

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW NO. E131 OF 2024

REPUBLIC
APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE 1ST
RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS,
KIKUYU POLICE STATION 2ND
RESPONDENT

THE HON. ATTORNEY GENERAL 3RD
RESPONDENT

AND

JOSEPH MIRINGU KIOI 1ST INTERESTED
PARTY

SIMON MUCHIRI GITHIRU 2ND INTERESTED
PARTY

KABUI M. MWANGI 3RD INTERESTED
PARTY

AND

DAVID THUO KIMINGI EXPARTE
APPLICANT

JUDGMENT

1. The Application that comes up for determination is the one dated 19.10.25 wherein the Applicant seeks the following:

- 1) That the Honourable court be pleased to issue an order of certiorari to remove into this Honourable Court and quash the investigations, findings and recommendations of the 1st and 2nd Respondents respecting the prosecution of the Exparte Applicant, his advocates or witnesses in relation to land reference number Ruiru Kiu Block 2 (Githunguri)/2369 or any matter incidental to the estate of Jane Ngoiri Kioi which are pending determination by the court.
- 2) That the Honourable court be pleased to issue an order of prohibition to prohibit the 1st and 2nd Respondents, their agents or any person acting at their behest from summoning, detaining, arresting or preferring charges against the Exparte Applicant, his advocates and witnesses in respect to land reference number Ruiru Kiu Block 2 (Githunguri)/2369 or any matter incidental to the estate of Jane Ngoiri Kioi which are pending determination by the court.
- 3) That the Honourable court be pleased to issue appropriate relief as it deems fit to grant.
- 4) That costs be borne by the Respondents.

2. The Application is supported by the Affidavit of the Applicant a senior citizen (aged over eighty years) with intermittent ill health. He is concerned that the 1st and 2nd Respondents have instigated sham investigations against him in bad faith and with ulterior motives.
3. The purported Criminal Investigations are only intended to sway outcome of various pending civil cases being: -
 - a) CMELC No. EOM of 2024;
 - b) Githunguri Miscellaneous Succession cause No. E078 of 2023; and
 - c) Thika ELCMISC. No, E043 Of 2024 in favour of the Interested Party.
4. The impugned Criminal Investigations against is instituted in bad faith and for ulterior motives.
5. The Interested Party is determined to use criminal proceedings to influence the outcome of a civil suit in favour of the Interested Party, being Ruiru **CMELC No, E016 of 2024; David Thuo Kimingi (Suing as the administrator ad litem of the estate of Jane Ngoiri v Githunguri Constituency Ranching Company Limited & 17 Others, Githunguri Magistrate Miscellaneous Succession Cause No, E078 of 2023 and Thika ELC MISC No. E043 of 2024** which cases are pending ruling.

- 6.** He believes that the investigations and the intended prosecution are unfair and biased towards achieving a premeditated outcome. He is of the view that the 1st and 2nd Respondents are not independent in the investigation of the matter and that they have admitted that they are under immense pressure from the interested party and other undisclosed parties to arrest him and prefer charges regardless of the outcome of the investigations.
- 7.** When the DCI from Kikuyu Police station called him informed me that they had given him a favour by not arresting as directed by the 1st Interested party.
- 8.** The police commenced by summoning his advocate for alleged offences of defamation of character, conspiracy to commit a felony and giving false information without giving the reasons for the summons.
- 9.** My advocate wrote seeking for particulars and further and better particulars of the nature of the complaint being investigated and who was the complainant, but he was never favoured with the courtesy of a reply.
- 10.** He argues that the police say that they can only provide any documents and information they are holding once he or my witnesses have been arraigned and charged in court.
- 11.** The same police have already supplied the Interested Party with documents and information that he is now using

against him not to prosecute the merit of the civil cases, but to derail and block the civil cases that have filed.

