



REPUBLIC OF KENYA



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Mirugi v Kinuthia & 4 others; Lazinos Hotel & Restaurant Limited & 3 others (Third party) (Civil Case 3 of 2023) [2026] KEHC 1237 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL CASE 3 OF 2023
FN MUCHEMI, J
FEBRUARY 5, 2026**

BETWEEN

NAHASON MUGO MIRUGI PLAINTIFF

AND

MARTIN ROBIN KINUTHIA 1ST DEFENDANT

ANTHONY T MATHI T/A MATHI & CO ADVOCATES 2ND DEFENDANT

**CHAIRMAN KIAMBU SUB COUNTY LAND CONTROL
BOARD 3RD DEFENDANT**

KIAMBU LAND REGISTRAR 4TH DEFENDANT

CONSOLIDATED BANK OF KENYA 5TH DEFENDANT

AND

LAZINOS HOTEL & RESTAURANT LIMITED THIRD PARTY

DAVID NJUGUNA NGOI THIRD PARTY

JAMES NGOI NJUGUNA THIRD PARTY

PETER MWANGI KIINIKI THIRD PARTY

RULING

Brief Facts

1. The plaintiff instituted the current suit in Nairobi Environment and Land Court vide ELC Case No. 272 of 2026 on 21st March 2016. On 18th December 2017, the ELC Court Nairobi found that the land parcel and subject matter of the suit was situated in Kiambu County and therefore transferred the matter to the ELC Court in Thika. The matter upon being transferred to Thika ELC vide case number



ELC No. 876 of 2017 did not proceed for hearing but on 1st November 2023, the learned Judge sought to transfer the matter to the current court on the basis that the matter involved a charge over the suit property and as such, the said court lacked the jurisdiction to hear and determine the case. This court when perused the record before this matter was heard. It was noted that the plaint and defence point to a land dispute as opposed to the validity of the charge. The court therefore gave directions for parties to address it on the issue of jurisdiction by way of written submissions.

The Plaintiff's Submissions

2. The plaintiff submits that the matter arose from an agreement between him and the 1st defendant for the sale of a 150 feet by 100 feet portion which was 0.138 Ha to be carved out of Kiambaa/Ruaka/5309 registered in his. The purchase price of the said property was Kshs. 14 million and he received a deposit of Kshs. 1,400,000/-. The agreement drawn by the advocate indicated a different acreage of 0.202 Ha and further the 1st defendant fraudulently subdivided the suit land into two portions being Kiambaa/Ruaka/5430 & 5431. The 1st defendant further illegally transferred land parcel Kiambaa/Ruaka/5430 measuring 0.20Ha to himself without obtaining the requisite consent. Additionally, the 1st defendant with the help of the 2nd and 3rd defendants charged the said property and took a loan from the 5th defendant.
3. The plaintiff argues that the matter is a dispute relating to the sale of land and whose jurisdiction lies with the Environment and Land Court pursuant to Article 162(2)(b) of the *Constitution*. Thus, the matter was properly filed in the ELC Court in Thika. Furthermore, Section 5 of the Environment and *Land Act* grants the powers to the land court to grant remedies in disputes relating to transactions of sale of land. However, the matter was placed for hearing before the ELC Court at Thika before Honourable Lady Justice J. G. Kimei on 1st November 2023. The judge expressed she was of the view that the matter ought to be transferred to the High Court since the land in dispute had been charged to a financial institution. The plaintiff stated that his counsel insisted that the matter was majorly a land dispute but the learned Judge made an order that the matter be transferred to the High Court Thika for hearing and determination. According to the plaintiff the matter ought to be transferred back to the ELC Court since all the prayers in the plaint relate to ownership of land despite the prayer that refutes the registration of the charge to the 5th defendant. To support his submissions, the plaintiff relies on the case of Sally Njeri Rwimbo vs Francis Kiura Gachagua (Civil Appeal 7 of 2018) [2025] eKLR.

The 1st Defendant's Submissions.

4. The 1st defendant submits that the plaintiff's suit touches substantially on the title to the suit property known as Kiambaa/Ruaka/5430 and therefore the orders sought by the plaintiff fall within the jurisdiction of the Environment and Land Court as enshrined under Article 162(2)(b) of the *Constitution* and Section 13 of the *Environment and Land Court Act*. The 1st defendant argues that the dispute relates to the use and title to the suit property and the plaintiff urges the court to find and declare that the title to the suit property belongs to him, being the rightful owner thereof. Relying on the case of Owners of Motor Vessel Lillian 'S' vs Caltex Oil Kenya Ltd [1989] KLR, the 1st defendant beseeches the court to down its tools for want of jurisdiction.

