



**Republic v Senior Principal Magistrate's Court, Bomet & 3 others; OCS  
Cheseon Police Station & another (Interested Parties); Kerich & another  
(Exparte Applicants) (Environment and Land Case Judicial Review Application  
E001 of 2024) [2025] KEELC 59 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 59 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E001 OF 2024**

**LA OMOLLO, J**

**JANUARY 23, 2025**

**IN THE MATTER OF AN APPLICATION BY ERNEST KIPRONO KERICH AND AGATHA  
CHEBOMUI FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI**

**AND**

**IN THE MATTER OF THE PROCEEDINGS BEFORE THE SENIOR PRINCIPAL  
MAGISTRATE'S COURT AT BOMET IN ELC CAUSE NO. E032 OF 2022**

**AND**

**IN THE MATTER OF THE PROCEEDINGS BEFORE THE SENIOR  
PRINCIPAL MAGISTRATE'S COURT AT BOMET IN ELC NO. E029 OF 2023**

**AND**

**IN THE MATTER OF THE PROCEEDINGS BEFORE THE HIGH  
COURT OF KENYA AT KERICHO IN THE ESTATE OF ELIJAH  
KIPKERICH CHEBOMUI SUCCESSION CAUSE NO. 2 OF 1998**

**AND**

**IN THE MATTER OF ARTICLE 23(3) (F) OF THE CONSTITUTION OF KENYA, SECTION  
45 OF THE LAW OF SUCCESSION ACT AND SECTION 3 OF THE TRESPASS ACT**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE SENIOR PRINCIPAL MAGISTRATE'S COURT, BOMET .... 1<sup>ST</sup>  
RESPONDENT**

**JACOB KIPLANGAT KERICH ..... 2<sup>ND</sup> RESPONDENT**



DAVID KIPKEMOI KORIR ..... 3<sup>RD</sup> RESPONDENT

JUSTUS K YEGON ..... 4<sup>TH</sup> RESPONDENT

AND

OCS CHESEON POLICE STATION ..... INTERESTED PARTY

THE ATTORNEY GENERAL ..... INTERESTED PARTY

AND

ERNEST KIPRONO KERICH ..... EXPARTE APPLICANT

AGATHA CHEBOMUI ..... EXPARTE APPLICANT

## JUDGMENT

### Introduction.

1. Pursuant to the leave of Court granted on 13<sup>th</sup> February, 2024, the Ex parte applicants filed the Notice of Motion application dated 15<sup>th</sup> February, 2024. The said application is expressed to be brought under Order 53 Rules 3 & 4 of the Civil Procedure Rules.
2. The application seeks the following orders;
  - a. Spent
  - b. That this Honourable Court do hereby issue Judicial Review Orders of Certiorari to remove into the High Court and quash the entire proceedings, Rulings and orders given by the 1<sup>st</sup> Respondent in Bomet ELC Nos E023 of 2022 on 12<sup>th</sup> June, 2023 and E029 of 2023 given on 24<sup>th</sup> October, 2023 and for the subordinate Court files to be released to the Environment and Land Court at Kericho and struck out with costs to the Ex parte Applicants.
  - c. That the costs of these proceedings be provided for and paid by the Respondents in any event.
3. The application is based on the grounds on its face and the supporting affidavit of Ernest Kiprono Kerich sworn on 15<sup>th</sup> February, 2024.

### Factual Background.

4. The Ex parte Applicants filed the Chamber Summons application dated 17<sup>th</sup> January, 2024 seeking for leave to commence judicial review proceedings.
5. The said application was allowed on 13<sup>th</sup> February, 2024 and the Ex parte Applicants directed to file the substantive motion within twenty-one days.
6. The Ex parte Applicants filed the application under consideration on 15<sup>th</sup> February, 2024. It was mentioned for directions on 29<sup>th</sup> April, 2024 and the Respondents were granted more time to file their responses.
7. On 9<sup>th</sup> July, 2024 the Court gave directions that the substantive motion would be heard by way of written submissions. It was mentioned for submissions on 30<sup>th</sup> September, 2024 and reserved for ruling.



