



**Mwandale v Nairobi City County & 3 others (Environment & Land
Petition 81 of 2018) [2024] KEELC 5770 (KLR) (9 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5770 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND PETITION 81 OF 2018

JO MBOYA, J

AUGUST 9, 2024

**IN THE MATTER OF: THE ALLEGED VIOLATION OF FUNDAMENTAL RIGHTS
AN FREEDOMS UNDER ARTICLE 22 AND 23 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ARTICLES 40,43,46 (1) AND 47 OF THE CONSTITUTION
OF KENYA**

AND

**IN THE MATTER OF: RULE 4 AND 19 OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS (PRACTICE AND PROCEDURE
RULES,2013))**

AND

**IN THE MATTER OF: SECTION LAND ACT 2012, ENVIRONMENT AND LAND
COURT ACT 2011, AND SECTION 28 OF THE LAND
REGISTRATION ACT**

AND

IN THE MATTER OF: SECTION 44 OF THE BANKING ACT, CAP 488 LAWS OF KENYA

AND

**IN THE MATTER OF: SEC. 16 AND 19 OF THE
RATING ACT, CAP 267 OF THE LAWS OF KENYA**

BETWEEN



JOACKIM OKESSA MWANDALE PETITIONER

AND

NAIROBI CITY COUNTY 1ST RESPONDENT

THABITI FINANCE CO.LTD (IN LIQUIDATION) 2ND RESPONDENT

WELVIN INVESTMENTS LIMITED 3RD RESPONDENT

1ST CLASS MAGISTRATE 4TH RESPONDENT

RULING

Introduction And Background:

1. The Petitioner herein approached the court vide Petition dated the 2nd November 2018 and in respect of which same [Petitioner] sought for a plethora of reliefs.
2. Subsequently, the Petitioner sought for and obtained leave to amend the Petition. In this regard, the Petitioner thereafter proceeded to and filed the amended Petition dated the 26th May 2023 and in respect of which same sought for the following reliefs [verbatim]:
 - i. That this Honorable Court declares that the action of the 2nd Respondent of merging the Sums Model Industries loan account with that of another co-director without consent violated the economic rights of the Petitioner under article 43 of *the Constitution* and amounted to unfair administrative action contrary to article 47 of *the Constitution*.
 - ii. That this Honourable court declares that the lack of accounts before the court in Misc. App No 138 of 2013 violated the Petitioner's right to a fair hearing as the vesting order made lacked legality and was borne out of an illegal claim and unfairly enriched the 2nd Respondent.
 - iii. That this Honourable court declares that the lack of service in RMCC 20 of 2013 violated the Petitioner's right to a fair hearing so that he could not defend his fundamental right to property.
 - iv. That this Honourable court finds and declares that the proceedings and orders in 1st Class magistrate in RMCC No. 9 of 2013 were a nullity for entertaining a Plaint where the total interest claimed was Ksh.2,725,666.00 against rates arrears of Kshs.222, 365.00 and then giving an illegal order and therefore a void order.
 - v. That this Honourable Court finds and declares that the proceedings and orders in the 1st Class Magistrate Court in RMCC 9 of 2013 were a nullity for entertaining a suit based on the *Rating Act* which was statutory time barred.
 - vi. That this Honourable Court finds and declares that the Honourable Court in 1st Class Magistrate Court in RMCC 9 of 2013 lacked jurisdiction to give orders for the sale of a ratable property based on rates decree it had issued.
 - vii. That this Honourable Court issues an order directing the 2nd Respondent to give accounts for the savings account held by the Petitioner and the use of its realized lien and chattel.
 - viii. That this Honourable Court reconsiders the orders made in ELC 671 of 2017 on 25th May 2017 in light of on set aside the orders made thereunder.



