

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLMISC. NO. E071 OF 2025

HYVET WAIRIMU T/AVETRANKS
INVESTMENT AUCTIONEERS.....
.....APPLICANT

-VERSUS-

ARGENTA AFRICA LTD.....1ST
RESPONDENT

MORRISON KAREITHI MWANGI
T/A KINGDOM LIFE ASSEMBLY.....2ND
RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 28th March 2025, and the notice of preliminary objection dated 28th April 2025 respectively. The notice of motion dated 28th March 2025 is filed by the applicant, and it is expressed to be brought under **Article 162 (3) of the Constitution** seeking the following orders:

1. ***Spent.***
2. ***That this honourable court be pleased to stay the ruling of the magistrate's court in Misc. Application No. E469 of 2025 pending the hearing and determination of this application inter partes.***
3. ***That the honourable court be pleased to call for the lower court file Misc. Application No. E469 of 2025 for supervision purposes.***
4. ***That the cost of this application be in the cause.***

2. The application premised on the grounds on its face, and further supported by the affidavit of the applicant which was sworn on even date. The applicant deposed that she was instructed to levy distress against the respondents for accumulation of rent arrears of Kshs.4,490,000/-, and that she followed all the prescribed legal procedures, but the tenant resisted the execution forcing her to apply for police assistance orders, which were granted on the 3rd March, 2025. The applicant deposed that on 20th of March, 2025 she proceeded in the company of the police and collected the proclaimed goods.
3. Further, on 22nd day of March, 2025 she was served with stay orders with an application via whatsapp which were opposed by her advocate on record on the ground that the said application had been spent and that the respondents needed to file a substantive case. The applicant deposed that the respondents filed another suit at Thika high court which was given directions for 28th April, 2025.
4. The applicant further deposed that the magistrate's court in defiance of the high court directions, issued orders on Friday 28th March, 2025 for the release of the attached goods in disregard of the Thika high court directions. Due to the act of the magistrate's court in issuing contradicting orders to itself,

and as advised by her advocate on record, this court has the supervisory jurisdiction and can intervene to bring justice to the parties.

5. The 2nd respondent filed the notice of preliminary objection dated 28th April, 2025 challenging the instant application on the grounds that this court has no jurisdiction to hear and determine this matter since the same is not a land environment matter.
6. The 2nd respondent also filed his replying affidavit in opposition to the application which is sworn on 2nd August, 2025. The 2nd respondent deposed that he deposed that he is the bishop of the 2nd respondent church, which is based in Thika and previously occupied the land belonging to the 1st respondent. Through a private agreement, the church intended to purchase the plot, which agreement he annexed to the affidavit.
7. The 2nd respondent deposed that however, on 20th March, 2025 the applicant carried away the church equipment and seats on the allegation that the church was a tenant in the premises erroneously, using an order of distress issued by the magistrate court following an application dated 27th February, 2025 filed by the applicant. He deposed that the court was misled to believe that the church was a tenant and that there

were rent arrears and the said tenancy agreement contains a forged signature alleged to be his.

8. The 2nd respondent deposed that it was therefore necessary for the court to review its orders, hence the application filed in Misc No. E469 of 2025, which court disqualified itself from hearing the matter as the land is situated in Thika and that is where the case should have been filed. The 2nd respondent contends that the applicant herein has not filed an appeal against the said court orders but has instead filed this application which lacks merit.
9. Further, he deposed that this court lacks jurisdiction to hear the suit as it is not a land matter, but one for distress for rent and supervisory jurisdiction cannot be invoked for a matter which does not fall under the **Environment and Land Court Act** and prays that the application be dismissed with costs.
10. Both the application and the preliminary objection were canvassed through written submissions. The applicant filed the written submissions dated 10th June, 2025. The 2nd respondent filed the written submissions dated 14th August, 2025.

- 11.** I have carefully analyzed and considered the application, the preliminary objection, the replying affidavit and the written submissions filed by the respective parties. The issue for determination is *whether the application and the preliminary objection have merit.*
- 12.** The applicant seeks an order that this court calls for the lower court file misc. application No. E469 of 2025 for supervision purposes. The dispute herein is regarding the premises of LR.8380/3 in Wieteithie area, next to Zetech University Mang'u Campus that houses the 2nd respondent's church. The applicant herein received instructions to distress for rent for a sum of Kshs.4,490,000/=. An order was issued by the chief magistrate's court at milimani vide case no. E469 of 2025 on 3rd March, 2025 for police assistance to assist the applicant to attach and proclaim goods worth Kshs.4,490,000/= on the suit premises.
- 13.** The 2nd respondent proceeded to file another suit before the Environment and Land Court at Thika ELC No. E049 of 2025.
- 14.** Before the court proceeds with the determination of the instant application, we must interrogate the preliminary objection raised by the 2nd respondent, that the court lacks the jurisdiction to handle this matter.