### **The Ex parte Applicant's Contention.**

8. The affidavit in support of the application is sworn by Ernest Kiprono Kerich the 1<sup>st</sup> Ex Parte Applicant.
9. He contends that he is a joint administrator of the estate of Elijah Kipkerich Chebomui representing the second house as  
  
per the Certificate of Confirmed Grant issued on 17<sup>th</sup> September, 2020 in Kericho High Court Succession Cause No. 2 of 1998.
10. He also contends that he was personally involved in the said succession proceedings. He adds that the 2<sup>nd</sup> Respondent was removed as a joint administrator in the proceedings due to misconduct and he was added in his place.
11. He further contends that the 2<sup>nd</sup> Respondent's advocate was convicted for contempt of Court and the grant rectified on 8<sup>th</sup> October, 2021.
12. It is his contention that he was sued by the 2<sup>nd</sup> Respondent in Bomet ELC Case No. EO32 of 2022 filed in the Senior Principal Magistrate's Court at Bomet where the 2<sup>nd</sup> Respondent sought that he transfers to him ten acres of land parcel No. Kericho/Chesoan/1002. He adds that the said orders sought went against the confirmed grant and were prejudicial to the other beneficiaries of the estate.
13. It is also his contention that the 2<sup>nd</sup> Respondent also claimed that his sisters from the second house were not entitled to benefit from their deceased father's land which claims he refused to accept.
14. It is further his contention that he later learnt that while the succession proceedings were pending before the High Court at Kericho, the 2<sup>nd</sup> Respondent purported to sell portions of the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
15. He contends that this only came to light after the grant had been confirmed and distribution effected when the 3<sup>rd</sup> and 4<sup>th</sup> Respondents sued his sister the 2<sup>nd</sup> Ex Parte Applicant in SPMC ELC Case No. E029 of 2023. They sued the 2<sup>nd</sup> Ex Parte Applicant claiming that they had purchased portions of the land  
  
that belonged to the deceased in the years 2002, 2006 and 2009 while succession proceedings were pending before the High Court.
16. He also contends that he is advised by his Advocates on record that this was a criminal offence contrary to the Provisions of Section 45 of the Law Succession Act.
17. He further contends that during the pendency of the succession proceedings, the High Court had temporarily allowed members of the family of the deceased to cultivate the land and maintain the tea plantations and the beneficiaries were not aware that the 2<sup>nd</sup> Respondent was selling portions of the said property in the years 2002, 2006 and 2009.
18. He ends his deposition by stating that he has annexed a schedule of documents to his affidavit to enable the Court to better appreciate his application and grant the orders sought. He adds that the said documents were attached to his Chamber Summons application.

### **The 3<sup>rd</sup> and 4<sup>th</sup> Respondents Response.**

19. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed a Replying Affidavit sworn by David Kipkemoi Korir the 3<sup>rd</sup> Respondent on 24<sup>th</sup> April, 2024.



20. He deposes that he has the authority of the 4<sup>th</sup> Respondent to swear the affidavit.
21. He also deposes that on 15<sup>th</sup> August they filed an application under Certificate of Urgency against the 2<sup>nd</sup> Ex parte Applicant in ELC Case No. 29 of 2023.
22. He further deposes that the 2<sup>nd</sup> Ex parte Applicant filed a Notice of Preliminary Objection which was dismissed by the 1<sup>st</sup> Respondent herein.
23. It is his deposition that the 1<sup>st</sup> Respondent has the jurisdiction to hear the said suit since the subject matter which is land parcel No. Kericho/1002 (sic) was subdivided by the 1<sup>st</sup> Ex parte Applicant into land parcel No's Kericho/Chesoan/3774, 3774 (sic) and 3776. He adds that the dispute falls within the jurisdiction of the 1<sup>st</sup> Respondent which was well exercised.
24. It is also his deposition that the 1<sup>st</sup> Respondent has the jurisdiction to hear the matter because the subject matter which was land parcel No. Kericho/Chesoan/1002 that was subject to succession in Kericho High Court Succession Cause No. 2 of 1998 has already been distributed among the beneficiaries. He adds that the High Court became functus officio at the confirmation stage.
25. It is further his deposition that since the said land has already been distributed and new parcel numbers allocated to the 2<sup>nd</sup> Ex parte Applicant and other beneficiaries to the exclusion of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the Ex parte Applicants cannot say that the estate has not been distributed.
26. He deposes that the Ex parte Applicants have been aware of their presence on the suit land from the year 2002 and watched them utilize the land extensively. He adds that they did nothing to ensure that they were arrested for the offence of intermeddling.
27. He also deposes that no criminal proceedings were commenced against them for intermeddling which is a clear indication that the Ex parte Applicants were not opposed to their occupation of the suit land as purchasers.
28. He further deposes that when they occupied the suit land, it was vacant and they started developing it by planting tea, Napier grass and other crops and hence the Ex parte Applicants cannot allege that it was a lease.
29. It is his deposition that the 1<sup>st</sup> Ex parte Applicant maliciously registered the 2<sup>nd</sup> Ex parte Applicant as the owner of the suit land with the intention of evicting them and yet they have worked on the land and have planted agricultural produce.
30. It is also his deposition that the portion they purchased belonged to the 2<sup>nd</sup> Respondent and the Ex parte Applicants never approached them after purchasing the suit property and inform them that they were not in agreement with their possession of the land or that theirs was a temporary occupation.
31. It is further his deposition that the application herein is intended to curtail the statutory functions and powers of the 1<sup>st</sup>

