



**County Government of Kajiado v Tata Chemicals Magadi Limited (Environment and Land Case E089 of 2024) [2025] KEELC 7758 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7758 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E089 OF 2024  
MD MWANGI, J  
NOVEMBER 6, 2025**

**BETWEEN**  
**COUNTY GOVERNMENT OF KAJIADO ..... PLAINTIFF**  
**AND**  
**TATA CHEMICALS MAGADI LIMITED ..... DEFENDANT**

**RULING**

(In respect of the defendant’s application dated 10th February 2025 contesting the court’s jurisdiction to determine the plaintiff’s suit)

**Introduction**

1. Before this Court for determination is the Notice of Motion dated 10th February 2025, brought by the Defendant/Applicant, Tata Chemicals Magadi Limited, pursuant to the provisions of Rule 15(1)(b), (c) and (d) and Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act (Cap 21, Laws of Kenya), and Section 25 of the repealed Rating Act (Cap 267, Laws of Kenya).
2. The Applicant seeks the following substantive orders:
  - a. That this Honourable Court be pleased to strike out the Plaintiff’s Complaint dated 10th September 2024 in limine for want of jurisdiction; and
  - b. That the costs of this application together with those of the entire suit be borne by the Plaintiff.
3. The application is premised on the grounds set out on the face thereof and is further supported by the affidavit of Anthony Wanjohi, sworn on even date. Mr. Wanjohi describes himself as the Treasury and Regulatory Manager of the Defendant/Applicant and avers that he is conversant with the facts giving rise to this dispute.



4. The Applicant contends that at the time of filing the suit on 10th September 2024, this Court lacked jurisdiction to hear and determine the matter by virtue of the then applicable provisions of the Valuation for Rating Act (Cap 266, Laws of Kenya), the Rating Act (Cap 267, Laws of Kenya) — both of which have since been repealed — and the Kajiado County Rating Act, 2016. The Applicant argues that the jurisdiction to entertain proceedings for recovery of land rates, under Section 25 of the repealed Rating Act, was vested in the subordinate court of the first class and not in this Court.
5. It is therefore the Applicant’s position that the filing of the suit herein is an abuse of the court process, frivolous, vexatious, and ought to be struck out with costs.
6. Upon being served with the application, the Plaintiff/Respondent, the County Government of Kajiado, filed Grounds of Opposition dated 18th March 2025, pursuant to Order 51 Rule 14(1)(c) of the Civil Procedure Rules, 2010. The Plaintiff opposes the Defendant’s application on both legal and jurisdictional grounds.
7. The Plaintiff contends that this Honourable Court is properly seized of the jurisdiction to entertain and determine the present dispute. It is the Plaintiff’s position that, by virtue of Article 162(2)(b) and Article 165(3)(a) of the Constitution of Kenya, 2010, as read together with Section 13(1) and (2) of the Environment and Land Court Act, Chapter 8D, this Court has unlimited original jurisdiction to hear and determine all disputes relating to the environment, the use and occupation of, and title to land.
8. The Plaintiff further argues that Section 25 of the repealed Rating Act (Cap 267, Laws of Kenya) did not have the effect of ousting or limiting this Court’s original jurisdiction. In any event, the Plaintiff maintains that the Magistrates’ Courts referred to under the said section were subject to the pecuniary jurisdictional limits prescribed under Section 7(1) of the Magistrates’ Courts Act, 2015, which restricts the jurisdiction of such courts to a maximum of Kshs. 20 million in civil disputes
9. The Plaintiff further relies on Sections 26(3) and (4) of the Environment and Land Court Act, which empower the Chief Justice to designate certain magistrates to handle environment and land matters within the limits of their jurisdiction

#### **Directions**

10. The court directed that the said application be canvassed by way of written submissions, the submissions of which were highlighted in open court on 29th September 2025. The court has duly considered the submissions in the writing of this ruling.

#### **Analysis and Determination**

11. The central issue that arises for determination is whether the Environment and Land Court (ELC) had original jurisdiction to hear and determine the Plaintiff’s suit for recovery of rates, or whether such jurisdiction was, at the time of filing, vested in the subordinate courts pursuant to Section 25 of the Rating Act (Cap. 267, now repealed).
12. The starting point in any jurisdictional inquiry is the Constitution itself and the enabling legislation. Article 162(2)(b) of the Constitution provides that:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to— (b) the environment and the use and occupation of, and title to, land.”



Article 165(3)(a) further stipulates that:

“The High Court shall have and exercise jurisdiction throughout Kenya in all matters and shall have such original jurisdiction as is conferred by this Constitution.”

Pursuant thereto, Parliament enacted the *Environment and Land Court Act* (Chapter 8D, Laws of Kenya).

13. Section 13(1) and (2) of the *Environment and Land Court Act* provides that:

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (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; ...”

Thus, by statute, the ELC is empowered to entertain disputes concerning rates.

14. Section 7(1) of the *Magistrates’ Courts Act*, 2015 provides that:

“A magistrate’s court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed— (a) twenty million shillings, where the court is presided over by a Chief Magistrate; ...”

Hence, the pecuniary jurisdiction of subordinate courts is statutorily capped.

