

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
JUDICIAL REVIEW DIVISION
HCJR NO. E278 OF 2025

WILLIAM KAMAU MWAURA.....APPLICANT

VERSUS

TERESIA WANGUI WANGO & 5 OTHERS.....RESPONDENTS

RULING

1. The Respondents filed a Preliminary Objection dated 23rd February 2026 to the Notice of Motion dated 4th September 2025 on the following grounds inter alia: -

- 1) That the said Application is not only procedurally defective, frivolous, vexatious, misconceived, incompetent and an abuse of the court process but the same is also bad in law, an afterthought, a sham and lacking in merit.

- 2) That this Application has already been overtaken by events as the case in Githunguri MCELC No. 29 of 2021 (E018 of 2021) had already been concluded and judgement thereof was duly delivered on 9th September 2025.

Respondents' submissions;

2. Counsel for the Respondents filed submissions in support of the Preliminary Objection.

3. Counsel urged that the Applicant's Application for Judicial Review in the nature of mandamus and certiorari has not been brought in good faith as the Applicant is guilty of non-disclosure of material facts which are relevant to the case. That the Applicant has not disclosed that the suit at the **Githunguri Law Court, MCELC No. 29 of 2021 (E018 of 2021)** which is a subject of these proceedings, has already been heard and determined and the judgement thereof has not been challenged in any manner as required by the law. The Applicant ought to have disclosed such material facts to the court.
4. **Counsel cited Halima Haji Sarah vs Multiple Hauliers (E.A.) Limited & Another (2022) eKLR, and Ruaha Concrete Co. Ltd et al versus paramount universal Bank Ltd et al, HCCC No. 430 of 2002** in this regard. He posited that it is now settled that any party seeking an equitable relief must disclose all the necessary facts that may aid the court in rendering justice to the parties.
5. Counsel further urged that the Application for Judicial Review in the nature of mandamus and certiorari is unmerited and amounts to an abuse of the court process taking into account the fact that the Applicant had failed to exhaust all the remedies available before approaching this court for any redress and, considering the fact that the Application as presented has already been overtaken by events thereby rendering it to be frivolous. Reliance was placed on **Trust Bank Ltd vs Amin Co. Ltd & Another (2000) KLR**. Counsel urged that the pleadings as filed herein by the Applicant are clearly ambiguous, state immaterial matters and raise irrelevant issues which

were also raised in Githunguri MCELC Case No. 29 of 2021 (E018 of 2021) and were heard and adjudicated by the court which had competent jurisdiction.

6. Counsel urged that it should be noted that the Applicant has not provided any proof that the lower court failed to accord him the opportunity of challenging the amendment of the plaint, if the same was improper, as claimed, and in any event, the ruling which allowed the Application for amendment of the plaint was never challenged by way of an appeal and cannot be raised at this juncture.

7. Counsel urged that the Applicant has not come to this court with clean hands and appears to be evading the orders which were pronounced against him by the court and has continued to violate them, and continues to occupy the suit land with impunity and his said actions are contrary to Section 3 (1) of the Trespass Act, Cap 294. Counsel urged the court to uphold the Preliminary Objection and dismiss the Application with costs to the Respondents.

Ex Parte Applicants' written submissions;

8. The Applicant, acting in person, laid down the brief facts leading up to the Application and the Preliminary Objection, identified the issues for determination and proceeded to submit on the same of note is that the submissions tend to address the Application and barely address the Preliminary Objection.

9. On Whether he is entitled for a grant for leave to file for certiorari Application, he urged that prayer 1 of the Application was overtaken by events, the same was spent. He urged that Prayer 2 is nonetheless applicable as it seeks the need to be granted Leave to file for a Certiorari Application so to enable this Court reach a fair conclusion. That the court is mandated to see to it that if the case before it is substantive then it grants such prayers so that eventually all shall be accorded fairness and eternal justification.

