



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kato v Mwanthi (Environment and Land Miscellaneous Case  
E031 of 2025) [2026] KEELC 1141 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1141 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E031 OF 2025**

**EO OBAGA, J**

**FEBRUARY 26, 2026**

**BETWEEN**

**CORNELIUS WAMBUA KATO ..... APPLICANT**

**AND**

**PETER JOHN MWANTHI ..... RESPONDENT**

**RULING**

1. Before this court for determination is the Notice of Motion dated 30<sup>th</sup> September, 2025 in which the Applicant seeks issuance of the following orders: -
  1. Spent
  2. Spent
  3. Spent
  4. That this Honourable Court be pleased to interpret and/or clarify the two conflicting orders issued in ELC Case No. 25 of 2023 at Makindu relating to Parcel No. 4394XXXX – Machinery and Machakos CMCC No. 390 of 2013 relating to Plot No. 1016 – UTithi Settlement Scheme.
  5. That upon addressing prayer 4 hereinabove, this Honourable Court be pleased to issue any other orders as the court may deem appropriate.
  6. That costs of this application be in the cause.
2. The application is premised on the grounds appearing on its face in addition to the supporting affidavit sworn by Cornelius Wambua Kato on even date. The deponent averred that he is the Plaintiff in Makindu ELC Case No. 25 of 2023 involving land Parcel No. 4394XXXX – Machinery whereas



- the Respondent is the Defendant. He further averred that the Respondent herein is the Plaintiff in Machakos CMCC No. 390 of 2013 whose subject matter is Plot No. 1016 Utithi Settlement Scheme.
3. The Applicant contended that the Respondent obtained orders in Machakos CMCC No. 390 of 2013 for his eviction from the premises ostensibly on the basis that the Applicant's shop is on the Respondent's Plot No. 1016 Utithi Settlement Scheme. The Applicant further contended that he had earlier on obtained an order of injunction against the Respondent in Makindu ELC Case No. 25 of 2023 in respect of Plot No. 4394XXXX – Machinery. The Applicant contended that it is the same shop which the Respondent intends on demolishing.
  4. On the basis of the foregoing, the Applicant averred that there is a need for this court to intervene and give directions in respect of the two conflicting orders.
  5. Opposing the application, the Respondent filed a replying affidavit sworn by himself on 21<sup>st</sup> October, 2025. He averred that Machakos CMCC No. 390 of 2013 was fully heard and determined in his favour. That the Applicant subsequently filed Machakos ELC Appeal No. 49 of 2019 which was dismissed on 16<sup>th</sup> February, 2022. That the Applicant then moved to the Court of Appeal vide Nairobi Civil Application No. E156 of 2022 which was later withdrawn and the appeal marked as closed.
  6. The Respondent averred that the Applicant filed Makindu SPMCC ELC No. E025 of 2023 introducing an entirely unrelated plot No. 4394XXXX in order to mislead the court. The Respondent insisted that the only genuine land in dispute is Plot No. 1016 which has since been fully determined. It was contended that the present application is barred by the provisions of Section 7 of the [Civil Procedure Act](#) for being *res judicata*.
  7. It was further averred that this court lacks jurisdiction to interpret the orders issued by the subordinate court in Makindu as only the court that issued the said orders can do so or the higher court vide an appeal. The Respondent contended that the present application is devoid of merit and hence it should be dismissed with costs.
  8. A preliminary objection was also filed by the Respondent dated 27<sup>th</sup> October, 2025 grounded on the following points: -
    - a. That the application is *res judicata* contrary to Section 7 of the [Civil Procedure Act](#) the issues having been fully adjudicated in Machakos CMCC No. 390 of 2013, Machakos ELC Appeal No. 49 of 2019 and Court of Appeal Civil Application No. E156 of 2022.
    - b. That the application is an abuse of the court process and violates the doctrines in [Henderson v Henderson](#) [1843] 67 ER 313 and [Uhuru Highway Development Ltd v Central Bank of Kenya](#) prohibiting multiplicity and re-litigation.
    - c. That this court lacks jurisdiction to interpret, vary, review or supervise orders issued in Machakos CMCC No. 390 of 2013, Machakos ELC Appeal No. 49 of 2019 and Makindu SPMCC ELC No. E025 of 2023 or to sit on appeal over decisions of courts of coordinate or superior jurisdiction.
    - d. That jurisdiction flows from the [Constitution](#) and statute and cannot be inferred or implied as held in [Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] KLR 1 and this court has no legal mandate to entertain the application.
    - e. That the application is incurably defective, incompetent and bad in law and ought to be struck out with costs.
  9. Both the application and the preliminary objection were canvassed by way of written submissions.