The 5th Defendant's Submissions

5. The 5th defendant submits that the current court lacks jurisdiction to hear and determine this matter as the plaintiff in the plaint is seeking an order relating to land ownership, subdivision of property, cancellation of title among other orders.



6. The 5th defendant refers to the cases of Benson Makori Makworo vs Nairobi Metropolitan Services & 2 Others [2022] eKLR; Lydia Nyambura Mbugua vs Diamond Trust Bank of Kenya Limited & Another [2018] eKLR and Co-operative Bank of Kenya Limited vs Patrick Kang'ethe Njuguna & 5 Others Civil Appeal No. 83 of 2016 [2017] eKLR and submits that the predominant purpose of this dispute involves questions of title, use or occupation of land and therefore falls within the ambit of the Environment and Land Court's jurisdiction pursuant to Article 162(2)(b) of the *Constitution*. The pleadings and the gravamen of the dispute clearly indicate that the issue at hand relates to the title of land.

The Law and Analysis.

7. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel "Lilian S" vs Caltex Kenya Limited [1989] KLR 1 where the court held:-

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...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

8. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR that:-

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.

9. The jurisdiction of the High Court is provided for in Article 165 (3) of the *Constitution* as follows:-

(3) Subject to clause (5), the High Court shall have-

- a. Unlimited original jurisdiction in criminal and civil matters.
- b. Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- c. Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- d. Jurisdiction to hear any question respecting the interpretation of this Constitution.....

(5) the High Court shall not have jurisdiction in respect of matters-

- a. Reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
- b. Falling within the jurisdiction of the courts contemplated in Article 162(2).



10. Article 162(2) of the Constitution provides:-

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

- a. Employment and labour relations; and
- b. The environment and the use and occupation of, title to land.

11. The jurisdiction of the Environment and Land Court is outlined in Section 13 of the Environment and Land Court Act which provides:-

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 environment 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 contracts, choses in action or other instruments granting any enforceable interests in land; and
- e. Any other dispute relating to environment and land.

12. On perusal of the plaint dated 7th March 2016, the plaintiff prays for judgment against the defendants for :-

- a. A declaration that property number Kiambaa/Ruaka/5430 belongs to the plaintiff.
- b. A declaration that the 1st defendant has no valid claim both in law and equity on property number Kiambaa/Ruaka/5430.
- c. A declaration that the mutation drawn and registered to subdivide property number Kiambaa/Ruaka/5309 into two plots number Kiambaa/Ruaka/5430 & 5431 was so drawn and registered illegally and unprocedurally and the same be cancelled and expunged from the records.
- d. A declaration that the letters of consent issued by the 3rd defendant to sub divide plot number Kiambaa/Ruaka/5309 into two plots Kiambaa/Ruaka/5430 & 5431 and further to transfer Kiambaa/Ruaka/5430 to the 1st defendant was so issued irregularly and unprocedurally and the same be cancelled and expunged from the records.
- e. A declaration that the registration of property number Kiambaa/Ruaka/5430 in favour of the 1st defendant was obtained illegally and unprocedurally there being no valid consent from the land control board.
- f. An order cancelling and or directed to the 4th defendant to revoke and or cancel title number Kiambaa/Ruaka/5430 in the name of the 1st defendant and reopen title records for the original title number Kiambaa/Ruaka/5309 in the name of the plaintiff.
- g. An order cancelling the charge registered against the suit property.



- h. A declaration that the charge registered in favour of the 5th defendant against property number Kiambaa/Ruaka/5430 is null and void and the same stands cancelled as against the suit property.
13. From the orders the plaintiff is seeking in this case, it is evident that he seeks orders that relate to land ownership, subdivision of property, cancellation of the title and cancelling the charge. These issues other than the issue of cancelling the charge relate to the title, use and occupation of the land and therefore, fall within the ambit of the Environment and Land Court pursuant to Section 13 of the *Environment and Land Court Act* and Article 162(2) of the *Constitution*. The issue of the validity of the charge stems from the issue of the unprocedural and illegal subdivision of land parcel Kiambaa/Ruaka/5309 which led to two parcels of land that is Kiambaa/Ruaka/5430 & 5431 as well as the subsequent charge of land parcel Kiambaa/Ruaka/5430 registered in favour of the 5th defendant.
14. It is not in dispute that the plaintiff's counsel and the two counsels for the defendants all agree on the issue of jurisdiction, that is, that the Environment and Land Court (ELC) that is possessed of the power to hear and determine this case. A cursory look at the prayers in the plaint leaves no doubt that this case is a land dispute that ought to be heard and determined by the ELC court as provided for under Section 13 of the Environment and Land Court.
15. It is, therefore, my considered view that this court lacks jurisdiction to hear and determine this case.
16. Consequently, this case is transferred back to the Environment and Land Court for hearing and determination.
17. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