10. The Applicant submitted that what is important here is the fact that the entire process was unprocedural in that the amended Plaint was legally defective. Further, that from its initiation it was occasioned by irregularities as opposed to the Civil Procedure Rules. That the case was heard and closed even without going for pre-trial filing rendering it null and void. He cited Order 11, Rule 2 of the Civil Procedure Rules and urged that the Objection is unmerited on the following grounds:-
 - a. That it is incompetent, misconceived, procedurally defective and an abuse of the court process and brought in bad faith.
 - b. That for one it was unwarranted and vexatious in that, it was time-barred;
 - c. That the Respondents based their Objection on only one prayer, belittling the most important prayer two and which is the bone of contention being profoundly considerate.

- d. That it is on record that the Applicant served the advocate upon filing the Application but as he ignored responding to it, the court advised him to serve the Respondents instead; which he did.
11. He urged that the Judgement is exceedingly defective, and is likewise subject to the follow-up exercise. That in compelling the Applicant to join in the “hearing up to close” of the Respondents case, then forcing him to file statements as such, the Applicant was of the opinion that it was contrary to the Civil procedure Rules.
12. The Applicant urged that his application was merited and urged the court to grant it as prayed.

Analysis and determination;

The following are the issues for determination:

- (i) Whether the Notice of Preliminary Objection dated 2.3.2026 has merit.
- (ii) What amounts to a Notice of Preliminary objection.
13. In the case of **Republic v Public Procurement Administrative Review Board Exparte Meru University of Science & Technology; M/S AakiConsultants Architects and Urban Designers (Interested Party) [2019] eKLR** where the Court held thus:

“The role of the court in Judicial Review proceedings was well stated in Republic vs National Water Conservation & Pipeline Corporation & 11 Others [9] where it was held that once a Judicial Review court fails to sniff any illegality, irrationality or procedural impropriety, it should down its tools forthwith. Judicial intervention is posited on the idea that the objective is to ensure that the agency did remain within the area assigned to it by Parliament. If the agency was within its assigned area then it was prima facie performing the tasks entrusted to it by the legislature, hence not contravening the will of Parliament, then a court will not interfere with the decision.”

14. Being a determination of the questions of law, this court notes that
The
applicant has raised a host of concerns and land dispute related issues in his application.
15. The case in Githunguri Law Courts is MC ELC No. 29 of 2021- (E018/2021), another application now with the current advocated at Githunguri ELC case No. E014 /2022.
16. It is the applicant’s case that the trial court’s Judgement is exceedingly
defective, and is likewise subject to the follow-up exercise, as it misjudges all-inclusive for want of clarity or awarding the Respondents the mandate over all ten 100 shares- disregarding the brothers as is they do not exist. These are the ones who sold their shares to applicant in the concerted effort to eliminate him. That in wrapping it up, they all agree that irrespective of the Applicant crying

foul, the allowing of the “Amended Complaint” and ambushing him in court catching him unawares- advocate urging the court to institute hearing thereof by calling 1st and 2nd respondents to testify on behalf of the rest he announced closing their case, and the Applicant was now “directed” to file his statements of defence as well as those of his witnesses, failure to or that he appeals to a Superior Court, as he himself could not overrule the ruling of a Magistrate of similar status’ hence this application.

17. He raises concerns around the proceedings in the lower court on matters and questions of the distribution and sale of property.
18. The question of jurisdiction is well established in the locus classicus, **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd** where the Court pronounced itself as such:

“I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it.

19. In the case of **Republic v Karisa Chengo & 2 others [2017] eKLR**

it was held that this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of

the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of the Constitution, which prohibits the High Court from exercising jurisdiction in respect of matters “reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)”.

Determination:

20. Upon looking at the application and the verifying affidavit in support thereof, this court is satisfied that the issues raised in this suit belong to the environment and land court.
21. The Notice of Preliminary Objection shall be determined by the environment and land court.

22. Order:

- (i) The application is hereby transferred to the Environment and Land Court In Kiambu.

(ii) Costs in the cause.

**Dated, Signed and Delivered virtually at Eldoret this 13th Day of
May, 2026.**

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J. CHIGITI (SC)
JUDGE