**Respondent.**

32. He deposes that in the circumstances, the 1<sup>st</sup> Respondent should be allowed to proceed with ELC Case No. E029 of 2023 and for it to be determined on merit.
33. He also deposes that the application herein is unmerited, misconceived, vexatious, bad in law and therefore an abuse of the Court process.



34. He ends his deposition by stating that the Notice of Motion application dated 13<sup>th</sup> February, 2024 is devoid of any merit and the orders sought should not be granted.

**The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties Response.**

35. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed Grounds of opposition dated 26<sup>th</sup> September, 2024. They are as follows;

- a. That guided by the case of Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2015] eKLR, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are improperly joined in this suit as they do not have a stake in the proceedings, nor will they be affected by the decision of the Court when it is made, either way.
- b. That the Applicants did not satisfy the guiding principles of enjoining interested parties as declared in Francis Kariuki Muruatetu & another v Republic & 5 Others particularly;
  - a. That the Applicants did not move the Court by way of formal application to enjoin the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.
  - b. The Applicants have not demonstrated that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties shall suffer prejudice in case of non-joinder.
- c. That the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties herein do not have an identifiable stake or legal interest or duty in the proceedings before the Court, as defined under Section 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
- d. That the Applicants have not exercised the doctrine of exhaustion, as they have not exercised their right to appeal and/or review the Court's ruling in Bomet ELC No. E023 of 2022 and E029 of 2023 before resorting to a Judicial Review application herein.
- e. That the proposed 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are disinterested and unconcerned with the subject matter of the suit and their participation in the proceedings shall be a futile academic exercise.

**Issues for Determination.**

36. The Ex parte Applicants filed their submissions on 18<sup>th</sup> June, 2024 while the other parties did not file submissions.
37. The Ex parte Applicants set out a brief background of the matter and while relying on the judicial decisions of Judges and Magistrates Vetting Board vs Center for Human Rights and Democracy [2014] eKLR, Director of Public Prosecutions & 2 Others vs Pius Ngugi Mbugua & another Ex parte Muktar Samari Oloru [2027]eKLR, Taib vs Minister for Local Government & 3 Others [2006] eKLR submit that they are seeking Judicial Review Orders of Prohibition and Certiorari against the 1<sup>st</sup> Respondent deter it from hearing Bomet SPMCC ELC No. E023 of 2022 and ELCC No. E029 of 2023.
38. The Ex parte Applicants submit that they are seeking that the Court quashes the said proceedings and the rulings delivered on 12<sup>th</sup> June, 2023 and 24<sup>th</sup> October, 2023 as they were made by a Court that lacks jurisdiction.
39. The Ex parte Applicants reiterate the averments in the affidavit in support of the application and submit that that is the basis for seeking orders of judicial review.



