

**REPUBLIC OF KENYA**  
**HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR. NO.E105 OF 2025**

**HI JUNG OH CHILDREN’S HOME ..... EXPARTE  
APPLICANT**

**VERSUS**

**DEPARTMENT OF CHILDREN’S SERVICES ..... RESPONDENT**

**RULING**

**1.** The application that forms the subject of this ruling is the one dated 29<sup>th</sup> April, 2025 wherein the applicant is seeking for orders:

1) Spent.

2) That leave be granted to the Exparte Applicant to institute judicial review proceedings to apply for Orders of:

a. CERTIORARI to bring to this Court and to quash the decision taken by the Respondent against the Exparte Applicant, following an alleged inspection conducted on 19<sup>th</sup> March, 2025; where the Respondent in the decision:

i. Appointed LRC to take over the management of the Hi Jung Oh Children's Home or a period of two months with effect from 18<sup>h</sup> March, 2025.

ii. The OCS Kasarani police station to provide security by deploying officers to guard Hi Jung Oh Children's

Home within the aforesaid period because of the safety of the children.

- iii. That pending permanent solution to the running of Hi Jung Oh Children's Home, the Sub-County Children's Officer Kasarani to undertake close supervision of the operations of the said home by LRC.
  - iv. That during the two-month period of its management, the LRC should be able to carry out proper tracing of the minors who were unprocedurally released from Hi Jung Oh Children's Home to ascertain their well-being.
- b. PROHIBITION against the Respondent, its agents, officers, servants, and/or any other persons acting under their instructions from:
- i. Trespassing onto and interfering with the Exparte Applicant's possession and occupation of, all that parcel of land known as NAIROBI/BLOCK 110/686.
  - ii. Executing, and/ or any further implementation of the ultra vires decision taken by the Respondent against the Exparte Applicant, following an alleged inspection conducted on 19<sup>th</sup> March, 2025, and

from interfering with the running of the affairs of Hi Jung Oh Children's Home.

c. MANDAMUS to compel the Respondent their agents, servants, and/or any other persons acting under their instructions to immediately vacate the suit property herein and restore the Exparte Applicant to full and unimpeded possession thereof, of all that parcel of land known as NAIROBI/BLOCK 110/686.

3) THAT the leave so granted does operate as a stay of implementation and/ or any further implementation of the decision by the Respondent undertaken on 19<sup>th</sup> March, 2025, as indicated at prayers 2 (a) (i)- (iv).

4) THAT cost of this application be provided.

**The Applicant's Case:**

2. The Exparte Applicant is the lawful registered proprietor of the parcel of land known as NAIROBI/BLOCK 110/686 where the Respondent's Children Home is situated.
3. The Respondent, who is in cahoots with its abettors, unlawfully and forcefully trespassed onto the suit property on 19th March 2025 took possession thereof, including the children's home and the school therein and unlawfully arrested the Exparte Applicant's employees. The Respondent then proceeded to change the locks to the premises and stationed police officers at the gate to deny entry to all persons.

4. In the course of the illegal actions of the Respondent, the trustee of the Exparte Applicant, a 90-year-old Korean national, was unlawfully detained.
5. Despite the Exparte Applicant, through its advocates on record, writing to the Respondent vide letter dated 21<sup>st</sup> March, 2025, to cease the unlawful trespass, the Respondent has persisted on the same.
6. The Respondent in its unilateral, unfair and ultra vires decision, which it restated in its letter of 7<sup>th</sup> April, 2025, undertook the following unlawful acts appointed LRC to take over the management of the Hi Jung Oh Children 's Home or a period of two months with effect from 18<sup>h</sup> March, 2025.
7. Life Reformation Centre (LRC) is a church organization that, together with the assistance of the Respondent, presented some children to be accommodated at the facilities of the Exparte Applicant.
8. There arose issues, including as to the Exparte Applicant's ability to continue accommodating the children, over which the Exparte Applicant sued LRC at the Children's Court vide MCCHCC No. E511 of 2021 - Milimani.
9. The Exparte Applicant sued LRC at the Nairobi Milimani Environment and Land Court under Environment and Land Court Case No. E223 of 2022.
10. It argues that despite being aware of the two court cases between the Exparte Applicant and LRC- Life Reformation Church, the Respondent, in a blatant display of disregard over the on-going court

processes, has proceeded to exercise favoritism, discrimination and conflict of interest; and with such viciousness, has shown vested interest on the suit property by unlawfully evicting the Exparte Applicant from the suit property and appointing LRC to occupy and manage the children home.

