



Mukawale v Executive, County Government of Vihiga & another (Civil Appeal 21 of 2021) [2025] KEHC 18828 (KLR) (15 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18828 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL 21 OF 2021
JN KAMAU, J
DECEMBER 15, 2025
FORMERLY KAKAMEGA HIGH COURT CIVIL APPEAL NO 27 OF
2010**

BETWEEN

EDWARD MUHAVI MUKAWALE APPELLANT

AND

EXECUTIVE, COUNTY GOVERNMENT OF VIHIGA 1ST RESPONDENT

GANGO ENTERPRISES COMPANY LIMITED 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of Hon M. L. Nabibya (SRM) delivered at Hamisi in the Magistrate's Court Land & Environment Case No 33 of 2018 on 14th February 2019)

RULING

Introduction

1. In her decision of 14th February 2019, the Learned Trial Magistrate, Hon M. L. Nabibya, Senior Resident Magistrate, dismissed the Appellant's suit with costs to the Respondent.
2. Being aggrieved by the said decision, on 8th March 2019, the Appellant herein filed a Memorandum of Appeal of even date. He relied on four (4) grounds of appeal. The matter was transferred to this court having been filed at the High Court of Kenya, Kakamega.
3. His Written Submissions were dated 20th November 2024 and filed on 25th November 2024. The Respondent did not file any Written Submissions.



Legal Analysis

4. Right from the onset and having looked at the Memorandum of Appeal and the Record of Appeal herein, this court noted that the appeal herein had emanated from a Land and Environment Case as the subject matter of the case involved claims of encroachment of the Appellant's portions of land.
5. Articles 162(2) of *the Constitution* of Kenya, 2010 provides:-

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

 - a. employment and labour relations; and
 - b. the environment and the use and occupation of, and title to, land.”
6. The jurisdiction of the Environment and Land Court is further set out under Section 13(2) of the *Environment and Land Court Act*, which provides that the jurisdiction of Environment and Land Court is to hear and determine disputes related to:-
 - a. Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. Relating to compulsory acquisition of land;
 - c. Relating to land administration and management;
 - 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.
7. The ousting of jurisdiction of the High Court to hear land and environment matters is expressly provided for under Article 165(5)(b) of *the Constitution* of Kenya which provides that:-

“the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the Courts contemplated in Article 162 (2) of *the Constitution* of Kenya.”
8. This court had due regard to the case of Owners of Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989]eKLR, where it was held that jurisdiction was everything and without it, a court had no power to make one more step. As this court could not hear and determine disputes within Environment and Land Court's jurisdiction, it found it prudent to transfer the file to Vihiga Environment and Land Court for hearing and determination.

Disposition

9. For the foregoing reasons, the upshot of this court's decision was that the Appellant's appeal be and is hereby transferred to Vihiga Environment and Land Court for hearing and determination.
10. It is hereby directed that this file be placed before the Judge of Vihiga Environment and Land Court on 9th February 2026 for hearing and determination. There will be no order as to costs at this point.
11. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 15TH DAY OF DECEMBER 2025

J. KAMAU



JUDGE