- ix. That this Honourable Court issues an order directing the 1st Respondent to rectify its rate demand notices to conform to the law.
 - x. That this Honourable Court finds and declares that the purported sale of NAIROBI BLOCK 110/442 to the 3rd Respondent was null and void as it was based on unlawful orders made by the 4th Respondent. In RMCC No. 9 of 2013.
 - xi. That this Honourable Court declares the sale of the Petitioner's and was void for offending Section 97 of the *Land Act* and sets aside the Vesting Orders made in Misc. App No 138 of 2013 and further affirms that the title for NAIROBI/ BLOCK 110/442 belongs to the Petitioner.
 - xii. This Honourable Court be pleased to make such other orders as it shall deem fit and just
 - xiii. In the alternative:
 - a. This Honourable Court declares and holds that the Petitioner's money was withheld by the Respondents after the property was sold at a forced sale value of Kshs 15,000,000 from 15th November 2013 to date.
 - b. That this Honourable Court declares and orders that the petitioner's money withheld from 15th November 2013 be paid with interest of 12% per annum from the date of such withholding to date, less any money genuinely owed or received.
 - c. This Honourable court awards the petitioner the costs of this petition.
3. Upon being served with the Petition, the 1st, 2nd and 3rd Respondents proceeded to and filed their response[s] and in respect of which the various Respondents contested the jurisdiction of the court.
 4. First forward, the Petition beforehand was scheduled for mention on the 20th May 2024; whereupon learned counsel for the 2nd and 3rd Respondents intimated to the court that same were desirous to raise and canvass a preliminary objection touching and concerning the jurisdiction of the court. In particular, learned counsel for the 2nd and 3rd Respondents contended that the honourable court is divested of Jurisdiction to entertain and adjudicate upon the reliefs sought at the foot of the amended Petition.
 5. On the other hand, learned counsel for the Petitioner reiterated his position that the court was seized of the requisite jurisdiction to entertain and adjudicate upon the reliefs sought at the foot of the amended Petition.
 6. Arising from the rival contentions/ position[s]; the court directed that the question/issue of jurisdiction be canvassed and addressed beforehand. Furthermore, the court ventured forward and directed that the parties do file and exchange written submissions within prescribed timelines.
 7. Suffice it to point out that learned counsel for the Petitioner proceeded to and filed written submissions dated the 26th June 2024, whereas the 2nd Respondent filed written submissions dated the 11th July 2024. Nevertheless, the 3rd Respondent herein did not file any written submissions.
 8. For coherence, the two sets of submissions [details in terms of the preceding paragraph] form part of the record of the court.



Parties Submissions:

a. Petitioner's Submissions:

9. The Petitioner herein filed written submissions dated the 26th June 2024 and in respect of which same has highlighted and canvassed three [3] salient issues for consideration and determination by the court.
10. Firstly, learned counsel for the Petitioner has submitted that the dispute beforehand touches on and concerns the powers of the 1st Respondent pursuant to Section 17 of the *Rating Act*. For good measure, learned counsel for the Petitioner has submitted that the 1st Respondent proceeded to and sold the suit property albeit without due regard to the provisions of the *Rating Act*; and as a result thereof same [1st Respondent] has deprived the Petitioner of lawful rights to and in respect of the suit property.
11. Furthermore, learned counsel for the Petitioner has submitted that the suit property was disposed of by the 1st Respondent at an under value and hence there does arise the question pertaining to and or concerning the import and tenor of Section 97 of the *land Act*, 2012.
12. Secondly, learned counsel for the Petitioner has also submitted that the impugned actions by the 1st and 2nd Respondents herein have impacted upon the Petitioner's legitimate rights to and in respect of the suit property. In any event, learned counsel has contended that the Petitioner's rights to the suit property in terms of Article 40 of *the Constitution* 2010 have been violated and/or infringed upon.
13. Thirdly, learned counsel for the Petitioner has submitted that the Petition beforehand raises assorted issues, some of which fall within the jurisdiction of the Environment and Land Court whilst some fall within the jurisdiction of the High Court. Nevertheless, it is pointed out that it behooves the court to adopt and apply the predominant test rule and thus discern that the predominant issues on the face of the Petition falls within the jurisdiction of the Environment and Land Court and not otherwise.
14. Premised on the foregoing, learned counsel for the Petitioner has invited the court to find and hold that the dispute underpinning the amended Petition falls within the jurisdiction of this court, namely, the Environment and Land Court; and hence the court is obliged to entertain and adjudicate upon the matter beforehand.
15. To buttress the submissions that the dispute herein falls within the jurisdiction of this court, learned counsel for the Petitioner has cited and referenced various decisions inter-alia the case in Republic v Karisa Chengo & 2 Others [2017] KESC 15 [KLR], In The Matter of The Interim Independent Electoral Commission [2012]eKLR, Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012]eKLR, Lydia Nyambura Mbugua v Diamond Trust Bank of Kenya Ltd & Another [2018]eKLR and Suzann Achieng Butler & 4 others v Redhill Hights Investment Ltd 7 Another [2016]eKLR, respectively.
16. Arising from the foregoing submissions, learned counsel for the Petitioner has implored the court to find and hold that the dispute beforehand falls within the jurisdiction of the court and hence the objection by and on behalf of the Respondents pertaining to and concerning the question of jurisdiction, is misconceived.