15. The classic case on jurisdiction is **The Owners of the Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd (1989) KLR 1**, where Nyarangi, JA held as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

16. Thus, the court must instantly down its tools if it finds itself not clothed with the requisite jurisdiction to hear and determine the case. **Article 162(2) (b)** of the **Constitution** enshrines the jurisdiction of this court as the only court with original and exclusive jurisdiction to determine disputes relating to the environment, use, occupation, and title to land.

17. The matter in dispute arises from a case of distress for rent. This court has been granted the appellate jurisdiction on matters before the **Rent Restrictions Tribunal** by **Section 8** of the **Rent Restrictions Act CAP 296** which provides as follows:-

“Except as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive, and no appeal shall lie therefrom to any court.

(2) An appeal shall lie to the Environment and Land Court from any such decision, determination or order in the following cases

—

(a) in the case of an order under subsection (5) of [section 6](#); or

(b) on any point of law; or

(c) in the case of premises whereof the standard rent exceeds one thousand shillings a month, on any point of mixed fact and law, and for the purposes of this subsection, the determination of any rent or of any sum shall be a matter of fact.

(3) Any person who is aggrieved by any decision, determination or order of a person acting under powers delegated to him under subsection (3) of [section 5](#) may apply to the tribunal for a review of that decision, determination or order, and the tribunal may make such order thereon as it thinks fit”

18. However, this is a miscellaneous application, and not an appeal. The parties have not even referred to any matter

before the rent restriction tribunal. When one is aggrieved by a decision reached by a competent court or tribunal, the usual course of action is revision, judicial review, or an appeal, and this instant application falls into neither category. Moreover, the suit property is not within the territorial jurisdiction of this court.

19. As it is, both parties are forum shopping seeing as the same matter has been before so many different courts, which is against the doctrine of *res-judicata* and *sub-judice*. In **Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR**, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked, that is:-

“(a) The suit or issue was directly and substantially in issue in the former suit.

(b) That former suit was between the same parties or parties under whom they or any of them claim.

(c) Those parties were litigating under the same title.

(d) The issue was heard and finally determined in the former suit.

(e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

20. The court finds that this application offends the doctrine of *res-judicata* for raising similar issues that have been heard before competent courts. Further, the applicant has invoked supervisory jurisdiction over the subordinate courts. However, it must be noted that the matter was before other competent courts. This court intervening in a matter that was already heard and determined by a competent court would amount to usurping the power of the said court and micro-managing how the court conducts its affairs. In the case of [National Social Security Funds v Sokomania Ltd and Another](#) [2021] eKLR, Hon Justice Samson Okong’o (as he then was) held as follows:-

“Where, or if, it is intended to exercise Supervisory Jurisdiction under the Constitution, I think the following safeguards should be observed:-

i. A balance has to be struck in the exercise of constitutional Supervisory Jurisdiction to ensure there is no appearance that its object is to micro- manage the trial court’s independence in the conduct and management of its proceedings;

ii. Ideally, constitutional Supervisory Jurisdiction should be exercised only after

the parties are heard on the subject matter in question;

iii. Supervisory Jurisdiction should not be used where the option of revision is appropriate or applicable;

iv. Supervisory Jurisdiction should not be used as a shortcut for an appeal where circumstances for appeal clearly pertain and are more appropriate;

v. Supervisory Jurisdiction should be exercised to achieve the promotion of the public interest and public confidence in the administration of justice.”

21. Thus, as was held above, the applicant should have sought for a review or appeal on the grounds that orders were already issued by another competent court and need not have involved this court to add to their list of courts that have heard this same matter.

22. From the above, the court finds the application dated 28th March 2025 lacks merit, and it is hereby dismissed. The notice of preliminary objection dated 28th April, 2025 is hereby upheld. The costs of the application and the preliminary objection is awarded to the 2nd respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 5TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
05/02/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

*Ms. Anyango holding brief for Ms. Muendo for the 2nd
Respondent*

Mr. Muhatia for the Applicant

ORIGINAL