40. They submit that the 1<sup>st</sup> Respondent lacks the jurisdiction to hear and determine the said suits as they involve property that is subject in Kericho High Court Succession cause No. 2 of 1998 in the matter of the estate of Elijah Kipkerich Chebomui.
41. The Ex parte Applicants also submit that the High Court had already issued orders for distribution of the suit property when it confirmed the grant. Therefore, the subordinate Court is acting ultra vires by trying to usurp the powers of the High Court and re-distribute the property of the deceased instead of appealing against the High Court's decision on distribution.
42. The Ex parte Applicants further submit that the subordinate Court is acting unlawfully as it is entertaining another suit for the alleged sale of the suit property by one of the beneficiaries while succession proceedings before the High Court were going on. They add that this is a violation of Section 45 of the Law Succession Act and constitutes a criminal offence known as intermeddling.
43. It is their submissions that the 1<sup>st</sup> Respondent is perpetuating an illegality by virtue of the rulings it delivered on 12<sup>th</sup> June, 2023 in Bomet SPMCC ELC Case No. E023 of 2022 and the ruling delivered on 24<sup>th</sup> October, 2023 in ELC Case No. E029 of 2023.
44. It is their submissions that in the said rulings, the 1<sup>st</sup> Respondent assumed jurisdiction and issued orders of injunction which were in total usurpation of the powers of the High Court and in total disregard to the judicial hierarchy of the Court System. They urge the Court to stop the 1<sup>st</sup> Respondent through Judicial Review orders of prohibition and certiorari.
45. It is also their submissions that the functions and powers of this Court in these judicial review proceedings is to prohibit the subordinate Court from continuing the unlawful proceedings that are ultra vires and to quash the aforementioned decisions.
46. It is further their submissions that the actions of the 1<sup>st</sup> Respondent indicate that it is acting as an Appellate court over the decision and orders of the High Court delivered on 17<sup>th</sup> September, 2020 and 8<sup>th</sup> October, 2021.
47. The Ex parte Applicants submit that the 1<sup>st</sup> Respondent was notified of the existence of the orders issued by the High Court but it still proceeded with dismissing the Preliminary Objections and issuing orders of injunction. They add that this led to the filing of the present proceedings.
48. The Ex parte Applicants also submit that the principles of Judicial Review orders of prohibition, certiorari and mandamus are geared towards guarding judicial, quasi-judicial and administrative authorities from exercising powers without jurisdiction. They add that judicial review cases have nothing to do with merits of a decision but the process of arriving at that decision.
49. The Ex parte Applicants further reiterate their averments in the affidavit in support of the application, rely on the judicial decision of Municipal Council of Mombasa vs Republic & another [2022] eKLR and submit that this Court should determine whether the 1<sup>st</sup> Respondent has the jurisdiction to hear and determine a matter which the High Court has already pronounced itself.
50. The Ex parte Applicants submit that they supplied the 1<sup>st</sup> Respondent with the orders of the High Court but it opted to proceed and hear the cases before it. They reiterate that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were aware of the proceedings before the High Court but they opted not to challenge its decision. It is their submissions that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents instead commenced proceedings before the 1<sup>st</sup> Respondent which does not have jurisdiction.



51. The Ex parte Applicants submit that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents replying affidavit fails to respond to the questions of jurisdiction and procedural irregularities of the proceedings before the 1<sup>st</sup> Respondent.
52. The Ex Parte applicants rely on Articles 23(3)(f), 162(2)(b) & 165 (6) of *the Constitution* of Kenya, Sections 7, 8 and 9 of the Fair Administrative Actions Act, Order 53 of the Civil Procedure Rules, Section 8 of the *Law Reform Act*, the judicial decision of Kiliavo Fresh Ltd vs National Environmental Tribunal & 2 Interested Parties [2021] eKLR and urge the Court to allow their application as prayed.

