



Wainaina v Land Registrar, Thika Lands Registry (Judicial Review Miscellaneous Application E010 of 2026) [2026] KEHC 596 (KLR) (Judicial Review) (28 January 2026) (Ruling)

Neutral citation: [2026] KEHC 596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E010 OF 2026
RE ABURILI, J
JANUARY 28, 2026**

BETWEEN

TERRY WAIRIMU WAINAINA APPLICANT

AND

THE LAND REGISTRAR, THIKA LANDS REGISTRY RESPONDENT

RULING

1. The *ex parte* chamber summons dated 23rd January, 2026 brought pursuant to Order 53 of the Civil procedure Rules and under certificate of urgency is certified urgent and heard *ex parte*, in the presence of counsel for the applicant only.
2. On whether leave sought is available, I have considered the application which seeks leave of court to apply for an order of mandamus compelling the Land Registrar – Thika, to forthwith lift, cancel and expunge any restriction and or caveat registered on the applicant’s land parcel known as Thika Municipality Block 20/2555 in compliance with the orders of the High Court issued on 11/10/2018, and certiorari to remove into this court and quash the administrative inaction and refusal by the Respondent to lift the said restriction, despite lawful orders having been issued by a competent court.
3. I have also heard Miss Gichuhi Counsel for the applicant in her oral submissions, when the Court alerted her of the jurisdictional issues involved in this matter and even accorded her time to verify from various constitutional and statutory provisions on jurisdiction of this Court in matters of this nature.
4. I observe that the matter relates to land and is therefore governed by the *Land Registration Act*, 2012.
5. Section 78 of the *Land Registration Act* provides for power of the Land Registrar on his own motion or on application to remove a restriction after giving the affected parties a chance to be heard, and the court’s power, upon an application by a proprietor of the land, to the Environment and Land Court,



for removal or variation of a restriction. The process of removal of a restriction from the title is also provided for under the Act.

6. Under Section 70 of the *Land Registration Act*, the court which is the *Environment and Land Court Act*, is empowered to remove or lift any restriction upon the expiration of the time stated in the inhibition. The land Registrar would then cancel the inhibition once satisfied of the occurrence of any event stated in the inhibition.
7. In the instant case, the applicant claims that she is the registered owner of the subject parcel of land and that on 29/4/2016, a restriction was registered against the said Title, allegedly based on a court order issued on 4/4/2016 in Succession Cause No. 784/1990.
8. The applicant avers that she filed an application dated 9/1/2017 and that on 11/10/2018, Muchelule J, (as he then was) vacated the said orders which orders were forwarded to the Land Registrar, Thika but that the Land Registrar has refused to lift the restriction placed on the title citing lack of express order compelling him to do so.
9. The applicant accuses the Respondent Land Registrar, of abuse of discretion and violation of his right to legitimate expectations under the law.
10. The requirement for leave to apply for judicial review is a preliminary, discretionary stage, under section 9 of the *Law Reform Act* and Order 53 Rule 1 of the Civil Procedure Rules.
11. The age-old rationale for the requirement that leave be sought and obtained under Order 53 (1) of the Civil Procedure Rules is to exclude frivolous, vexatious or applications which prima facie appear to be an abuse of the process of the Court or those applications which are statute barred. However, leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case.
12. The yardstick for the grant of leave was pronounced by the Court of Appeal in *Mirugi Kariuki v Attorney General* Civil Appeal No. 70 of 1991 [1990-1994] EA 156; [1992] KLR 8 as follows:

“It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant’s interests without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, on reasonable grounds for believing that there has been a failure of public duty, the Court would be in error if it granted leave. The curb represented by the need for the applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables the Court to prevent abuse by busybodies, cranks and other mischief-makers...

In this appeal, the issue is whether the appellant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a prima facie case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of the Act was brought into question. Without a rebuttal to these allegations, the appellant certainly disclosed a prima facie case. For that, he should have been granted leave to apply for the orders sought.”
13. The purpose of seeking leave therefore is to determine whether there is prima facie case that would warrant the hearing of the judicial review application to determine whether the orders sought should be granted. Leave serves as a filter of frivolous, vexatious or hopeless applications. This sifting ensures the court's time is not wasted and that a legitimate case exists for full investigation.