11. In addition, the OCS Kasarani, who is working in cahoots with and is under the instructions of the Respondent, has stationed armed guards at the entrance of the suit property, thereby preventing access to the premises, including the doctor responsible for the medical care of the elderly trustee.
12. The Respondent and/ or its agents who are currently in unlawful possession and/or occupation of the suit property have commenced unlawful excavation of the land.
13. The decision of the Respondent warranting trespass of the Exparte Applicant's premises is marred and tainted with unfairness, discrimination, conflict of interest, illegality, irrationality and procedural impropriety, in addition to due process not having been followed, and hence any decision thereto ought to be quashed by an order of certiorari.

### **The Respondent's Case;**

14. It is The Respondents case that the Office of the Secretary of Children Services is established in line with Section 37 of the Children Act (Cap 141) Laws of Kenya and it performs its functions in accordance with Section 38 of the said Act and administratively, it operates as the

Directorate of Children Services under the State Department for Children Welfare Services in the Ministry of Labour and Social Protection.

- 15.** That the Directorate of Children Services in its mandate of safeguarding the rights and welfare of children is required to supervise the administration of institutions as per the provisions of Section 38(q) of the Children Act. In addition, sections 87(1) & (2) require the Secretary Children Services to supervise all Rescue Centres, Child Protection Centres, Charitable Children's Institutions, Remand Homes and Rehabilitation Schools.
- 16.** That the Area Advisory Committee (as it was then) conducted an impromptu inspection of the facility and found that some of the children weren't in school, meals were never being offered to the then hosted children, some of the hosted children and the facility staff were very high on drugs and the institution was generally in a deplorable state of being unkempt, dirty and untidy.
- 17.** It argues that after the facility failed its inspection on the 20th February 2019, it was given 3 months to make necessary changes to the institution which changes included the entire change of management.
- 18.** Since it failed the required standards, the facility was closed via a letter dated 3rd June, 2019 by the Kasarani Sub-County Area Advisory Council as it was then, and all the children in the home were rescued and placed in Mama Ngina's Children Home.

- 19.** The Kasarani Sub-County Area Advisory Council made several visits to the facility and was eventually satisfied that it met the threshold for re-opening and it was thus re-opened in February 2020 but the facility had no children within it and the Kasarani Children Office promised to place children within the facility as per the request of the founder Dr. Oh and Prof. Park, the Executive Director.
- 20.** That the Children officers were initially denied entry into the facility and on reporting this back to the Secretary Children Services, they were informed to go back with the support from the National Police Service Kasarani Station and they gained access and conducted the inspection on the 24th of March, 2025.
- 21.** Upon inspection, the facility was found to be in violation of Sections 65(3), 66(1) & (2) and 73(3) of the Children Act and to safeguard the welfare of the Children, the Respondent and in accordance with the provisions of Section 73(4) of the Act implemented the following measures:
  - a. Appointed Life Reformation Centre to take over the management of the Applicant's facility for a period of two months with effect from 18<sup>th</sup> March, 2025;
  - b. Requested the OCS Kasarani Police Station to provide security by deploying officers to guard the Applicant's facility for the aforesaid period;