10. In the Applicants submissions dated 17<sup>th</sup> November, 2025, Counsel contended that by virtue of Article 162(2)(b) of the Constitution, this court is competent to interpret and clarify the subordinate courts' orders in order to preserve the integrity of judicial decisions.
11. Counsel further contended that the doctrine of *res judicata* does not apply in this instance as the Applicant merely seeks to clarify two conflicting orders by two subordinate courts. Counsel urged the court to allow the application as prayed.
12. In the Respondent's submissions dated 1<sup>st</sup> December, 2025, Counsel submitted that there is no legal framework which allows this court to interpret, harmonize or clarify the two orders issued by the subordinate courts. It was further submitted that the Environment and Land Court Act limits the jurisdiction of this court over subordinate courts to appeals which have properly been instituted under Section 26 of the Act. It was pointed out that no appeal had been filed herein.
13. Counsel pointed out that the two impugned orders involve different parcels of land altogether. It was submitted that an order for stay of execution cannot be issued in the absence of an appeal under the provisions of Order 42 Rule 6 (2) of the Civil Procedure Rules. Concluding his submissions, Counsel argued that the court lacks jurisdiction to entertain the application which was described as a gross abuse of the court process and that it should be dismissed with costs.
14. The sole apparent issue for determination is whether this court is vested with discretionary powers to grant the orders sought by the Applicant.
15. The Respondent contended that the application herein is defective since the court is being asked to exercise discretionary powers to grant a stay of execution when no appeal has been filed. It was also argued that the power to review and or clarify court orders is vested with the court which issued the orders in the first instance and hence this court has been improperly moved to clarify the impugned orders of the lower courts.
16. In the timeless words of Nyarangi J.A in The Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd [1989] KLR 1 at pg14, the Court 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 obligated to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending the 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.”
17. Undoubtedly, the Applicant has moved this court under the provisions of Order 42 Rule 6 of the Civil Procedure Rules which governs stay of execution in the pendency of an appeal from the subordinate courts. In this case, the Applicant has not filed an appeal for which an order for stay of execution may be issued in respect of the judgment in Machakos CMCC No. 390 of 2013.
18. In his replying affidavit, the Respondent further pointed out that the decision in Machakos CMCC No. 390 of 2013 was appealed to the Environment and Land Court at Nairobi and later on to the Court of Appeal. The Applicant did not rebut the Respondent's averments. As such, it can be safely concluded that there has been substantive litigation and determination of the matter by superior courts and therefore, this court lacks discretionary powers to exercise in favour of the Applicant.
19. This court has been moved by way of a miscellaneous application in order to clarify and/or interpret the two orders issued by the subordinate courts in Machakos and Makindu. This court is being asked to



give interpretation to two orders which touch on different suit properties namely Plot No. 1016 Utithi Settlement Scheme and Plot No. 4394XXXX – Machinery. Clearly, the rules of procedure cannot allow the court to make a substantive determination over a legal dispute touching on two distinct properties without substantive pleadings being on record.

20. In the case of *Simon Mayaka v Land Registrar-Kisii & Another* [2013] eKLR, the court held as follows:

“The relief to be sought in such application must be one that does not settle any private rights or obligations of the parties. It follows therefore that where there is a dispute as to private rights of the parties which the court is to be called upon to determine, such dispute cannot be brought to court by way of a miscellaneous application. A claimant in such a dispute must institute a suit by way of a Plaint or where it is authorized by the rules, by way of Originating Summons or by any other acceptable procedure for initiating such a suit.”

21. Section 80 of the *Civil Procedure Act* grants recourse to an aggrieved party to seek a review of an order issued by a court in the first instance if so dissatisfied. The law outlines as follows: -

Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

22. The Applicant has not demonstrated that he applied to the subordinate courts to clarify on the two impugned court orders. This court cannot exercise discretionary powers over orders it did not issue.

23. In the case of *Owner of Motor Vessel “Mirembe Judith” v Jade International Shipping Line DMC* [2023] KECA 1046 (KLR), the Court of Appeal aptly held as follows: -

“The predecessor of this Court, the *East African Court of Appeal in Mawji v Arusha General Store* [1970] EA 137 while citing *Rawal v Mombasa Hardware Ltd* [1968] EA 392 expressed itself as follows:

“A Court must have power to effect its orders. This is not a case of recalling an order but giving effect in one part of the order to the decision arrived at in another part. It would be non-sense to stultify the activities of any court of justice that it would be unable to give effect to a decision which it had just handed down. No provision of the rules should be so construed as to preclude a court from giving effect to its decision...Under the inherent powers of the court, a court should not be precluded by anything incidentally set out in the Code or in the rules made under the Code from giving effect to its decision, and giving effect in a way which will result immediately in justice between the parties and in saving of unnecessary proceedings...A court must have power, unless it is most clearly set out to the contrary by legislation, to give effect to its decision and that is all that the court sought to do here. It is not suggested that the discretion, which, of course must lie in the court as to the manner in which to give effect to its decision, was wrongly exercised in this case but the argument is that the court did not have the power



to make this order. The Court is satisfied that it did, and, indeed, that any court must have the power to give effect to its decisions.”

24. In the end, this Court has not been properly moved in order to exercise its inherent jurisdiction to grant the orders sought by the Applicant. The present application is incurably defective and is dismissed with costs to the Respondent.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. E. O. OBAGA**

**JUDGE**

In the presence of:

Mr. Kiluva for Mr. Mutiso for Applicant.

Mr. Borona for Respondent.

Court assistant Steve Musyoki

