

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITUI

ELC LAND MISC CASE NO. E014 OF 2024

TITUS MWENDWA MUSEMBI

APPLICANT

VERSUS

MUNYOKI MWETU

RESPONDENT(DECEASED)

**MITULA MBUNZI RESPONDENT/INTERESTED
PARTY**

RULING

1. By a Notice of Motion dated 11/11/2024 filed in court on 13/11/2024, the applicant - TITUS MWENDWA MUSEMBI - is asking for the following orders:

(1) That this honorable court, in exercise of its supervisory jurisdiction, be pleased to call for the record and proceedings of chief magistrate's land case No. 26 of 1999, Titus Mwendwa Musembi Versus Munyoki mwetu and another and make any just order or give any directions as it may consider

appropriate to ensure the fair administration of justice.

(2) That this honorable court, in exercise of its supervisory jurisdiction, be pleased to determine that, this is the appropriate court with jurisdiction to determine the matter.

(3) That this honorable court be pleased, in exercise of its supervisory jurisdiction, to call fourth for the record and proceedings of chief magistrate's land case No. 26 of 1999, TITUS MWENDWA MUSEMBI Versus MUNYOKI MWETU (deceased) and another to this court for the determination of the matter.

(4) That cost of the application be cost in the matter.

2. The parties against who the application is brought are two - MUNYOKI MWETU (deceased) and MITULA MBUNZI. The two are indicated to be defendant and respondent respectively. The application is expressed to be brought under Articles 159 (1), 162 (2) (a), 165 (6), 165 (b) and (7) of the Constitution of Kenya, 2010, Sections 4 (1) and (2), 13 (4) and 30(1) of the Environment and Land Court Act and the Practice Directions on Proceedings relating to the Environment, land use and occupation of land, and title to land dated 9th November 2012.

3. The applicant premised the application on the grounds, *inter alia*, that the disputed land was the subject matter of an appeal filed before the now defunct Provincial Appeals Committee which had been setup under the repealed Land Disputes Tribunals Act No. 18 of 1990. The appeal itself was essentially an escalation of the matter to that appellate forum after an earlier decision had been made before the Land Disputes Tribunal also set up under repealed Act.
4. The appeal before the Provincial Appeals Committee was never decided. The law under which it had been set up was repealed and somehow, the appeal or the dispute seems to have ended up in the lower court instead of this court. This court is the forum that was supposed to handle the appeals then pending before the appeals committee.
5. It Appears clear that when the matter was first handled before the land disputes tribunal, the decision was taken to the lower court and adopted as the judgement of the court. The decision was not in the applicants' favor. The applicant felt aggrieved and decided to appeal. In the meantime, he

applied for, and was granted, on order of stay of execution pending appeal.

6. According to the applicant, there were related interlocutory proceedings pending in the lower court and as those proceedings have now been finalized, it is only proper that this court calls for the matter to itself for determination. This, according to the applicant, is supposed to happen by invoking the courts supervisory jurisdiction.
7. The application also came with a supporting affidavit, which, in the main, elaborated the grounds upon which it was premised.
8. The respondent responded to the application in two ways viz: Grounds of opposition dated 18/3/2025 and a replying affidavit dated 25/10/2025.
9. In the grounds of opposition, the application was termed *“frivolous” “vexatious” “an abuse of the court process”* and *“meant to drag the respondent through the corridors of justice in hopeless and unending legal battles.”* The person named as defendant- MUNYOKI MWETU - was said to be the main party in the dispute, with the respondent himself only

being joined later as an alleged contemnor. MUNYOKI MWETU was said to be deceased and the applicant was said to lack capacity to bring the matter against a deceased person.

10. Further, this court itself was said to lack supervisory jurisdiction to call for the matter to itself. This court was further told that the applicant cannot be heard to invoke the supervisory jurisdiction of the court concerning a case - Chief Magistrate's Land case No 26 of 1999 - more than twenty-four (24) years after it was filed in the lower court. The respondent opined that the proper recourse for the applicant is to withdraw the lower court matter and file it here.