b.2nd Respondent's Submissions:

17. The 2nd Respondent filed written submissions dated the 11th July 2024 and wherein same has raised, highlighted and canvassed one [1] salient issue for consideration and determination by the court.



18. Pertinently, learned counsel for the 2nd Respondent has submitted that the various reliefs that have been sought for at the foot of the amended Petition, essentially touch on and concern the question of accounts pertaining to and concerning the sale and disposition of the suit property.
19. On the other hand, learned counsel for the Petitioner has also highlighted the issue that touches on and concerns the alleged merging of the loan account of Sums Model Industries and that of [sic] a co-director, which merging is stated to have been undertaken without the consent of the co-director.
20. Other than the foregoing, learned counsel for the 2nd Respondent has also submitted that the rest of the reliefs being sought at the foot of the amended Petition relates to the proceedings and decision[s] that were made by court[s] of competent jurisdiction[s] and which proceedings and decision[s], have neither been reviewed and/or appealed against. In this regard, learned counsel for the 2nd Respondent contends that the amended Petition beforehand constitutes a disguised appeal against the various decisions which have been highlighted and referenced in the body of the amended Petition.
21. Be that as it may, learned counsel for the 2nd Respondent has submitted that the issues that have been adverted to and which colour the amended petition are issues that fall outside the jurisdiction of this court and in this regard, learned counsel for the 2nd Respondent has implored the court to find and hold that the court is divested of the jurisdiction to entertain and adjudicate upon the dispute beforehand.
22. In support of the submissions that the court is devoid of jurisdiction to entertain and adjudicate upon the dispute beforehand, learned counsel for the 2nd Respondent has cited and referenced various decisions inter-alia Owners of Motor Vessel Lilian S v Caltex Oil [K] Ltd [1989]eKLR, In The Matter Interim Independent Electoral Commission [2011]eKLR and Samuel K Macharia v Kenya Commercial Bank Ltd [2012]eKLR, respectively.
23. Premised on the foregoing submissions, learned counsel for the 2nd Respondent has invited the court to find and hold that same [court] is divested of the requisite jurisdiction to entertain the subject dispute and thus to strike out the amended Petition.

Issues For Determination:

24. Having reviewed the amended Petition dated the 26th May 2023, and upon consideration of the written submissions filed by the Petitioner and the 2nd Respondent, respectively, the following issues do arise [emerge] and are thus worthy of consideration;
 - i. Whether this court is seized of the requisite jurisdiction to deal with and/or adjudicate upon the alleged merger of the loan account of Sums Model Industries and that of a co-director, albeit without [sic] the consent of the co-director or otherwise.
 - ii. Whether the court has the requisite jurisdiction to interrogate, review and/or issue declaratory orders pertaining to proceedings which were undertaken before courts of competent jurisdiction and whose decisions have neither been appealed against and/or reviewed.
 - iii. Whether the honourable court is seized of jurisdiction to reconsider and/or set aside the orders of a court of a coordinate/concurrent jurisdiction issued vide ELC No. 671 of 2017 or otherwise.