15. At the material time, the governing statute on rates recovery was the *Rating Act* (Cap. 267), now repealed. Section 25 provided that:

“Notwithstanding anything to the contrary in the Magistrate’s Courts Act (Cap. 10), any magistrate empowered to hold a subordinate court of the first class shall have jurisdiction to hear and determine suits for the recovery of rates under this Act.”

The phrase “notwithstanding anything to the contrary” clearly operates to override other statutory provisions that would limit the jurisdiction of a magistrate court of the first class, including pecuniary ceilings, in matters for the recovery of rates.

16. In the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited* [1989] eKLR, the Court of Appeal emphatically held as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are before it or take cognizance 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 cognizance, or as to the area over which the jurisdiction shall extend, or it may partake both of 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 the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given... 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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR held that:

“ A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law could 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.”

I am duly persuaded by the foregoing authorities, which remain the cornerstone of our jurisprudence on jurisdiction, and which reinforces the principle that a court must first satisfy itself that it has the legal authority to adjudicate upon a dispute before proceeding any further.

17. The Plaintiff’s suit was filed on 10th September 2024, prior to the repeal of the *Rating Act* by the National *Rating Act*, 2024, whose commencement date was the 24th December 2024. Jurisdiction must therefore be determined as at the date of filing — not retrospectively by subsequent legislative changes.
18. At that time, Section 25 of the *Rating Act* was still operational and expressly conferred jurisdiction for the recovery of rates upon a “magistrate empowered to hold a subordinate court of the first class,” notwithstanding any contrary provision in the *Magistrates’ Courts Act*. The legislative intent was clear: that suits for recovery of rates be commenced in the subordinate courts as the court of first instance.
19. The Plaintiff, however, instituted the present suit directly in this Court, arguing that Section 13(1) and (2) of the ELC Act grants this Court unlimited original jurisdiction over all land and rates disputes. While this submission has textual support, the constitutional framework—when read with the Macharia case (supra)—dictates that jurisdiction is not assumed merely by general constitutional grant where specific statutory allocation exists. The *Rating Act* was such specific legislation, operational and unambiguous at the time. The ELC Act did not amend the *Rating Act*, which was enacted much earlier.
20. The Plaintiff further contended that subordinate courts were constrained by pecuniary limits under section 7(1) of the *Magistrates’ Courts Act*, and therefore incapable of hearing a claim exceeding Kshs. 20 million. However, the “notwithstanding” clause in section 25 of the *Rating Act* was crafted precisely to override that limitation. The words “notwithstanding anything to the contrary” are a legislative ouster of conflicting statutory limitations and therefore vested the subordinate court with the full jurisdiction to hear and determine such matters, irrespective of their value.
21. While the Environment and Land Court retains jurisdiction in matters where there is no express statutory ouster, this Court is in full agreement with the reasoning of my brother, Hon. Justice Angote J, in *Machakos County Government v Kapiti Plains Estate Limited* [2021] KEELC 2047 (KLR),



whose holding I find both persuasive and applicable to the present circumstances. The learned Judge stated, that;

“The reading of Section 25 of the *Rating Act* gives the Magistrates’ Courts, and not this court, the jurisdiction to hear disputes relating to suits for the recovery of rates at the first instance. Indeed, Section 25 of the Act gives all the Magistrates of first class, notwithstanding their pecuniary jurisdiction as stipulated under the Magistrate’s Court Act, jurisdiction to hear and determine suits for the recovery of rates under the Act.”

Consequently, the filing of this suit before this Court contravened the statutory scheme then in force.

22. The subsequent repeal of the *Rating Act* by the National *Rating Act*, 2024 does not retroactively validate proceedings filed in a court lacking jurisdiction at the time of institution. Jurisdiction is determined at the point of commencement, and any defect is incurable ab initio. The Court of Appeal in *Joseph Muthee Kamau & another v David Mwangi Gichuru & Another* (Civil Appeal 54 of 2009) [2013] KECA 284 (KLR) (29 May 2013) (Judgment) affirmed the position stating that;

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being the case of *Kagenyi v Musirambo* [1968] EA 43.”

23. Therefore, upon a comprehensive consideration of the constitutional, statutory, and judicial authorities, this Court finds that as at 10th September 2024, Section 25 of the *Rating Act* (Cap. 267) was still operational and expressly vested original jurisdiction to hear and determine suits for recovery of rates in subordinate courts of the first class. The Environment and Land Court’s jurisdiction under Section 13(1) and (2) of the *Environment and Land Court Act* did not supersede or override that specific statutory allocation. The Plaintiff’s suit, filed directly in the Environment and Land Court, was therefore instituted in a forum lacking original jurisdiction.

24. The court therefore makes the following orders:

- a. The Complaint dated 10th September 2024 is hereby struck out for want of jurisdiction.
- b. The Plaintiff/Respondent shall bear the costs of both the application and the suit.
- c. For avoidance of doubt, this determination is without prejudice to the Plaintiff’s right to institute the claim before a court of competent jurisdiction as prescribed by law.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 6<sup>TH</sup> DAY OF NOVEMBER\_\_ 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

M/S. Ngina holding brief for M/S. Katasi for the plaintiff/respondent

Mrs. Oliwa holding brief for Mr. Chacha Odera for the defendant/applicant

Court assistant- Mpoye

**M.D. MWANGI**

**JUDGE**