11. In the replying affidavit, much of what is in the grounds of opposition is reiterated. Additionally, the application before the court was said to be defective as the matter in the lower court was withdrawn by the applicant himself on 5/8/2025.

12. The application was canvassed by way of written submissions. The applicant's submissions are dated 20/5/2025. The introductory part of the submissions is

essentially on overview of the matter and it contains much of the substance found in the grounds upon which the application is anchored. The applicant then submitted, *inter alia*, that the law that governed the dispute between the parties' - Land Dispute Tribunals Act No. 18 of 1990 - was no doubt repealed and the tribunals operating under it were also disbanded. Then a new law, the Environment and Land Court Act, came into force. The interlude between the repeal of Land Disputes Tribunals Act and enactment of Environment and Land Court Act was characterized by confusion and existence of a lacuna relating to the forum to which matters being handled under the repealed law could be taken or handled. There was, concerning the matter at hand, a pending appeal before the Provincial Appeals Committee and the confusion or lacuna therefore applied to it as well. The Appeals Committee itself met its quietus upon the repeal of the Land Disputes Tribunals Act.

13. Then the Environment and Land Court was established and according to the applicant, it is a court with supervisory jurisdiction over subordinate's courts and tribunals. More

specifically, the court was said to have jurisdiction relating to matters being handled under the repealed Land Disputes Tribunals Act. It is in light of this that this court is being asked to call for the lower court file and decide how best to handle it.

14. Several decided authorities including **Thomas Muthee & Another -vs- Nyaguthii Kaguthu (2015) eKLR, Muga Mbundi Mwendwa -vs- Muguza Jangwata Jindwa & Another (2014) eKLR, Kwamboka Ogaro -vs- Nakuru Provincial Land Disputes Appeals Committee (2013), eKLR & Francis Kimani Kirimira -vs- Chege Macharia (2015) eKLR**, were cited and quoted as necessary to drive the point home. The point was that appeals then pending before the defunct provincial appeals committees were to be transferred to the Environment and Land Court.

15. The respondent's submissions are dated 25/9/2025. The respondent started by reiterating a lament he had made earlier namely: that the applicant is needlessly involving him in "*hopeless court battles since 1999.*" He also pointed

out that the lower court case was withdrawn by the same applicant on 5/8/2025.

16. Further, the respondent submitted that this court is bereft of jurisdiction to hear the application; that the lower court case ceased to exist by operation of the law by dint of the death of another party - Munyoki Mwetu; that as the matter in the lower court was withdrawn, there is no suit over which this court can exercise jurisdiction; and finally that there are no grounds for the exercise of court's jurisdiction.

17. On the issue of lack of supervisory jurisdiction, the respondent submitted that such jurisdiction is the preserve of the High Court as mandated under Article 165 (3) (5) and (6) of the Constitution. Under Article 162 (2) (b) of the Constitution, the jurisdiction of the Environment and Land Court is required to be created by or under an Act of Parliament. The Parliament then enacted Environment and Land Court Act No. 19 of 2011, which at Section 13 spells out the jurisdiction of the court. It appears like supervisory jurisdiction is not one of the mandates given by the Act. Further the respondent cited and quoted the case of

Republic -vs- Karisa Chengo & 2 Others: (Supreme Court Petition No. 5 of 2015) 2017 eKLR where the court stated, *inter alia*, that jurisdiction is conferred by the constitution or statute. Further, it was emphasized that all the superior courts of equal status “*are different and autonomous courts and exercise different and distinct jurisdiction.*” To reinforce the position further, the case of MWK and PKJ (2021) eKLR was also cited and quoted.

18. The respondent then turned to the issue of the matter having ceased to exist by operation of the law. He pointed out that Munyoki Mwetu, shown to be defendant in the matter, is deceased and the matter has abated. There is therefore no suit over which the court can exercise jurisdiction.

19. The final issue related to the fact that the lower court matter was marked closed on 5/8/2025. It was pointed out that it is actually the applicant who caused the case to be closed. Relating to this issue too, it was submitted that there is no suit for this to issue the orders asked for.