- 12.** These sham investigations violate the doctrine of equality of arms and thus tilt the balance in favour of the interested party in the criminal case and ALL the pending Civil proceedings.
- 13.** The Interested Party has deliberately failed to enter appearance nor file a Defence in the civil proceedings but he is pursuing the criminal proceedings in order to force my hand in the civil suits.
- 14.** This action shows that the investigations are tainted with malice and it is not intended to furnish the criminal wrong which is the intention of instituting criminal proceedings.
- 15.** The civil suits were commenced in 2023 and in January, 2024. Upon being served with summons to enter appearance and other pleadings in Ruiru CMELC No. E016 OF 2023.
- 16.** The Interested Party went ahead to irregularly obtain a death certificate for the late Jane Ngoiri Kioi in April, 2024 and commenced engaging in ploys and machinations to block and derail the civil cases where he had an opportunity to be heard but has decided he does not want to be heard.

- 17.** He argues that he and the 1st interested party come from Githunguri where there is a police station and the land in dispute (Ruiru Kiu Block 2 (Githunguri)/2369) is in Ruiru where there is also a Police station.
- 18.** The protagonist death certificates were procured in Kiambu where there are county police headquarters.
- 19.** The act of the DCI Kikuyu purporting to commence investigation can only be explained on the basis malice, ulterior motive and scheming ploy with a predetermined outcome.
- 20.** It is his case that in 2023/ he discovered that the Interested Party had fraudulently transferred land parcel number Ruiru Kiu Block 2 (Githunguri)/2369 to himself in 2012 and subsequently transferred it to third parties.
- 21.** The Interested Party fraudulently transferred the property without obtaining letters of administration and the certificate of confirmation of grant in the matter of the estate of the late Jane Ngoiri Kioi.
- 22.** He has declined to enter appearance and instead chosen to scuttle the civil trial using the criminal process. This issue is now the subject of trial in Ruiru CMELC Case No. E016 of2024 and Thika ELC Court Misc. Case No. E 043 of2024.

- 23.** He admits that even though civil and criminal proceedings can proceed simultaneously, the use of criminal proceedings to defeat the civil proceedings is an abuse of the court process and the criminal justice system and such proceedings are instituted in bad faith.
- 24.** According to the 1st interested party, and the police, Jane Ngoiri Kioi (deceased) died in 1984. But, the 1st interested party conveniently procured an irregular death certificate in April 2024, after the Applicant commenced the three civil cases in court.
- 25.** According to the Applicant, the sham Criminal Investigations where he is pressurizing the police to arrest me, detain me and charge him. It is against the public interest and the administration of justice to use criminal justice process as a pawn in civil disputes.
- 26.** The police should not be involved in the settlement of what is purely a civil dispute being litigated in court. It is his case that the DCI's actions are unreasonable, irrational, unconstitutional, unprocedural, biased, ma/a fide and tainted with malice and this court should grant an order quashing the investigations, recommendations and intended prosecution.
- 27.** He has been summoned to report to Kikuyu DCI on 25th October, 2024. He is Persuaded that the intended

prosecution is for ulterior motives is an abuse of the criminal justice system.

The Respondents Case;

- 28.** The Respondent's case is predicated on the Replying Affidavit of PC Elias Angila, who is attached to Kikuyu DCI police station tasked with performing general investigations.
- 29.** It is his case that on 22/05/2024 a report of forgery of a death certificate was made to kikuyu police station vide OB No. 34 of the said date by the 1st Interested Party herein.
- 30.** The complainant alleged that the death certificate of their late grandmother Jane Ngoiri Kioi who died on 07/06/1984 had been forged to read 27/03/1991 and presented in a case of succession cause No. E078/2023, Chief Magistrate Court, Githunguri.
- 31.** He recorded statements of witnesses among them the said Joseph Kioi, the chief, the assistant chief and the obtained relevant documents. He got a letter from the Ministry of Interior and Co-ordination of National Government, State department for Interior and Citizen Services, Civil Registration Office letter ref CRB/KBU/VRT/CERT VOL 111(442) dated June 2024.

