



**Isaac v Onyango (Miscellaneous Application E024 of 2026)
[2026] KEHC 4914 (KLR) (Civ) (14 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E024 OF 2026

RE ABURILI, J

APRIL 14, 2026

BETWEEN

PETER MAINA ISAAC PETITIONER

AND

SILVANUS ONYANGO RESPONDENT

RULING

1. The notice of motion dated 13/4/2026 is supported by the affidavit sworn by Peter Maina Isaac. It seeks orders of injunction restraining the respondent, Silvanus Onyango from continuing with construction or any interference with L.R No. 13/14 plot 212 Korogocho locality Ngithathuru Sub Location.
2. The applicant also prays for a mandatory order to issue compelling the respondent to immediately demolish/remove the perimeter wall blocking access to his house and that the order be served upon OCS Korogocho police station to enforce compliance with the court orders and ensure the petitioner gains access to his house. He further prays that he be granted unhindered access to his residence and that the respondent's acts be declared unconstitutional for violating his rights under Article 40 and 43 of *the Constitution*.
3. I have considered the notice of motion and after certifying it as urgent, I directed the petitioner to appear virtually and he did appear and argued his application in Kiswahili language, Relying on his grounds and supporting affidavit, he argued that the respondent has trespassed onto his land, constructed a perimeter wall and blocked him from accessing his residence and that the matter was reported to DCI who visited, directed the respondent to stop but he continues to construct hence the filing of these proceedings.



4. I have considered the application which is filed as a miscellaneous petition with only the notice of motion. The issue for determination is whether this court has jurisdiction to entertain the claim, even if there is no substantive petition to anchor the notice of motion.
5. The answer lies in Article 162(2)(b) of the Constitution as read with Article 165(5)(b) of the Constitution. Under Article 162(2)(b), the Constitution contemplates the establishment of an Environment and Land Court to hear and determine disputes relating to environment and the use and occupation of title land.
6. On the other hand, Article 165(5)(b) of the Constitution expressly bars the High Court from hearing and determining disputes which are reserved for the exclusive jurisdiction of the Supreme Court and the courts contemplated in Article 162(2) of the Constitution. Those courts are the Employment and Labour Relations Court and the Environment and Land Court.
7. Consequently, as the dispute herein relates to trespass to land with the petitioner claiming ownership thereof, this court's jurisdiction is ousted by the Constitution. Jurisdiction is conferred by the constitution or by statute or both. A court of law cannot arrogate itself of jurisdiction that it does not possess and neither can parties confer the court with jurisdiction. Not even by consent.
8. For the above reasons, I find the notice of motion dated 13/4/2026 to be fatally incompetent and for want of jurisdiction, I down my tools and do no more than strike out the said notice of motion with no orders as to costs.
9. This file is hereby closed.
10. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF APRIL, 2026

R.E ABURILI

JUDGE

