.”

37. Pursuant to the said section, the Chief Justice published the Practice Directions on matters relating to Environment and Land that were pending before other courts. They provided in part as follows;

“ 4. All part-heard cases relating to the environment and the use and occupation of, and title to land pending before the High Court shall continue to be heard and determined by the same court.

5. All cases relating to environment and the use and occupation of, and title to land which have hitherto been filed at the High Court and where hearing in relation thereto are yet to commence shall be transferred to the Environment and Land Court as directed by a judge.”

38. In this matter, leave to commence the Judicial Review proceedings had been granted and the applicant filed the substantive application on 21st July 2008. The said application was never heard by the time *the Constitution*, 2010 was promulgated. It was not a partly heard case, thus it is to be considered under paragraph 5 of the Practice Rules.

39. Therefore, the proper avenue is to have the matter determined by the ELC.

40. Consequently, I hereby direct that this file be transferred to the ELC, Nakuru for hearing and determination.

41. The matter is to be placed before the Deputy Registrar, ELC on a date that I shall give shortly.

42. Costs of the Application shall be in the cause.

43. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF MARCH, 2024.

.....

H. M. NYAGA,

JUDGE.

In the presence of;

C/A Oleperon

Ms Wanjiru for the Ex-parte Applicant