- 32.** He argues that he thereafter wrote a letter to requesting for Authenticity of Death certificate No.66102112 with entry Number 130129291 and 1769380 with entry number 1302468/84.
- 33.** According to the report by the registrar of Births and deaths, Kiambu the death certificate entry number 1302468/84 is a true record as held and maintained by the said office while the death certificate no 013029 does not have any record and was not issued by the same office. According to the records at the senior principle magistrate there are documents which copies them are the forged death certificate.
- 34.** This prompted him to summon the Applicant herein, and thereafter had also recorded statements of the assistant chief and the chief who confirmed having issued David Thuo with a letter dated 11/08/2023, alleging that he was going to pursue share Certificate of the late Jane Ngoiri Kioi.
- 35.** Upon being summoned the Exparte Applicant herein did indeed come to DCI Kikuyu and upon interrogation, he said that he would speak when his lawyer was present as he was not the person who generated the certificate in question adding that one Simon Githiru did bring to him.
- 36.** It is further his case that upon further inquiry our investigations revealed that the Exparte Applicant herein

had gone ahead to make their own documents fraudulently and used the same for succession proceedings and later obtain property. According to him, summoning anybody to give his side of the story does not warrant to be called harassment.

- 37.** He argues that the Application is frivolous, vexatious and an abuse of court process since it does not disclose how the 1st and 2nd Respondent has acted outside their mandate as provided in law.
- 38.** If granted, the orders sought in the Application will undermine the investigatory functions of the 2nd Respondent provided for under Section 24(e) of the National Police Service Act, No. IIA of 2011, thereby crippling the criminal justice system.
- 39.** The Respondents acted in accordance with the provisions of the National Police Service Act, No. IIA of 2011 and the Constitution of Kenya, 2010 in carrying out their mandate in Application of the law in regards to investigative functions.
- 40.** The Applicant has failed to show how the acts complained are tainted with illegality, irrationality and procedural impropriety hence the judicial review orders sought should not be granted and as such the Application herein should be dismissed with costs.

The Interested Party's Case;

He opposes the Application on the following grounds;

- 41.** According to the interested party, the Application is frivolous, vexatious and an abuse of court process since it does not disclose how the 1st and 2nd Respondent has acted outside their mandate as provided in law. He believes that the Application does not disclose any single act of illegality on the part of the Respondent.
- 42.** It is his case that if granted, the orders sought in the Application will undermine the investigatory functions of the 2nd Respondent provided for under Section 24(e) of the National Police Service Act, No. 11A of 2011, thereby crippling the criminal justice system.
- 43.** He argues that this Honorable Court would be usurping the statutory mandate of the 1st and 2nd Respondent if it were to take up that role as proposed by the Exparte Applicant.
- 44.** The Applicant in essence, seeks that this honorable Court directs a Public officer to exercise or not to exercise his/her statutory discretion in a particular manner hence usurp the said officer's authority.
- 45.** The Applicant is inviting this court to trespass into the arena specifically reserved for the criminal trial process and ought not to usurp the constitutional or statutory mandate of the 1st & 2nd Respondent.

- 46.** The court is expressly barred by Article **165(5) (b)** and **162(2) (b)** of the Constitution disputes reserved for the Environment and Land courts.
- 47.** The Environment and Land court has jurisdiction to grant prerogative orders as this matter cause of Action arises from **Riuru Kiu Block 2 (Githunguri)/2369**.
- 48.** It is his case that this Honourable Court lacks Geographical Jurisdiction to hear and determine this suit as the cause of Action arose in Kiambu yet the suit has been filed in Nairobi County.
- 49.** The Applicant has failed to show how the acts complained are tainted with illegality, irrationality and procedural impropriety hence the judicial review orders sought should not be granted and as such the Application herein should be dismissed with costs.

Analysis and determination;

Upon perusing the Applications, the responses by the various parties for and in opposition to the Application, rival submissions and authorities cited by counsel, the following issues call for determination;

- 1) Whether this court has jurisdiction?
- 2) Whether the Applications have merit.
- 3) Who shall bear the costs?