20. I have considered the application as filed, the response made to it, and the rival submissions filed by both sides. I will start by addressing the issue of supervisory jurisdiction. The issue is actually whether this court has such jurisdiction. I understand supervisory jurisdiction to be the authority or power given a superior court to oversee, monitor, or correct the proceedings of the lower courts, tribunals, commissions, or other legally established bodies, in order to ensure that there is no miscarriage of justice. The jurisdiction helps to ensure that there is fairness, compliance with the law, and proper performance or execution of duties or responsibilities.

21. When the Environment Land Court Act 2011 (No. 19 of 2011) was first enacted it expressly conferred supervisory jurisdiction to Environment & Land Court over subordinate courts and tribunals. Under section 13(5) at the time it was clearly stated that the court had “*supervisory jurisdiction over the subordinate courts local tribunals, persons or authorities in accordance with Article 165 (6) of the constitution.*” The purpose of that provision was to give

Environment and Land Court the same powers as the High Court in terms of supervision of the lower courts or tribunals.

22. However, by didn't of statute law (miscellaneous amendment) Act, 2012, which came into effect on 12/7/2012, that provision was deleted or repealed. But even after this development, there is no unanimity of thought as to whether the jurisdiction exists or not. In **Sabina Moraa Swanya -vs- Everlyn Kemunto Ontiri & Another (2021) eKLR** for instance, the court while faced with a similar issue held that such jurisdiction does not exist and the Environment & Land Court can only deal with appeals from the subordinate courts. But in **Lariak Properties Limited - vs- Metro Pharmaceuticals Limited (2022) KEELC 15000 (KLR)** the court had a different view. In the case, the court expressed itself thus: *"having laid out the foundation of this court as established by the constitution as a court of equal status to the High Court, it would be absurd and indeed illogical to conclude that this court does not have supervisory jurisdiction."*

The court went on:

“The Constitution having granted this court the status of the High court in matters relating to Environment and Land and without resorting to tabulated legalism, it follows that powers of the High Court to supervise subordinate courts under them applies Mutatis Mutandis to this court, but limited to Environment and Land disputes.”

23. In addressing this issue, I find it useful to find out first how jurisdiction is created or conferred. In **Samuel Kamau Macharia -vs- Kenya Commercial Bank Limited & 2 others (2012) eKLR** the court observed this:

“(68) 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 the law ...”

24. From this observation, it is clear to me that jurisdiction has to be given either by the constitution or statute, or other written law. It is not something that the court can presume to have. It must be traceable to some written law.

I think it is important also to further appreciate the sentiments of the supreme court in the same case. The sentiments were as follows:

“Where the Constitution exhaustively provides for the jurisdiction of a court of law the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation nor can parliament confer jurisdiction upon a court of law beyond the scope defined by the constitution. Where the constitution confers power upon parliament to set jurisdiction of a court of law or tribunal, the legislature would be within the authority to prescribe the jurisdiction of such court or tribunal by statute law.”

25. It appears to me clear that jurisdiction must expressly or explicitly subsist in a written law in order for the court to exercise the authority or power conferred by it. It is not something conferred by craft of interpretation or through rigorous application of logic, much as these two are useful in our other judicial processes. The existence of jurisdiction should be rather obvious. It cannot be ingeniously or innovatively inferred.

26. To my mind, the jurisdiction of Environment & Land Court is to be found both in the Constitution of Kenya 2010 and Environment and Land Court Act. In the constitution, Article 162 (2) (b) states thus:

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

(a)

(b)The environment and the use and occupation of, and title to, land.”

27. The aforestated short provision essentially provides the jurisdictional scope of what the Environment and Land Court was meant hear and determine. Sub-article 3, of the same Article mandates parliament to spell out the detailed aspects of jurisdiction and functions of the Environment and Land Court and pursuant to that, the Environment and Land Court Act was enacted. Section 13 of the current version of the Environment and Land Court Act states as follows:

“13 (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) 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 Environmental 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 and contracts, chose in action or other instruments granting any enforceable interests in land and

(e) Any other dispute relating to environment and land.”