### **Analysis and Determination.**

53. I have considered the application, the responses thereto and the Ex parte Applicants submissions and my view is that the only issue that arises for determination is whether the Ex parte Applicants Notice of Motion application dated 15<sup>th</sup> February, 2024 has merit.
54. It is the Ex parte Applicants contention that the 1<sup>st</sup> Ex parte Applicant is a joint administrator of the estate of the late Elijah Kipkerich Chebomui while the 2<sup>nd</sup> Ex parte Applicant is a beneficiary of the said estate.
55. It is their contention that land parcel No. Kericho/Chesoan/1002 belonged to the estate of the deceased and was part of the properties that were distributed by the High Court in Succession Cause No. 2 of 1998.
56. It is also their contention that while the succession proceedings were pending before the High Court, the 2<sup>nd</sup> Respondent who is also a beneficiary of the said estate sold portions of the suit property to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
57. It is further their contention that after the suit property was distributed, the 2<sup>nd</sup> Respondent filed ELC case No. E023 of 2022 against the 1<sup>st</sup> Ex parte Applicant before the 1<sup>st</sup> Respondent seeking to be awarded ten acres of the suit property.
58. The Ex parte Applicants submit that they filed a preliminary objection to the said suit on the ground that the 1<sup>st</sup> Respondent did not have jurisdiction as the matter was subject to succession proceedings which preliminary objection was dismissed in the ruling delivered on 12<sup>th</sup> June, 2023.
59. It is the 2<sup>nd</sup> Ex parte Applicant's contention that after distribution of the suit property, she realized that the portions of land allocated to her were occupied by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents. When she sought to evict them, they filed ELC Case No. E029 of 2023 seeking orders of injunction while contending that they had purchased the said portions from the 2<sup>nd</sup> Respondent when the succession proceedings were pending before the High Court.
60. It is also the 2<sup>nd</sup> Ex Parte Applicant's contention that she filed a preliminary objection in the said matter contending that the 1<sup>st</sup> Respondent did not have jurisdiction to hear the case as it was based on an illegal transaction.
61. It is further her contention that the 1<sup>st</sup> Respondent in the ruling delivered on 24<sup>th</sup> October, 2023 found that it had jurisdiction and dismissed her Preliminary Objection.
62. The Ex parte Applicants are therefore seeking that this Court issues an order of certiorari against the rulings delivered on 12<sup>th</sup> June, 2023 and 24<sup>th</sup> October, 2023 in the above stated matters on the grounds that the 1<sup>st</sup> Respondent lacked jurisdiction and the said decisions were ultra vires.
63. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents in response contend that the 1<sup>st</sup> Respondent has the jurisdiction to hear and determine ELC Case No. 29 of 2023 that has been filed before it as it is a land dispute.



64. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents also contend that land parcel No. Kericho/Chesoan/1002 that was subject to the succession proceedings before the High Court has since been subdivided into land parcel No's Kericho/Chesoan/3774, 3775 and 3776.
65. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents further contend that the 1<sup>st</sup> Respondent has the jurisdiction to handle the matter because land parcel No. Kericho/Chesoan/1002 has already been distributed among the beneficiaries.
66. They contend that the Ex parte Applicants have been aware of their occupation of the portions of the said property and they have never commenced any intermeddling proceedings against them.
67. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties contend that they have no identifiable stake in the proceedings and that the Ex parte Applicants ought to have exhausted their right to appeal and/or review of the said orders given in the said suits before resorting to filing the judicial review application herein.
68. The Court of Appeal in *Municipal Council of Mombasa v Republic & another* [2002] eKLR set out the purpose of judicial review as follows;

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a Court hearing a matter by way of judicial review is concerned with, and such Court is not entitled to act as a Court of appeal over the decider; acting as an appeal Court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review.”

69. The Court in the Ugandan judicial decision of *Pastoli Vs Kabale District Local Government Canal & Others* (2008) 2EA 300 at pages 300-304 as was cited in *Esther Victoria Wanjiku Mahoro v Mary Wambui Githinji & 3 others* [2021] eKLR held as follows;

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety. Illegality, is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality----.

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such



authority exercises jurisdiction to make a decision. (Al-Mehidswi...Vs...Secretary of State for the Housing Department (1990) AC 876”.