Analysis And Determination

Issue Number 1 Whether this court is seized of the requisite jurisdiction to deal with and/or adjudicate upon the alleged merger of the loan account of Sums Model Industries and that of a co-director, albeit without [sic] the consent of the co-director or otherwise.

25. The Petitioner beforehand has sought for a plethora of reliefs in the body of the amended Petition. In particular, one of the reliefs that has been highlighted in the body of the amended Petition touches on and concerns a declaration that the merging of the loan account of Sums Model Industries and that of a co-director, albeit without consent has violated and/or infringed upon the Petitioner's human rights and fundamental freedoms underpinned by Article 43 of *the Constitution* 2010.
26. To my mind, what I hear the Petitioner to be complaining about is to the effect that the 2nd Respondent herein proceeded to and merged the loan account of Sums Model Industries with that of a co-director [whose names have not been disclosed]. Furthermore, the Petitioner ventures forward and contends that the impugned merger of the loan account has violated and/or infringed upon his [Petitioner's] constitutional rights and fundamental freedoms.
27. To start with, it is not clear whether the Petitioner herein was/is the co-director, whose loan account was merged with that of Sums Model Industries or otherwise. Besides, it is also not clear how the impugned merger of the loan account of Sums Model Industries with that of [sic] unnamed co-director has impacted upon and/or better still violated the fundamental freedoms of the Petitioner.
28. Be that as it may, the concern of this court at this juncture does not relate to whether or not the amended Petition has been pleaded with the requisite particularity and specificity or otherwise. To the contrary, the concern of the court relates to whether the court is seized of the requisite jurisdiction to interrogate the circumstances leading to [sic] the merger of the loan account complained of and whether the said merger was lawful or otherwise.
29. In my humble view, the question pertaining to and concerning accounts, including the merger of the loan account which is one of the aspects of the current Petition, is an issue that can only be addressed and remedied [where appropriate] by the High Court and not otherwise.
30. To this end, it is my finding and holding that the question of accounts, including the impugned merger of the loan account, which seems to have aggrieved the Petitioner, do not fall within the circumscribed jurisdiction of the Environment and Land Court.
31. Expressed differently, the Environment and Land Court, whose jurisdiction is circumscribed by the provisions of Article 162[2][b] of *the Constitution* 2010, is not vested with the mandate to undertake investigations pertaining to and or concerning questions/issues of accounts. In this regard, this court is devoid of jurisdiction to engage with the question pertaining to the impugned merger of the loan account.
32. To buttress the foregoing exposition of the law, it suffices to take cognizance of the ratio decidendi espoused by the Court of Appeal in the case *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR, where the court stated and held thus;
 40. To the appellant, the charge was an instrument granting an interest in the land, hence jurisdiction in the matter lay with the ELC. However, under Section 2 of the said Act, an instrument is a writing or enactment which creates or affects legal or equitable rights and liabilities. For the purposes of this suit, that instrument was the charge. However, it bears repeating that the cause of action herein was never the charge (instrument) but the amounts



due and owing thereunder. Neither the charge instrument nor the creation of an enforceable interest thereunder, were disputed. The main questions to be determined were the tabulation of the sums owing and whether statutory notices had issued prior to the attempted statutory sale.

41. Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be understood within the context of the court's jurisdiction to deal with disputes connected to 'use' of land as discussed herein above. Such contracts, in our view, ought to be incidental to the 'use' of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. In *Paramount Bank Limited vs. Vaqvi Syed Qamara & another* [2017] eKLR, this Court while discussing the jurisdiction of the Employment and Labour Relations Court over a claim of malicious prosecution expressed itself thus,

QUOTE

"The origin of the dispute between the 1st respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant accused the 1st respondent of theft followed by a criminal charge of stealing by servant. This was further followed by suspension and finally summary dismissal. There cannot therefore be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the *Employment and Labour Relations Court Act*, the court could entertain the dispute in all its aspects and award damages appropriately."

By parity of reasoning, the dominant issue in this case was the settlement of amounts owing from the respondents to the appellant on account of a contractual relationship of a banker and lender.

