



Voi Sisal Estates Limited v Attorney General (Judicial Review Miscellaneous Application E134 of 2025) [2025] KEHC 15104 (KLR) (Judicial Review) (27 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15104 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E134 OF 2025
RE ABURILI, J
OCTOBER 27, 2025
IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION
AND
IN THE MATTER OF VOI ESTATES LIMITED
AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER
OF MANDAMUS PURSUANT TO ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010
BETWEEN
VOI SISAL ESTATES LIMITED APPLICANT
AND
ATTORNEY GENERAL RESPONDENT

RULING

1. The Chamber Summons dated 23rd October, 2025 brought under certificate of urgency, but not certified as urgent, seeks leave of court to apply for judicial review orders of mandamus to compel the Attorney General to pay to the applicant Kenya shillings 17,714,180.70 as per the certificate of order against the government being the sum decreed by the Environment and Land Court inclusive of interest. The applicant also prays for costs of the application.
2. The application is supported by the grounds contained in the statutory statement and verifying affidavit sworn by Shakil Visram, the Director of the Applicant Company sworn on the 22nd October, 2025 and the annexures to the affidavit which include a decree and certificate of order against the government in ELC NO. 1388 of 2014 formerly HCC 2457 of 1996. The judgment in what is



undoubtedly a pure land matter was rendered by S. Okong'o Judge of Environment and Land Court on 7th March, 2019.

3. In the said decree, the plaintiff decree holder was awarded a sum of Kshs 10,227,587 together with interest at 12% per annum from date of default until payment in full. The Court made other orders which are not monetary in nature.
4. I observe that there is no evidence that the applicant decree holder has made any formal demand for settlement of the decree and certificate of order against the government although the same were served upon the respondent on 29th July, 2025.
5. The application was argued orally this morning by Mr. Gitonga counsel for the applicant, exparte, reiterating the prayers and grounds in support.
6. I have considered the application as filed and argued and the main issue for determination is whether this court is possessed of jurisdiction to hear and determine the judicial review proceedings intended to be filed seeking for mandamus to compel settlement of the decree and certificate of order against the government as issued by the Environment and Land Court.
7. Jurisdiction is everything to a court of law. It is the power to adjudicate over disputes and determine the disputes on merit. Where there is no jurisdiction, a court of law would be acting in vain and therefore the moment a court of law determines that it is devoid of jurisdiction to entertain a matter, it must down its tools and say no more.
8. Thus, 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' v 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...”

9. The Court of Appeal in Jamal Salim v 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;

- 1)
- 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.”



10. The Court of Appeal in *Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others* (2013) eKLR stated as follows on the centrality of jurisdiction:

“So central and determinative is the jurisdiction that it is at once fundamental and overarching 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.”

11. 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.”

12. In *Orange Democratic Movement v 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...”

13. From the foregoing judicial pronouncements, it is clear that a Court’s jurisdiction is derived from *the Constitution*, an Act of Parliament or both and that a court of law cannot by craft arrogate itself of jurisdiction that it does not have. Neither can parties confer jurisdiction on a court of law or tribunal, by consent.

14. Onto the jurisdiction of this court, it is primarily derived from Article 165 of *the Constitution*, the High Court Organization and Administration Act and other Acts of Parliament. On the other hand, the Environment and Land Court is established pursuant to the dictates of Article 162(2) (b) of *the Constitution* with the primary jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.



15. The jurisdiction of the Court is provided for in detail under section 13 of the *Environment and Land Court Act* which establishes the Court as dictated by Article 162(2) of *the Constitution* which clearly stipulates that “Parliament shall 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.
16. Other jurisdiction of the Environment and Land Court is derived from other statutes including the *Land Act*, the *Land Registration Act*, The *Rent Restriction Act*, among other pieces of legislation.
17. As to what orders the court can make, in exercise of its jurisdiction, section 13(5) of the *Environment and Land Court Act* provides that:
 - 13(5) (5) 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;
 - (f) restitution;
 - (g) declaration; or
 - (h) costs.
18. Prerogative orders as underlined above are orders that a court in exercise of its judicial review jurisdiction issues. Among the prerogative orders are certiorari, mandamus and prohibition.
19. It follows that the Environment and Land Court has express statutorily donated jurisdiction to hear and determine applications for judicial review and make orders thereto including mandamus to compel performance of a statutory duty, such as settlement of a decree and certificate of order against the government as stipulated in section 21 of the *Government Proceedings Act*.
20. On whether the Environment and Land Court has power to enforce its own orders such as a decree for damages as against both private and public bodies, section 14 of the *Environment and Land Court Act* is clear that a judgment, award, order or decree of the Court shall be enforceable in accordance with the *Civil Procedure Act*.
21. In other words, the judgments, awards, decrees and orders of the Environment and Land Court cannot be transposed to this Court which is the High Court Division exercising judicial review jurisdiction to enforce since the court is vested with enforcement of its own orders.
22. Additionally, Article 165(5) (b) of *the Constitution* expressly bars the High Court from exercising jurisdiction in matters or disputes expressly reserved for the Supreme Court falling within the jurisdiction of the courts contemplated in Article 162(2). The Environment and Land Court is one such Court contemplated under Article 162(2) (b) of *the Constitution*.
23. From the foregoing discussion, it is clear to this court that it is devoid of hearing and determining the proceedings for judicial review arising from decree of the Environment and Land Court and or for purposes of enforcing that decree.



24. Accordingly, for want of jurisdiction, I decline to entertain these proceedings and I proceed to strike out the chamber summons dated 23rd October, 2025 with no orders as to costs.
25. This file is closed.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER, 2025

R.E. ABURILI

JUDGE