70. The Court of Appeal in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR while elaborating on judicial review reliefs stated as follows;
- “Only an order of Certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”
71. As afore stated in the preceding paragraphs, the Ex parte Applicants are seeking that this Court issues orders of certiorari to quash the decision delivered on 12<sup>th</sup> June, 2023 in Bomet ELC case No. E023 of 2022 and the ruling delivered on 24<sup>th</sup> October, 2023 in ELC Case No. E029 of 2023.
72. The Court of Appeal in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others (supra) held that an order of certiorari can only issue if the decision is made in excess of jurisdiction. That being the case, the Ex parte Applicants have to demonstrate that the decisions made by the 1<sup>st</sup> Respondent in the afore stated cases were made without jurisdiction.
73. The Ex parte Applicants have attached a copy of a Rectified Certificate of Confirmation of Grant issued in Succession Cause No. 2 of 1998 in the matter of the estate of Elijah Kipkerich Chebomut on 17<sup>th</sup> September, 2020.
74. Land parcel no. Kericho/Chesoan/1002 is listed as one of the properties of the deceased and it measures 43.68 acres. The 1<sup>st</sup> house was given 33.68 acres while the second house was given 10 acres.
75. Copies of pleadings filed in Sotik PMCC ELC Case No. E023 of 2022 have been annexed. The parties are Jacob Kiplangat Kerich who is the Plaintiff and Ernest Kiprono Kerich the Defendant.
76. In the Complaint, Jacob Kiplangat Kerich avers that he is entitled to ten acres of land parcel No. Kericho/Chesoan/1002 which the Defendant, Ernest Kiprono Kerich had registered in his name. He seeks the following orders;
- a. An order of specific performance or in the alternative the Executive Officer Bomet Law Courts to sign transfer forms.
  - b. Costs of this suit.
  - c. Any other relief this Honourable Court deems fit and just to grant.
77. A copy of a preliminary objection dated 3<sup>rd</sup> November, 2023 is also attached. The grounds on the said preliminary objection are as follows;
- a. This Honourable has no Jurisdiction to entertain both the Application and the Suit as the Subject Property; land Title No. KERICHO/CHESOEN/1002 is the subject of Distribution in Kericho Succession Cause No. 2 of 1998 pursuant to a Confirmed Grant Issued by Hon. Lady Justice A.N. Ongeru on 17/09/20 and subsequently Rectified on 08/10/21 in which the Plaintiff was removed as a Co-Administrator of the Estate of Elijah Kipkerich Arap Chebomoi (Deceased) representing the 2<sup>nd</sup> House of the Deceased and replaced by the Defendant.
  - b. Under the Confirmed Grant the 10 Acres of the Suit Property Devolves to the beneficiaries and members of the deceased second house and not the Plaintiff and the Defendant herein as a Co-Administrator appointed by the High Court holds the Property in Trust for the Beneficiaries from the 2<sup>nd</sup> House of the Deceased and not the Plaintiff and the Defendant is



only answerable to the High Court In the process of Distribution of the Deceased Estate in terms of the Confirmed Grant and Orders of the High Court.

- c. The Plaintiff has no cause of action whatsoever against the Defendant as he has no right of personal ownership or entitlement over the Property except as one of the beneficiaries of the Deceased Estate from the 2<sup>nd</sup> House amongst others.
- d. The Defendant and other administrators of the deceased estate are registered as trustee under the Confirmed Grant in Kericho H.C Succ. Cause No. 2 of 1998 and this Court cannot usurp the Powers and Jurisdiction of the High Court in the process of Distribution of the Deceased Estate.
- e. That the Advocate of the Plaintiff Mr. Vincent Kipkemoi Bii (P.105/54...V.K Advocates was adjudged to have committed professional misconduct and was held to be in contempt of Court on 11/11/2020 by Hon. Lady Justice A.N Ongeru in Kericho HC Succession Cause No. 2 of 1998 and the Deputy Registrar was directed to transmit the proceedings to the disciplinary committee of LSK for necessary disciplinary action and is therefore a contemnor who should not be heard by this Honourable Court in respect of the same matter in a Court subordinate to the High Court.
- f. The Plaintiff's suit and application is a gross abuse of the Court process and the same should be struck out with costs to the Defendant and both the Plaintiff and his advocate punished for perjury and contempt for failing to disclose the existence of the proceedings in the High Court at Kericho and the orders given.

78. In its ruling delivered on 12<sup>th</sup> June, 2023, the Court held as follows;

“On the issue of jurisdiction, I believe that if the High Court succession matter was still ongoing this Court would have lacked jurisdiction to handle this matter. Or if the order sought in the main suit would amount to overturning High Court orders if granted then this Court would have lacked jurisdiction, but all of us know that there is no way a lower Court can overturn a higher Court's order, and in the first place the Plaintiff disputes the Defendant's claim that the allocation of the 10 acres to the Defendant was as in (sic) accordance of the High Court order thus according to the Plaintiff Defendant's (sic) action was unlawful, for Plaintiff (sic) kind of disputes the said rectification.