Whether this court has jurisdiction?

- 50.** In the case of **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023)** where the court held thus:

“Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of the Constitution as read with Section 4(1) of the Environment and Land Act. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of the Constitution. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, J) stated: “In the instant case, the Petitioners allege violation of their fundamental rights.

Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court."

- 51.** Article 162(2) (b) of the Constitution empowers Parliament to “establish Courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land.” In this regard and pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act, Act No. 19 of 2011.
- 52.** Section 13 of the Environment and Land Court Act outlines the jurisdiction of the Environment and Land Courts as follows: -

(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;

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.

53. In the instant suit this court notes that it is not in dispute the Applicant was summoned by the police in...
54. The suit property that forms the subject of the title documents that were allegedly forced is in Kiambu being land reference number Ruiru Kiu Block 2 (Githunguri)/2369.
55. There are pending court cases being Ruiru **CMELC No, E016 of 2024; David Thuo Kimingi (Suing as the administrator ad litem of the estate of Jane Ngoiri v Githunguri Constituency Ranching Company Limited & 17 Others, Githunguri Magistrate Miscellaneous Succession Cause No, E 078 of 2023 and Thika ELC MISC No. E043 of 2024.**
56. The cause of action has its roots on a report of forgery of a death certificate was made to kikuyu police station vide OB No. 34. From the foregoing it is clear to this court that this case falls within the environment and land Court in Thika.

57. In the case of **Republic v Karisa Chengo & 2 others [2017] eKLR** it was held;

“The law is now settled by the Supreme Court in its decision made on 26th May, 2017 in the case of Republic v Karisa Chengo & 2 others [2017] eKLR in which it upheld this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of the Constitution, which prohibits the High Court from

exercising jurisdiction in respect of matters “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).”

58. Article 162(2) (b) of the Constitution empowers Parliament to “establish Courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land.” In this regard and pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act, Act No. 19 of 2011.

59. Section 13 of the Environment and Land Court Act outlines the jurisdiction of the Environment and Land Courts as follows: -

(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;

d) Relating to public, private and community land and contracts, chosesin action or other instruments granting any enforceable interests in land; and

e) Any other dispute relating to environment and land.

- 60.** The Thika Environment and Land Court has the requisite jurisdiction to preside over this suit.

The second issue;

- 61.** The Supreme Court in the case of **Dickson Ngigi Ngugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019] eKLR**, [36] observed that;

“Jurisdiction goes to the root of any cause or dispute before a court of law. A court must exercise restraint to avoid overstepping its constitutional role in order to maintain its legitimacy. If a court has no jurisdiction, a judgment rendered therein does not adjudicate the dispute. It does not bind the parties, nor can it be made the foundation of any right. It is a nullity without life or authority. In short, it is coram non judice and amounts to a nullity because, as Nyarangi, JA famously said in the locus classicus, Owners of the Motor Vessel “Lillian S” v Caltex Oil, (Kenya) Ltd [1989] KLR 1, “jurisdiction is everything. Without it, a court has no power to make one more step”.

It is a settled legal proposition that conferment of jurisdiction is a legislative function and it can only be conferred by the Constitution or statute. It cannot be conferred by judicial craft. See Samuel Kamau Macharia & Another v Kenya commercial Bank & 2 Others, SC Application No. 2 of 2011; [2012] eKLR. Nor can parties, by consent confer on a court power it does not have.”

62. Having determined that is this court lacks jurisdiction it cannot proceed to determine the second issue and I so hold and this court must down it tools which I hereby do.

Disposition;

63. This court, lacks jurisdiction to preside over this matter. It should in the circumstances should be transferred to the appropriate court.

Order;

This suit is hereby transferred to the Thika Environment and a Land Court.

Dated, signed and delivered at Nairobi this 13th Day of October 2025.

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J. CHIGITI (SC)

JUDGE

