



Opiyo & 2 others v Cabinet Secretary, Ministry of Land, Public Works, Housing and Urban Development & 7 others; Institution of Surveyors of Kenya (Proposed Interested Party) (Petition E012 of 2023) [2024] KEHC 5709 (KLR) (22 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5709 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E012 OF 2023
RE ABURILI, J
MAY 22, 2024**

BETWEEN

**MOSES OWINO OPIYO 1ST PETITIONER
BONNY OJWANG' ABWAKU 2ND PETITIONER
BONNY COWINO ANIN 3RD PETITIONER**

AND

**CABINET SECRETARY, MINISTRY OF LAND, PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT 1ST RESPONDENT
CHAIRMAN NATIONAL LAND COMMISSIONER 2ND RESPONDENT
CHIEF LAND REGISTRAR 3RD RESPONDENT
DIRECTOR GENERAL, PHYSICAL PLANNING 4TH RESPONDENT
PERMANENT SECRETARY, MINISTRY OF DEVOLUTION 5TH
RESPONDENT
CHAIRMAN, COUNCIL OF GOVERNORS 6TH RESPONDENT
NATIONAL DIRECTOR OF SURVEY 7TH RESPONDENT
THE HON. ATTORNEY GENERAL 8TH RESPONDENT**

AND

**INSTITUTION OF SURVEYORS OF KENYA PROPOSED INTERESTED
PARTY**



RULING

1. The Petition dated December 14, 2023 seeks orders which can only be granted by the Environment and Land Court. I need not reproduce here those prayers save to state that they relate to land use and planning, under the *Physical Planning and Land Use Planning Act* No. 13 of 2019.
2. That being the case, it is clear from the onset that this is a matter which squarely falls within the jurisdiction of Environment and Land Court and not the High Court.
3. Article 165 (5) (b) of the *Constitution* expressly bars the High Court from hearing and determining disputes which are exclusively in the jurisdiction preserved for the Environment and Land court, the Employment and Labour Relations Court and the Supreme Court.
4. This Petition was filed nearly 14 years after promulgation of the 2010 *Constitution*.
5. We are not in the transitional period where one would be mistaken to file a claim of one court into the other, especially where that person is represented by an Advocate of this Court.
6. That being the case, and for want of jurisdiction, what this court can do is no more than down its tools and say no more as jurisdiction cannot be arrogated by a court or be conceded to by parties but conferred by the Law and the *Constitution*.
7. On whether I should transfer the Petition to ELC, I hesitate to do so as the petition was not filed in the transitional period. The jurisdiction of the Environment and Land Court is apparent and the definition of court under the *Physical Planning and Land Use Planning Act* No. 13 of 2019 is the Environment and Land Court.
8. It follows that parties must, before instituting suits, first identify what court has jurisdiction before lodging their claims and straying in a court without jurisdiction only calls for the fiat of the court to decline jurisdiction which I have done.
9. Consequently, and for want of jurisdiction, this Petition as a whole is hereby struck out with no orders as to costs.
10. This file is closed.
11. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF MAY, 2024

R. E. ABURILI

JUDGE