Therefore, since the 10 acres are already in the name of the Defendant, and the Plaintiff disputes that the Defendant got it lawfully, then I feel that this Court has jurisdiction to determine whether or not the Defendant's allocation of the 10 acres to himself was lawful, and then advise without having to interfere with or change any High Court Order. Let both parties be given an opportunity to proof (sic) their claim...”

79. The Plaint filed in Bomet PMCC No. E029 of 2023 has also been attached to the affidavit in support of the application but it is not legible.

80. A copy of the Preliminary Objection dated 24<sup>th</sup> August, 2023 has been attached. It was filed in Bomet PMCC No. E029 of 2023 where the parties are David Kipkemoi Korir & another vs Agatha Chebomui & 3 Others. The grounds on the said preliminary objection are as follows;

- a. That the Application dated 15/08/23 is incompetent, misconceived and otherwise an abuse of the due process of this Honourable Court and should be struck out with costs and the interim orders granted on 17/08/23 should be set aside/vacated ex debito justitiae.



- b. That this Honourable Court lacks jurisdiction to entertain the said application as the subject property; land title No. Kericho/Chesoen/1002 is the subject of succession proceedings and distribution in Kericho High Court Succession Cause No. 2 of 1998 pursuant to a confirmed grant issued by Hon. Lady Justice A. N Ongeru on 17/09/20 and subsequently rectified on 08/10/21 in which the 2<sup>nd</sup> Defendant (Jacob Kerich) was removed as a Co-Administrator of the estate of Elijah Kipkerich Arap Chebomui (Deceased) representing the 2<sup>nd</sup> house of the deceased and replaced by Ernest Kiprono Kerich as co-administrator and any issue touching on the distribution of the estate can only be dealt with by the High Court and not the subordinate Court.
- c. This suit related to a purported sale of a property belonging to the estate of a deceased person before confirmation of grant in total violation of the provisions of Section 45 of the Law of Succession Act which is an offence and therefore a nullity.
- d. That the subject property land title No. Kericho/Chepsoen/1002 is again the subject to proceedings in Bomet Court ELC Case No. E023 of 2022 where the 2<sup>nd</sup> Defendant (Jacob Kerich as the Plaintiff) sued Ernest Kiprono Kerich (Co-administrator) seeking orders for the subject property; land title No. Kericho/Chesoen/1002 be transferred to his name in contravention of the distribution orders of the High Court at Kericho in Succession Cause No. 2 of 1998.
- e. That the application is fatally defective and arises from criminal transactions carried out between the Plaintiffs and the 2<sup>nd</sup> Defendant on the subject property land title No. Kericho/Chesoen/1002 before confirmation of the grant of letters of administration in contravention of Section 45 of the Law of Succession Act and the Plaintiffs have no cause of action whatsoever in relation to the subject property land title No. Kericho/Chesoen/1002 and the orders sought cannot be granted and the interim orders should be vacated forthwith.
- f. That the 1<sup>st</sup> Defendant (Agatha Chebomui) and other administrators of the deceased estate are registered as trustee under the confirmed grant in Kericho HC Succ Cause No. 2 of 1998 and this Honourable Court cannot entertain this application and purport to usurp the powers and jurisdiction of the High Court in the process of distribution of the estate of the deceased.
- g. That the Plaintiffs application is a gross abuse of the Court process and the same should struck out with costs to the 1<sup>st</sup> Defendant (Agatha Chebomui) and both the Plaintiffs and the 2<sup>nd</sup> Defendant be punished for perjury and contempt of Court for failing to disclose the existence of the proceedings and orders given in the High Court at Kericho and the proceedings in Magistrate Court (sic) at Bomet as stated above.

81. The Court in its ruling delivered on 24<sup>th</sup> October, 2023 held as followed;

“...Then if the High Court Succession cause is already complete and estate distributed and new title numbers are already out, what then denies this Court to have jurisdiction?

I do not find any, because from the explanation or reply of the 1<sup>st</sup> Plaintiff the claim is based on the new titles that came out as a result of this and the titles make

it an ELC Case and not a succession case. And therefore, they should be given opportunity to present their case and Defendant also present their defence then the Court decide the case on merit. (sic)The Preliminary objection is dismissed, let parties be allowed to present



and defend their case, then case (sic) be decided on merit by the Court. Cost of preliminary objection be in cause.”