14. More significantly, the court must have jurisdiction to hear and determine the despite. This because, without jurisdiction, it does not matter that the applicant has an arguable case. See Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment).
15. Jurisdiction is everything without which, a court of law must down its tools and say no more. Jurisdiction is conferred by *the constitution* and statutes. No court of law or tribunal can arrogate itself of jurisdiction that it does not have. In Macharia & another v Kenya Commercial Bank Ltd & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling) where the Supreme Court stated as follows:
 68. 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 counsel 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. This Court dealt with the question of jurisdiction extensively in, 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.”
16. Having said that, the question is whether this Court has jurisdiction to entertain these proceedings.
17. As stated above, Section 78(1) of the *Land Registration Act* empowers the Land Registrar upon an application by an affected party, to order the removal or variation of a restriction. The same Section 78(2) grants the court power to order for the removal of the restriction.
18. The court as defined under Section 2 of the *Land Registration Act* is the Environment and Land Court established under the *Environment and Land Court Act* (Cap 8D). Subordinate Courts too once gazetted by the Chief Justice, exercise jurisdiction over environment and land.
19. Under section 2 of the *Land Registration Act*, inhibition means an order made under Section 70 or a prohibition, while restriction means an interest registered under Section 76 and includes the Registrar’s caveat.
20. As to which court or courts have jurisdiction on matters relating to encumbrances or interests registered on land, including caveats, inhibitions and restrictions, Article 162 (2) (b) of *the Constitution* contemplates the establishment of the Environment and Land Court, with jurisdiction to hear and determine disputes relating to the Environment and the use and occupation of and title to, land.
21. To operationalize the above Article, Parliament enacted the *Environment and Land Court Act*, 2011 with jurisdiction to hear and determine such disputes. Section 4 of the Act establishes the Environment and Land Court, a superior court of record with the status of the High Court to exercise jurisdiction as conferred by *the Constitution*, the Act itself and various other legislation on Land and Environment.



22. Jurisdiction of the Environment and Land Court under the *Environment and Land Court Act* is provided for under Section 13 and the orders that the court can grant includes, under section 13 (5) (b), prerogative orders. Execution or enforcement of the court's orders is provided for under Section 14 of the Act.
23. To crown it all, Article 165 (5) (b) of *the Constitution* expressly bars the High Court from hearing and determining disputes which are exclusively reserved for the specialized courts contemplated in Article 162 (2) of *the Constitution*. These courts are the Employment and Labour Relations Court and the Environment and Land Court.
24. From the above exposition, it is clear that the issue to do with removal of a restriction placed on title to land is a matter which can only be resolved by either the Land Registrar or the Environment and Land Court, whether it is a superior court or Magistrate's Court duly gazetted by the Chief Justice to hear and determine those disputes.
25. Although the applicant claims that an order was issued in the succession court, which order has been disobeyed by the Land Registrar who demands for a mandamus order compelling removal of the restriction, if there is such an order, then the succession court has power to enforce its own orders through contempt proceedings in the event of disobedience by the person directed at to obey the order.
26. The applicant cannot be permitted to initiate fresh proceedings in the Judicial Review Division of the High Court for mandamus to compel obedience or as is in the present case, removal of a restriction, when Sections 70 and 78 of the *Land Registration Act* are clear that the court that has power to issue such compelling or other prerogative or Judicial Review orders is the Environment and Land Court.
27. Therefore, without much ado, and or wasting judicial time and resources, and for want of jurisdiction, notwithstanding the merits that the intended application may have, I hereby decline to grant the leave sought in the chamber summons dated 23/1/2026 and I proceed to dismiss the chamber summons with no orders as to costs.
28. The applicant is at liberty to initiate proceedings before a court of competent jurisdiction seeking redress.
29. This file is closed.
30. I so order.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF JANUARY, 2026

R.E. ABURILI

JUDGE