28. Crucially, it is clear that supervisory jurisdiction is missing in what the parliament felt and expressed to be the necessary jurisdiction of the court. As pointed out earlier the original or first version of the Act expressly provided for such jurisdiction but subsequent amendment ensured deletion or repeal of the provision.

29. The above scenario does not apply to the High court, for under Article 165(6) of the constitution, the following appears:

"165 (6) The High Court has supervisory jurisdiction over the subordinates' courts and over any person, body or authority exercising judicial or quasi-judicial function, but not over a superior court."

This same jurisdiction is cascaded down to the High court (organization and administration) Act, which at section 5 (a) states that the High Court has:

(a)The jurisdiction conferred to it by Article 165(3) and (6) of the constitution.

30. It seems clear to me that supervisory jurisdiction is conferred to the High Court in clear and express terms. That conferment is clear in both the constitution and the statute that govern

the operations of the High Court. That clear and unequivocal position is lacking in the Environment and Land Court Act, which is the statute that provides for jurisdiction, administration and operations of the court.

31. A problematic situation arises as regards the position that the Environment and Land Court still has supervisory jurisdiction over the subordinate court: As I understand, it is assumed that the jurisdiction inheres in the court by virtue of the fact that it enjoys the same rank or status as the High Court. It is also said to arise due to the fact that the same jurisdiction as given to the High Court is as much necessary for the operations of Environment and Land Court in order to perform that which the High Court cannot do in relation to environment and land matters.

32. But this position in my view is not reconcilable with the Supremes Court's position in Samuel Kamau's case (*supra*) that jurisdiction has to be conferred by the constitution or by legislation. It bears repeating that such jurisdiction was once expressly given by the first Environment & Land Court Act and equally expressly removed through an amendment. The

position that a jurisdiction that is expressly removed still exists in another form or in another way outside of the constitution or statute is another way of creating non-existent jurisdiction through creativity and/or ingenuity. In my view the best approach is to accept that such jurisdiction, though necessary, does not exist and then recommend to parliament to bring it back in the same manner it appeared in the first version of the Environment and Land Court Act. To suggest or infer its existence when Parliament has expressly removed it flies in the face of Samuel Kamau's case (supra) and it may also look like judicial overreach.

33. In light of the views expressed up to this stage, my view is that the Environment and Land Court does not have supervisory jurisdiction over the subordinate courts and in this regard, I am therefore in agreement with the respondent on this issue. The jurisdiction was once there but was removed and it does not abide in court by dint of its rank or status or simply because the High Court has it.

34. The other issue raised in this matter concerns the fact that one party is deceased. True, Munyoki Mwetu, is captured in

the proceedings as a deceased party. The respondent submitted that the matter has abated. The applicant has not responded to this. It seems to me clear that the applicant would wish to proceed with the matter as it is. But it's clear that no order can be made against an estate of a deceased person unless that estate has a duly appointed legal representative. Furthermore, the principal party shown as defendant is deceased and the case is said to have abated. It does not therefore exist in the eye of the law. Unless or until the matter is revived in some way, the court is duty-bound to desist from issuing orders that may affect the unrepresented estate of the deceased. Again on this issue, I agree with the respondent.

35. The last issue relates to the closure of the matter recorded by the lower court at the instance of the applicant himself. A closed case is an ended case and unless reopened, the court has no business entertaining it. It is shown clearly that on 8/5/2025, counsel appearing for the applicant in the lower court asked that the matter be marked closed. The court then closed the matter. Question is: What is there in the lower

court for bringing to this court? In my considered view there is nothing.

36. The upshot, in light of the foregoing, is that the merits of the application herein have not been demonstrated. The application is therefore dismissed with costs to the respondent.

RULING DATED, SIGNED and DELIVERED in open court at **KITUI** this **12TH DAY** of **MARCH, 2026**.

In the presence of;

Court Assistant - Musyoki

Applicant - absent

Respondent/Interested Party - present

Nduva for Daudi for respondent/Interested Party

Kilonzi (absent) for the applicant

A. KANIARU

JUDGE - ENVIRONMENT & LAND COURT, KITUI