82. I have set out, in great detail, the preliminary objections that had been filed before the Principal Magistrate’s Court at Bomet in Bomet ELC Case No. E023 of 2022 and ELC Case No. E029 of 2023. I have also set out excerpts of the rulings delivered on 12<sup>th</sup> June, 2023 and 24<sup>th</sup> October, 2023.
83. It is the Ex parte Applicants contention that the said decisions delivered on the afore stated dates ought to be quashed as the 1<sup>st</sup> Respondent did not have jurisdiction. Their reason is that the suit property belongs to the estate of a deceased person and the succession proceedings are pending in Kericho High Court Succession cause No. 2 of 1998.
84. Before going any further, it is important to note that the Ex parte Applicants are essentially seeking that this Court makes a finding that the 1<sup>st</sup> Respondent did not have the requisite jurisdiction to hear and determine the aforementioned suits for the reason that there is a succession matter pending before the High Court and/or for reason that the High court had already made certain orders.
85. It is important to bear in mind that the proceedings before the High Court related to succession to the estate of the late Elijah Kipkerich Chebomui. As at the time of delivery of rulings on the preliminary objections, i.e. on 12<sup>th</sup> June, 2023 and 24<sup>th</sup> October, the 1<sup>st</sup> Respondent noted that the proceedings before the High court had been concluded. This fact is set out by the Ex parte Applicants, in the affidavit in support of their application. More particularly, they depose that the succession cause before the High Court has been concluded and distribution effected.
86. The question that follows is whether the prayers sought are merited and should be granted. That is, whether this court should issue Judicial Review Orders of Certiorari to quash the entire proceedings, Rulings and orders issued by the 1<sup>st</sup> Respondent in Bomet ELC No’s E023 of 2022 on 12 June, 2023 and E029 of 2023 on 24<sup>th</sup> October, 2023.
87. Both rulings were issued on preliminary objections raised by the Ex Parte Applicants. The basis for the objection as can be read from the preceding paragraphs is that the 1<sup>st</sup> Respondent lacked jurisdiction to hear and determine Bomet ELC case No’s E023 of 2022 and E029 of 2023 for reason that the subject matter in the said suit is subject to succession proceedings before the High Court in Succession Cause No. 2 of 1998.
88. It is not disputed that the said matters that are pending before the 1<sup>st</sup> Respondent have been filed before the Environment and Land Court. It is also not disputed that the issues raised in the said suits are with regard to ownership of land parcel No. Kericho/Chesoan/1002 and its resultant subdivisions.
89. Section 9 (a) of the [Magistrates’ Courts Act](#) 2015 provides as follows;
- “ (a) in the exercise of the jurisdiction conferred upon it by section 26 of the [Environment and Land Court Act](#) and subject to the pecuniary limits Cap. I2A under section 7(1), hear and determine claims relating to —
- (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (ii) compulsory acquisition of land;
  - (iii) land administration and management;



(iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(v) environment and land generally.

(b) in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act, 2011 and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.”

90. According to the provisions of Section 9 (a) of the Magistrates Courts Act cited above, magistrates who are duly gazetted and have the requisite pecuniary jurisdiction have the power to hear cases involving occupation of and title to land.

91. The disputes in Bomet ELCC No’s E023 of 2022 and E029 of 2023 relate to the ownership of land parcel No. Kericho/Chesoan/1002 and its resultant subdivisions. On perusal of the prayers sought in the Plaints, there is no doubt that the matters for adjudication fall within the jurisdiction of the Environment and land court.

### **Disposition.**

92. An order of certiorari can only be issued if a person makes a decision without having the power or jurisdiction to do so. In this matter, I find that the 1<sup>st</sup> Respondent has jurisdiction to hear and determine the suits pending before it.

93. The upshot of the foregoing is that the Ex parte Applicants application dated February 15, 2024 lacks merit and it is hereby dismissed with costs.

94. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Ongocho for Mr. Kopere for the Ex Parte Applicants.

Mr. Ojwang for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

No appearance for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Court Assistant; Mr. Joseph Makori.

