



REPUBLIC OF KENYA



KENYA LAW
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Maina v Nakuru County Land Registrar & another (Environment and Land Case E018 of 2025) [2025] KEMC 338 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEMC 338 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE E018 OF 2025
PA NDEGE, SPM
DECEMBER 11, 2025**

BETWEEN

PASKWEL KINYANJUI MAINA PLAINTIFF

AND

NAKURU COUNTY LAND REGISTRAR 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. This matter arises from the 1st defendant's alleged refusal to register the interest of the plaintiff in the parcel of land known as Bahati/Kabatini Block 1/4936. The 1st defendant is sued as the public official responsible for preparation of land register and issuance of title deeds under the *Land Act*, while the 2nd Defendant is sued in his capacity as the government's legal adviser. The defendants were served with summons to enter appearance and plead and filed their Statement of Defence.
2. The plaintiff averred that he was a member of a land buying company known as Ndeffo Company Limited. That he has been allocated the parcel of land, the subject matter of this suit, and had been issued with a letter of allocation as well as a letter indicating that he was the owner. That his true identity had also been confirmed by the area chief through a letter to that effect. That he therefore desired to be issued with a title deed and that he presented his documents to the land registrar, the 1st Defendant herein. That the 1st Defendant however neither responded to the plaintiff nor issued the title deed. It was that refusal or lack of response that precipitated the filing of this suit. He is praying for an order compelling the 1st defendant to issue him with a certificate of lease and/or a title deed, and costs of the suit.
3. The 1st Defendant admitted that he had the statutory duty under the *Land Registration Act* to register proprietary interest and issue title deed, but denied that this court has the jurisdiction to entertain



this matter against it. It averred that it performs its statutory duties of registration and issuance of title documents upon being presented with all the requisite documents.

4. In the instant suit, the Plaintiff wants the court to compel the 1st defendant, a public officer, to issue him with a certificate of lease and/or title deed. The cause of action herein is that the 1st defendant, a public official, has refused to make the appropriate entries on the register and thereafter issue him with a certificate of lease and/or title deed. However, which compelling order is this that he is seeking from this court?
5. Definitely it is not a mandatory injunction, as there has been no proof of a breach of contract or tort disclosed herein. What comes out herein is fair administrative action concerns. The provisions of Fair Administrative Action Act become relevant herein. This therefore brings me to the issue of jurisdiction as validly raised in the Statement of Defence.
6. The useful starting point in addressing the core issue raised in this case is to define the word "Jurisdiction." Whereas the Civil Procedure Act¹ and the Civil Procedure Rules, 2010, do not define the term jurisdiction, in common parlance, the term jurisdiction means the power of the courts to decide and try a case or issue. "Jurisdiction may be defined to be the power of the court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. Jurisdiction means the power conferred by law upon the court to try and hear the cases and give appropriate judgements.
7. By jurisdiction is meant the authority, which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. If the jurisdiction of a subordinate court depends on the existence of a particular state of facts, the court must inquire into the existence of the facts in order to decide whether it has jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.² A court's jurisdiction flows from either the Constitution, legislation or both or by principles laid out in judicial precedent.³ The locus classicus decision in Kenya on jurisdiction is the celebrated case of OWNERS OF MOTOR VESSEL "LILLIAN S" VRS CALTEX OIL (KENYA) LTD (1989) KLR 1.
8. It is also important to point out that jurisdiction is determined on the basis of pleadings and not the substantive merits of the case. As was appreciated by the South African Constitutional Court, In The Matter Between Vuvile Jackson Gcaba Vrs Minister For Safety And Security Firsra & Others CCT 64/08 [2009] ZACC 26: -

"Jurisdiction is determined on the basis of the pleadings,⁴ ... and not the substantive merits of the case... In the event of the court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognizable only in another

¹ Cap 21, Laws of Kenya

² John Beecroft, Words and Phrases Legally Defined, Volume 3:1-N, at Page 113.

³ The Supreme Court in the matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011 (unreported).

⁴ Fraser vs ABSA Bank Ltd {2006} ZACC 24; 2007 (3) BCLR 219 (CC); 2007 (3) SA 484 (CC) at para 40.



court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim ..., one that is to be determined exclusively by... {another court}, the High Court would lack jurisdiction..."

9. Strictly, a suit is only effective if the court has jurisdiction to adjudicate the issues raised in the suit. The jurisdiction of the court to adjudicate those issues depends on a number of elements including: - whether the suit discloses a cause of action which that court has jurisdiction to determine (e.g, breach of contract, negligence etc.; whether the court has jurisdiction over the defendant; whether the court has jurisdiction to grant the remedy sought.
10. With the foregoing exposition of the law in mind, I now turn to the instant suit. As aforesaid, the pleadings herein discloses a maladministration (inefficiency, ineptness etc.) issue, or lack of fair administrative action on the part of the 1st Defendant, a public official, grievance. Thus, a compelling order is being sought against the official herein. However, does this court has powers to issue the order sought against the public official? According to me, the compelling order being sought herein is in the nature of a judicial review.
11. Judicial review is the review by a judge of the High Court of a decision; proposed decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction - reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised. The role of the court in judicial review is supervisory. This court being a subordinate court lacks the powers to supervise public officials, except as may be allowed under the *Magistrates' Courts Act*, 2015.
12. The Magistrates' Court Act of 2015, provides for the jurisdiction of the Magistrates' Court on land and other related matters and I find that this court has no jurisdiction to adjudicate over this matter and therefore the orders may not be granted. I do therefore have no other option but to strike out the suit herein with costs. The plaintiff is at liberty to lodge the same at an appropriate forum.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 11TH , DAY OF DECEMBER , 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Machoka

Defence Counsel:N/A

Plaintiff: N/A

1st Defendant: N/A

Machoka: Praying for a copy of the ruling

CT: Certified copy of the ruling be supplied to counsel upon payment of the requisite fee.