- c. That pending a permanent solution on the running of the facility, the Sub-County Children's Officer Kasarani would undertake close supervision of the operations of the facility; and
  - d. That during the two-month period of its management, Life Reformation Centre should be able to carry out proper tracing of the minors who had been irregularly, improperly and illegally released from the facility to ascertain their well-being.
- 22.** The Applicant through its Advocates wrote a letter to the Secretary Children Services seeking clarification as to why the Directorate of Children Services had trespassed onto its property and informed the secretary that the Respondent would be enjoined in suit to wit Nairobi ELC No. E223 of 2024; Hi Jung Oh Children's Home V Life Reformation Centre & 5 Others if it failed to respond to the letter within 3 days.
- 23.** In the aforementioned letter at paragraph 8 above, the Applicant stated that they were willing and open to resolving the issue outside the confines of the judicial process but it, however, proceeded to file its Notice of motion dated 24th March, 2025 under a certificate of urgency before the Respondent had a chance to respond to the letter.
- 24.** This Application is deemed mischievous as the Applicant filed a Notice of Motion Application dated 24th March 2025 proposing to enjoin the Respondent herein as the 6th Defendant in Nairobi ELC No. E223 of 2024 Hi Jung Oh Children's Home V Life Reformation Centre & 5 Others and the proposed 6th Defendant has since filed and

served its Replying Affidavit and the matter is scheduled for ruling on 10th June, 2025.

- 25.** The Department for Children Services has come up with a number of recommendations as outlined in its letter to the Chief Registrar Milimani Law Courts dated 23rd June 2025 that, if implemented, would lead to the overall success of the children's home in respect to the welfare of the children.
- 26.** The decisions made and measures taken by the Respondent were in the best interest of the children as espoused in Section 8(1) and (2)(a) and (b) of the Children Act and as enshrined in Article 53(2) of the Constitution of Kenya 2010.
- 27.** All the decisions made and the measures put in place by the Respondent were well within the mandate of the Respondent as provided in the Children Act and as demonstrated herein.

### **Analysis and Determination;**

Upon perusing the application, the issue that stands out for determination is whether the Applicant is entitled to leave to institute Judicial Review proceedings or not.

- 28.** The requirement that leave must be obtained before making an application for judicial review under Order 53 Rule 1 of The Civil Procedure Rules was designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints.

29. Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief sought by the applicant.
30. The test is whether there is a case fit for further investigation at a full inter-partes hearing of the substantive application for judicial review.
31. It is an exercise of the court's discretion but as always it has to be exercised judicially.
32. In **Republic v County Council of Kwale & Another Exparte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** Waki J. (as he then was) made the following findings:

*“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.”*

33. In **Uwe Meixner & another v Attorney General [2005] eKLR**, it was held that the leave of court is a prerequisite to making a substantive Application for Judicial Review with a view to filtering out frivolous Applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the Applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory "leave stage." At this stage an Application for leave to bring Judicial Review proceedings must

first be made. The leave stage as held by Waki J is used to identify and filter out, at an early stage, claims which may be trivial or without merit.

**34.** The court should, through a mere cursory or a quick perusal of evidence before it establishes that not merely arguable case has been set out but also it one with reasonable chance or possibility of success on inter parties hearing.

**35.** In the case of **Republic vs. Land Disputes Tribunal Court Central Division and Another Exparte Nzioka[2006] 1 EA 321** held;

*“That 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 for granting leave.”*

**36.** Section 13 (7) (b) the Environment and Land court provides that:

In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including prerogative.

**37.** The **Final Report of the Committee of Experts (CoE)** that prepared the draft that ultimately became the Constitution of Kenya 2010, leaves no doubt that the ELRC and its twin sibling, the ELC, were intended to be *“specialized courts”* with certain, specific and precise jurisdiction, in contradistinction to the High Court which enjoys *unlimited original* jurisdiction in criminal and civil matters and the jurisdiction to interpret and apply the constitution, including

enforcement of fundamental rights and freedoms. The report expressly refers to the two courts as “*specialised*” courts and further explains that the CoE rejected a proposal to remove the two courts from the Constitution and leave it to Parliament to establish “other courts” with such jurisdiction as it may determine. The CoE reasoned that to do so would give Parliament an opportunity to establish courts with broad jurisdiction capable of supplanting that of the other superior courts established by the Constitution, which “would not signal establishment of specialised courts” on employment and labour and land/environment, and might lead to competing jurisdiction with the High Court.

