

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CONSTITUTIONAL PETITION NO. 17 OF 2015

ROBERT GAKINYA NJAU..... 1ST
PETITIONER

JACKSON NDERITU WANJAGE 2ND
PETITIONER

VERSUS

THE COUNTY GOVERNMENT OF NYERI.....
RESPONDENT

AND

LUCY WARUGURU MWAI.....
APPLICANT

RULING

1. Vide the ruling of this court dated and delivered by Mshila J on 16.9.2021, the court upheld the Respondents' Preliminary Objection dated 20.1.2021 and found that this High Court had no jurisdiction to hear and determine this matter that arose from a claim under Section 13 (2)(a) of the Environment and Land Court Act. The court transferred the suit for hearing and determination by the Environment and Land Court.

2. Subsequently, the Petitioners appealed the said ruling and sought stay of execution in this court vide the Notice of Motion application dated 27.9.2021.

3. I have to determine whether this court can issue stay of execution pending appeal in light of the existing ruling of court by which this Petition was transferred to the Environment and Land Court. By dint of Article 165(5) of the Constitution, this Court has no jurisdiction to hear this case. Under Article 165(5)2 of the Constitution, it is provided as doth:

The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162.

4. It is my understanding that jurisdiction is everything. The court is bound to take jurisdiction where it has and down its tools where it does not have jurisdiction. My senior brother Nyarangi JA, as then he was, immortalised these words, in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd** [1989] eKLR as follows: -

"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 pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I

part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as 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 the 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 of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

5. This means that the court cannot assume jurisdiction that it does not have nor eschew jurisdiction it has. In the case of **Samuel Kamau Macharia & another v Kenya Commercial**

Bank Limited & 2 others [2012] eKLR, the supreme court stated as doth: -

“This Court dealt with the question of jurisdiction extensively in *the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. 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.”

6. The Petition is not before this court as it was transferred to the Environment and Land Court. Therefore, I down my tools. I decline to consider any question that ought to be in the court to which the court transferred this matter.
7. The court is unable to issue any order in this matter, after it was transferred. Transfer takes effect on issuance. There were issues raised on withdrawal. It is only the court to which such application for withdrawal is made that can issue the same.

8. The matter will be given a date in the court it was transferred to. Alternatively, the parties are aware of the provisions of Rule 5(2)(b) of the Court of Appeal Rules.

9. As I leave this matter, I note with concern that the transferred suit has stayed in this court for a record 4 years, without any basis.

Determination

10. The upshot of the foregoing is that I make the following orders: -

- a) The court is unable to issue any order in this matter, after it was transferred.
- b) The matter will be given a date in the court it was transferred to. Alternatively, the parties are aware of the provisions of Rule 5(2)(b) of the Court of Appeal Rules.
- c) No order as to costs.

DELIVERED, DATED and SIGNED at **NYERI** on this **30th** day of **October, 2025**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

Represented by: -

No appearance for the Petitioner

Mr. Wahome Gikonyo for the Applicant

Ms. Ngari for the Interested Party

Court Assistant - Michael

ORIGINAL