

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
HIGH COURT CIVIL MISCELLANEOUS CASE NO. E164 OF 2025

DAVID KHAEMBA, HUMAN RIGHTS REPRESENTATIVE-----
APPLICANT

(suing on behalf of Rose Lunyangi Kahi)

VERSUS

KWAME SAKWA SHIROYA-----1ST
RESPONDENT

LAND REGISTRAR, KAKAMEGA COUNTY-----2ND
RESPONDENT

COUNTY SURVEYOR, KAKAMEGA COUNTY-----3RD
RESPONDENT.

RULING

1. The Applicant herein had filed an application dated 10th November 2025 seeking an enlargement of time as he sought to appeal a decision made in the Chief Magistrate's Court at Kakamega MCELC /133/2023.
2. The 1st Respondent opposed the application by contending that the initial application had been filed in the Environment and Land Court (ELC) at the subordinate court and that the issues raised by the Applicant referred to land rights issues that should be addressed by the Environment and Land court (ELC) which has the same status with the High court and that it shall hear decisions relating to appeal matters at the subordinate courts under section 13 (4) of the Environment and Land Act.

3. The 1st Respondent submits that it is an appeal that should be heard at the ELC courts and that this High Court lacks jurisdiction to hear the intended appeal.
4. The Applicant filed documents in which he acknowledges that the matter arose from MCELC NO. 133 OF 2023 and alleges conspiracy and unlawful amendment of an area map affecting access road. He avers that there was a violation of fair administrative action under Article 7 of the Constitution, and he addresses concerns regarding the integrity of public institutions and the right to be heard.
5. The Applicant has filed his submission dated 9th January 2026, praying that this court grants them leave to file the appeal out of time and denies the Respondents' application that the appeal process is an abuse of the court's process, stating that there was a violation of rights.
6. He contends that the appeal raises issues of land dispute, stating that the issues were addressed without audience from the land registrar and county surveyor.

Analysis and determination

7. I have considered the application, the response by the 1st Respondent as well as the submissions by the parties and find that the main issue for determination is whether this court has the jurisdiction to determine the application on enlargement of time as well as the intended appeal.
8. Courts have noted over and over again that Jurisdiction is the foundational question upon which any judicial proceeding rests.

Without it, a court must put down its tools. This principle was emphatically settled in **Owners of the Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd**, where the Court of Appeal held:

“Jurisdiction is everything. Without it, a court has no power to make one more step...”

9. I have perused the records before this court by both parties. The Applicant is now seeking for leave to file the appeal out of time in a decision that was rendered in Kakamega MCELC No. 133 of 2023. It is not in dispute that the said matter was heard and determined by a Magistrate’s Court exercising jurisdiction in environment and land matters.
10. I, however, note that the issues in dispute raised by the applicant relate to an alleged unlawful amendment of an area map affecting an access road, and the involvement (or lack thereof) of the Land Registrar and County Surveyor. These are important land use and land administration issues.
11. Article 162(2)(b) of the Constitution establishes the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Further, Section 13(1) of the Environment and Land Court Act donates jurisdiction to that Court in matters relating to land and environment, while Section 13(4) expressly provides: *“In addition to the matters referred to in subsections (1) and (2), the Court shall have appellate jurisdiction over the decisions of subordinate courts*

or local tribunals in respect of matters falling within the jurisdiction of the Court.”

12. The import of the above provision is that appeals arising from Magistrates’ Courts in land matters lie to the Environment and Land Court, and not to the High Court.

13. The Supreme Court in **Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others** reiterated that: ***“A court’s jurisdiction flows from either the Constitution or legislation or both... A court of law cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”***

14. Similarly, in **Republic v Karisa Chengo & 2 Others(2017) Eklr**, the Supreme Court clarified the distinct and autonomous jurisdiction of courts established under Article 162(2), holding that the High Court cannot exercise jurisdiction reserved for courts of equal status, such as the Environment and Land Court.

15. The Applicant has attempted to invoke constitutional violations, including alleged infringement of the right to fair administrative action under Article 47 and the right to be heard under Article 50 of the Constitution. While constitutional questions may, in certain instances, fall within the High Court’s jurisdiction, where such issues are ancillary to a dispute squarely falling within the specialised jurisdiction of the ELC, the proper forum remains the ELC.

16. In the present case, the substratum of the dispute is land specifically, access roads and survey mapping and a lack of forum of

the Land Registrar and county surveyor to be heard. The constitutional arguments raised are incidental and do not oust the jurisdiction of the ELC.

17. Consequently, this court finds that it lacks jurisdiction to entertain both the application for enlargement of time and the intended appeal.

18. Having found that jurisdiction is lacking, this court must decline to proceed further with the merits of the application.

19. In the premises, the Court makes the following orders:

a) This Court declines jurisdiction to entertain the application dated 10th November 2025.

b) The application is hereby struck off for want of jurisdiction.

d) Given the nature of the matter each party to bear the costs of the Application.

e) File closed

21. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF APRIL, 2026.

S.N MBUNGI

JUDGE

In the presence of:-

CA: Angong'a/Velma

Applicant present.

2nd Respondent absent.

Khasiolia for the 1st Respondent present.