- 38.** The Supreme Court emphasised this background in **Republic v Karisa Chango & Another [2017] eKLR**, when it stated as follows:

*“The Constitution of Kenya, 2010 has pronounced itself clearly on the jurisdictional competencies of various courts of law in Kenya. The drafters of the Constitution, it appears, had the intention of clearly demarcating the jurisdictions of the said courts so as to pre-empt lacunae and conflicts. Besides the Constitution, there are several statutes which demarcate the jurisdictions of various Courts and tribunals...” [Emphasis added]*

Later on, in the same judgment, the Supreme Court concluded as follows:

*“Although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of the Constitution, which prohibits the High Court from exercising jurisdiction in respect of matters “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).*

- 39.** In the cases of **Beatrice Wambui Kiarie & 2 others vs Tabitha Wanjiku Ng’ang’a & 9 others (2018) eKLR** and **Isaac Kinyua & 3 Others v Hellen Kaigongi [2018] eKLR**, **Wilson Mthui Mutungu v Beatrice Gathoni & Another (2016) eKLR**, **nGerick Kenya Limited v National Environment Management Authority [2015] eKLR**
- 40.** In the case of **Republic v Chief Land Registrar & Another, JR ELC No. 11 of 2010 [2019] eKLR**, the court held as follows on the issue of distinctiveness of jurisdiction of the High Court and courts of equal status as follows: -

*“Even with that clear-cut jurisdictional demarcation on paper, sometimes matters camouflaged in what may on the surface*

*appear to be a serious constitutional issues or Judicial Review applications or other matters falling in other High Court divisions may, on a closer scrutiny reveal otherwise- that the germane of the application is actually a labour dispute or land issue falling squarely in the forbidden sphere of the specialized courts! ...The drafters of the Constitution were very clear on the limits of this court's jurisdiction and the jurisdiction of the courts of equal status.”*

- 41.** It is the Exparte Applicant's position that at no point does the law grant the Respondent the authority to trespass onto private property, evict the Exparte Applicant, take possession thereof, or station officers therein without the express permission of the registered proprietor or a valid Court Order.
- 42.** The applicant argued that pursuant to the Respondents illegal and ultra vires decision and/ or actions, the Respondent has now illegally and unlawfully trespassed on the suit property.
- 43.** The Exparte Applicant also sued LRC at the Nairobi Milimani Environment and Land Court under Environment and Land Court Case No. E223 of 2022.
- 44.** It was its case that despite being aware of the two court cases between the Exparte Applicant and LRC- Life Reformation Church, the Respondent, in a blatant display of disregard over the on-going court processes, has proceeded to exercise favoritism, discrimination and conflict of interest; and with such viciousness, has shown vested interest on the suit property by unlawfully evicting the Exparte

Applicant from the suit property and appointing LRC to occupy and manage the children home.

**45.** Article 40 provides for protection of right to property where Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and (b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description

**46.** It was the Applicant's case that the Respondent has commenced unlawful excavation of the land, which is an ill motive of arbitrarily depriving the Ex parte Applicant's right to the suit property in violation of Article 40 of the Constitution.

**47.** The Ex parte Applicant argued that it is gravely apprehensive that unless this situation is immediately reversed the Respondent will have effectively and unlawfully evicted the Ex Parte Applicant from the suit property, despite the Ex parte Applicant's right to property as protected under Article 40 of the Constitution of Kenya and the significant financial investment by the Ex parte Applicant therein.

**48.** It is clear to this court that the issues raised by the Applicant herein touch on environment and they present a land use dispute.

**49.** From the above analysis as guided by the pleadings, it is quite obvious this suit is related to environment, use and occupation of and use of land and I so hold.

**Determination;**

**50.** The Application does not meet the legal threshold for leave under Order 53 Rule 1 of the Civil Procedure Rules.

**Orders:**

The application dated 29<sup>th</sup> April, 2025 is transferred to the Environment and Land Court.

**Dated, Signed and Delivered at Nairobi this 19<sup>th</sup> day of February 2026.**

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**J. CHIGITI (SC)**

**JUDGE**