



REPUBLIC OF KENYA



**Sareri & 14 others v Attorney General & 7 others (Petition
E001 of 2025) [2026] KEHC 1242 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
PETITION E001 OF 2025
CM KARIUKI, J
FEBRUARY 6, 2026**

BETWEEN

MERCY SARERI 1ST PETITIONER
MURMET LESAIYA ALIAS OLE YIAMPOI SIKORE 2ND PETITIONER
EDWARD KIMPEUPEU 3RD PETITIONER
PHILIP NARASHA 4TH PETITIONER
BOAZ KISOI 5TH PETITIONER
DAVID KEKUTA 6TH PETITIONER
MEMUSI OLA BURA 7TH PETITIONER
BEN KISEET 8TH PETITIONER
DAVID OLEMAMPULI 9TH PETITIONER
ALLAN LEBOO 10TH PETITIONER
DANIEL KNANTHA 11TH PETITIONER
PHILIP KEKUTA 12TH PETITIONER
DALMAS KISOI 13TH PETITIONER
VICTION SARUNI 14TH PETITIONER
BENSON LETEIPA 15TH PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT
INSPECTOR GENERAL OF POLICE 3RD RESPONDENT



DIVISIONAL CRIMINAL INVESTIGATIONS OFFICER TRANSMARA SOUTH 4TH RESPONDENT
OCPD TRANSMARA SOUTH 5TH RESPONDENT
OLE KOTIMI SEWANI 6TH RESPONDENT
SAMUEL NAIDUYA, CHIEFSITUKA LOCATION 7TH RESPONDENT
ASSISTANT COUNTY COMMISSIONER, TRANSMARA SOUTH 8TH RESPONDENT

RULING

1. By Notice of Motion Amended on 26.05.2025, the Applicants, who are Petitioners, seek conservatory orders to prevent the Respondent from: -
 - i. Evicting them
 - ii. Met them with police brutality.
 - iii. Harassment.
 - iv. AND from further unlawful “occupation” of 1st Petitioner’s property.
 - v. An order to compel (mandatory) Respondents to produce documents/decisions justifying their eviction, arbitrary arrest, and violation of their (Petitioners) rights.
 - vi. Mandamus to compel the I.G. of police to restore the petitioners’ possessions of her homestead and provide adequate protection as well as enforcement of life.
 - vii. The Court of Appeal order issued on 23.10.2024 was for maintaining the status quo, which has been violated. Thus, need to ensure the unlawful occupation of the land is reversed.
 - viii. Be discharged from prosecution and trial in Cr. Case E366 and E0367 of 2025, and the same be stayed.

2. The application is based on the grounds on the face of the Application and supporting affidavit of Mercy Saberi, sworn on 26.05. 2025. The Application is accompanied by a Petition, amended on 20.05.2025, seeking a Plethora of reliefs, ranging from Habeas corpus, declarations, injunctions, judicial reviews, prohibitions, and an order for compensation of Kshs. 5,000,000.

3. On record, only the 6th Respondent filed a Replying Affidavit (Ole Kotimi Sewani). He raises a bundle of issues that go to the root of this court’s jurisdiction to entertain the instant matter. issues. Namely.
 - i. The court has to consider the Preliminary issue raised by Respondent No. 6 before going to the merits of the application; The issues are, namely:
 - ii. Whether the 1st Petitioner has locus standi to prosecute the Petition on behalf of 14 petitioners without authority from them?
 - iii. Whether the High Court has jurisdiction to handle the matter under Act 162, *Constitution of Kenya, 2010*, as it deals with evictions from land which are impugned?



- iv. Want of specificity of what petitioner occupies in Transmara/Kimintet/'E' and 'F', and what she owns, as there are no supporting documents of ownership available on the court record.
 - v. Whether the Court of Appeal order relied on touch, affect, or even apply to the petitioner No. 1.
4. The court directed the parties to canvass the Application by way of submissions, but only the Applicant has lodged submissions dated 22.10. 2025. The court is obligated to consider the Preliminary issue raised by the Respondent No.6 before going to the merits especially where they implicate court's jurisdiction. In the case of Owners of Motor Vessel "Lillian S" v Caltex Oil [1989] KLR 1, the court held: "Jurisdiction is everything; without it, a court must down its tools." The Principle is that the Jurisdiction is determined at the earliest opportunity. The same cannot be conferred by consent or acquiescence.
 5. The issue court consider preliminarily are.
 - i. Whether the 1st Petitioner has locus standi to prosecute the Petitioner on behalf of 14 petitioners without authority from them?
 - ii. Whether the court has jurisdiction to hear the matter under Act 162 of *the Constitution* of Kenya, 2010, as it deals with evictions that are impugned?
 - iii. Whether the 1st petitioner and the 14 others demonstrated their ownership/interest in the suit property?
 - iv. Is this the appropriate court to enforce the status quo order issued by the Court of Appeal in relation to the subject matter herein?
 6. Under CPR (Order 1, Rules 8 & 12), a person may sue on behalf of others only if they have express authority from those people or leave of court to act as a representative; if that is missing, the court finds that the claimant has no capacity to sue for others.
 7. In the instant matter, no authority to act for the 14th petitioner is on record. That is the first roadblock to the instant matter mounted by the Respondent no 6.
 8. The other preliminary issue is whether the High Court will entertain the dispute where the core issue arises from impugned evictions from land? Courts established under Article 162(2) (ELC & ELRC) are of equal status to the High Court. The High Court cannot exercise jurisdiction over matters reserved for ELC.
 9. The Principal Jurisdiction is constitutionally delimited; the High Court is expressly barred by Article 165(5)(b) from land matters. Where eviction arises from use, occupation, or title to land, the High Court lacks jurisdiction.
 10. Eviction cases wrongly filed in the High Court must be struck out or transferred once the lack of jurisdiction is apparent. In Samuel Kamau Macharia v Kenya Commercial Bank [2012] eKLR (Supreme Court), the court held that Courts can exercise jurisdiction only as conferred by *the Constitution* or a statute. Jurisdiction cannot be expanded by judicial craft or pleadings. Parties cannot "constitutionalise" eviction disputes to keep them in the High Court.
 11. In Mukisa Biscuit Manufacturing Co. v West End Distributors [1969] EA 696. The court held that jurisdiction is a pure point of law and a proper subject of a preliminary objection. Jurisdictional objections are common in eviction matters, where parties contest the High Court's or ELC's competence.



