

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 538 OF 1998**

**ALFRED KIMANI NJOROGE .....  
PLAINTIFF**

**VERSUS**

**FREDRICK NJUGUNA KAMAU ..... 1ST  
DEFENDANT**

**PATRICK MBURU GITAU ..... 2ND  
DEFENDANT**

**AND**

**MARGARET MIHANGO KAMAU..... INTERESTED  
PARTY/APPLICANT**

**VIRGINIA WANJIRU MUKIRI ..... INTERESTED  
PARTY/APPLICANT**

**CATHRINE WAMBUI NDIRANGU ..... INTERESTED  
PARTY/APPLICANT**

**PHYLLIS NYAMBURA MWANGI ..... INTERESTED  
PARTY/APPLICANT**

**RULING**

**Introduction**

1. Before this Court is the Notice of Motion dated **17th December 2024**, brought by the Interested Parties. They seek orders directing the Land Registrar, Murang'a, to cancel the registration of the 1st Defendant as proprietor of **Land Parcel No. Loc.5/Githunguri/1345** and to register the same in the names of Margaret Mihango Kamau and Virginia Wanjiru Mukiri, to hold in trust for themselves and other beneficiaries.
2. The application is premised on Sections 1A, 1B and 3A of the Civil Procedure Act and supported by the affidavit of Margaret Mihango Kamau.
3. The Applicants rely on this Court's decree of **21st October 2015**, which ordered that the original parcel **Loc.5/Githunguri/40** be excised such that 1.5 acres be registered in the Plaintiff's name, and the balance of 1.98 acres be registered in the Applicants' names in trust for specified beneficiaries.
4. The Applicants assert that whereas the Plaintiff's portion was correctly registered, the remaining portion—now **Loc.5/Githunguri/1345**—was erroneously registered in the name of the 1st Defendant on **4th February 2016**, contrary to the Court's decree.

5. The application was canvassed by way of written submissions filed on **24th September 2025**. The Respondents, though served, filed neither responses nor submissions. The Land Registrar, Murang'a, also failed to participate despite service pursuant to directions issued on **14th October 2025**.

### **Analysis and Determination**

6. The single issue arising for determination is whether this Court, sitting as the High Court in its Commercial and Tax Division, has jurisdiction to grant the orders sought.

7. Jurisdiction remains the foundational question in every proceeding. A court without jurisdiction must down its tools. This principle was firmly stated in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where Nyarangi JA observed that "Jurisdiction is everything."

8. The Supreme Court reinforced this position in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR**, holding that a court can only

exercise jurisdiction as conferred by the Constitution or statute.

9. In the present case, it is clear from the pleadings that the orders sought relate to the cancellation of a title, rectification of the register, and compulsory registration of proprietors in respect of **Loc.5/Githunguri/1345**. These are matters that squarely concern title to land.
10. Article **162(2)(b)** of the Constitution, read together with section 13 of the Environment and Land Court Act, vests exclusive jurisdiction over disputes relating to the environment, land, use, occupation and title in the **Environment and Land Court (ELC)**.
11. Further, Article **165(5)(b)** expressly ousts the jurisdiction of the High Court over matters reserved for courts established under Article 162(2).
12. The Court of Appeal in **Co-operative Bank of Kenya Ltd v Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR** affirmed that disputes concerning title, use, and occupation of land fall within the ELC's domain.
13. The Supreme Court in **Republic v Karisa Chengo & 2 Others [2017] eKLR** highlighted that though the High Court and ELC are courts of equal status, they possess

distinct and exclusive jurisdictions which cannot be interchanged.

14. The dispute at hand does not arise from any commercial transaction, contract, or commercial relationship. Its essence is the alleged wrongful registration of land and the entitlement to title; matters exclusively within the province of the ELC.
15. The presence of a consent order issued in earlier commercial proceedings does not convert the present issue into a commercial matter. As held in **Suzanne Achieng Butler & 4 Others v Redhill Heights Investments Ltd & Another [2016] eKLR**, jurisdiction must be discerned from the pleadings and the nature of the dispute.
16. The pleadings reveal a pure land ownership and registration dispute. This Court, therefore, cannot arrogate to itself jurisdiction where none exists.
17. As observed by the Court of Appeal in **Phoenix of East Africa Assurance Co. Ltd v S.M. Thiga t/a Newspaper Service [2019] eKLR**, a suit filed or pursued without jurisdiction is “*dead on arrival*” and cannot be salvaged by the Court.

18. Guided by the constitutional and statutory framework, as well as binding precedent, I am satisfied that jurisdiction lies solely with the Environment and Land Court.
19. In the premises, this Court finds that it lacks jurisdiction to hear and determine the Notice of Motion dated 17th December 2024. The issues raised are reserved exclusively for the Environment and Land Court.
20. The application is accordingly dismissed for want of jurisdiction.
21. As the Respondents did not participate in these proceedings, I direct that each party shall bear its own costs.
22. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI  
THIS 9<sup>TH</sup> DAY OF APRIL 2026**



**HON. JUSTICE MOSES ADO**  
*Judge of the High Court*

**In the presence of: -**

C/A - Moses

*Mwangi.....for the Plaintiff*

*Ngetich h/b for Mwaniki..... Interested Party*