12. In *United States International University (USIU) v Attorney General* [2012] eKLR, the court held that the High Court retains jurisdiction over constitutional interpretation. But must respect the specialisation of Article 162 courts.
13. Jurisdiction depends on the dominant issue in the dispute. If eviction primarily implicates land rights, the matter falls within the ELC's domain.
14. In the case of *Elijah Wafula Wamukoya v Francis Kisilu Kivuva & Another* [2017] eKLR, the court held that A land dispute framed as a constitutional petition does not automatically confer High Court jurisdiction. The Courts look at the substance, not the form of pleadings.
15. The Eviction disputes disguised as constitutional claims belong in the ELC if land occupation/title is central. See the case of *Peter Gichuki King'ara v IEBC & 2 Others* [2014] eKLR, where the court held that the High Court cannot assume jurisdiction merely because constitutional violations are alleged
16. Where eviction is grounded in competing land rights, ELC is the proper forum—even if constitutional issues arise.
17. The ELC is mandated to determine constitutional issues arising from land disputes. The High Court is not the only forum for eviction-related constitutional claims. The jurisprudence aforesaid strengthened ELC's competence over eviction disputes with human rights dimensions.
18. The case of *Benson Ambuti Atega & 2 Others v Kibos Distillers Ltd* [2020] eKLR (Supreme Court). Held that where a dispute falls within ELC jurisdiction, the High Court must decline jurisdiction, even if constitutional issues arise. The Constitutional issues incidental to land disputes falls within the ELC's jurisdiction.
19. In sum, Kenyan courts have drawn a firm but nuanced line: ELCs handle land-centered eviction disputes, while the High Court handles rights-centred eviction disputes without contest over land title, use, or occupation.
20. In the instant petition, the matter is land-centred eviction disputes.
21. The issue of the Court of Appeal order of status quo allegedly to have been violated in the eviction impugned, the same apparently was designed principally to stop evictions that would apparently seem to have been violated in the obtaining circumstances of this matter.
22. This gives rise to the next issue as to which court is supposed to entertain the enforcement of the Court of Appeal Order in the form of restoration of possession and punishment of the contemnors?
23. The order of the Court of Appeal is enforceable by the Court of Appeal itself, and contempt proceedings for violation lie before it.
24. Article 164 of *the Constitution* of Kenya 2010 establishes the Court of Appeal with inherent powers of superior courts to protect their authority and dignity.
25. No court can enforce a Court of Appeal order or punish for contempt of a Court of Appeal order unless expressly authorized by law. See the cases of *Ramadhan Salim Vs. Evans M. Maabi and Another* (2016) eKLR and *Christine Wangari Gachege Vs. Elizabeth Wanjiru Evans and 11 Others* (2014) eKLR.
26. The case of *Owner of Motor Vessel Lillian S. Vs. Caltex Oil* (1989) KLR, held that where the court lacks jurisdiction, it cannot take one step in the proceedings. This court finds that the eviction matter is the core subject that ought to be handled by the ELC court.



27. However, since the flow of violation implicated the court of appeal's order of status quo, the proper forum to seek remedies is the court of appeal, which can even restore the possession or occupation of the petitioner, or, if it is established there was a violation of the same, punish the contemnors. restore the order on the ground.
28. Thus, due to the above preliminary issues discussed above, the court's jurisdiction is disabled and affected to the extent that it cannot take any further step save to strike out both the notice of motion and the petition here. No orders as to costs.

DATED AT KILGORIS THIS 6TH DAY OF FEBRUARY 2026

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HON. CHARLES KARIUKI

JUDGE

In The Presence Of

C/a – Jerusha