42. While exclusive, the jurisdiction of the ELC is limited to the areas specified under Article 162 of *the Constitution*, Section 13 of the ELC Act and Section 150 of the *Land Act*; none of which concern the determination of accounting questions. Consequently, this dispute does not fall within any of the areas envisioned by the said provisions. On the other hand, the jurisdiction of the High Court over accounting matters is without doubt, for under Article 165(3) of *the Constitution* provides inter alia, that;

1. subject to clause (5), the High Court shall have-
 - a. unlimited original jurisdiction in criminal and civil matters.

For the above reasons, the appellant's objection on jurisdiction was rightly dismissed.

33. Other than the foregoing decision, which underscores that questions pertaining to accounts do not fall within the jurisdiction of *Environment and Land Court Act*, it is imperative to point out that where a court is divested of jurisdiction, such a court cannot entertain proceedings and/or make any determination, in respect of a matter where same [court] is divested of jurisdiction.
34. Simply put, before a court of law, engages with the matter and/or undertakes proceedings, the court is obligated to interrogate and discern whether same is seized of jurisdiction. For good measure, jurisdiction denotes the mandate and/or authority that a court has to handle and adjudicate the dispute beforehand. Consequently, where a court is divested of jurisdiction, then it behooves the court to make a proclamation at the onset and thereafter to down it tools.



35. To this end, it suffices to take cognizance of the decision of the Supreme Court Kenya [the apex court] in the Matter of Interim Independent Electoral Commission [2011]eKLR, where the court underscored the significance of jurisdiction.
36. For coherence, the court stated thus;
29. Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):
- “I think that 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. Jurisdiction is everything. Without it, a Court has no power to make one more step.”
30. The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by *the Constitution*.
37. Similarly, the question of jurisdiction of a court and its implications was re-visited by the Supreme Court in the case of Samuel K Macharia & Another v Kenya Commercial Bank Ltd [2012]eKLR, where the court stated as hereunder;
- (68) A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.
- This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.
38. Pertinently, jurisdiction is key and central and thus every court is obligated to interrogate same at the onset and where it is evident that the court is divested of jurisdiction, then the court must desist from entertaining and adjudicating upon such a matter. In any event, where a court entertains a matter where same is devoid of jurisdiction, the proceedings and resultant decision, if any, are nullity ab initio. [Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR].

Issue Number 2: Whether the court has the requisite jurisdiction to interrogate, review and/or issue declaratory orders pertaining to proceedings which were undertaken before court



of competent jurisdiction and whose decisions have neither been appealed against and/or reviewed.

39. Other than the question of loan account and the impugned merger thereof, which has been discussed in terms of the preceding paragraphs, the Petitioner herein has also sought to invite the court to make declarations pertaining to proceedings and decisions which were made in various court proceedings, namely Misc. Application No 138 of 2013; Nairobi RMCC 20 of 2013 and Nairobi RMCC No 9 of 2013, respectively.
40. Suffice it to point out that the proceedings under reference were taken before courts of competent jurisdiction and thereafter same [courts] proceeded to and rendered decisions, which decisions have neither been reviewed nor appealed against.
41. Instructively, if the Petitioner herein felt aggrieved and dissatisfied by the proceedings and decisions that arose from the various court cases, which are sought to be impugned herein, then it was incumbent upon the Petitioner to file appropriate application for review in accordance with the provisions of Section 80 of the *Civil Procedure Act*; as read together with Order 45 of the Civil procedure Rules, 2010.
42. Alternatively, the Petitioner herein was at liberty to file and/or lodge the requisite appeals to challenge the validity and propriety of the orders and decisions, issued vide the impugned court cases.
43. However, it is not clear whether the Petitioner herein ever filed appeals against the decisions arising from the impugned court cases. Nevertheless, whether or not appeal[s] were filed, what is common ground is that the proceedings and decision emanating from the said court cases cannot be the subject of a Constitutional Petition.
44. Put differently, the Petitioner herein cannot file and/or prosecute the instant Petition with a view to overturning lawful and legitimate decisions of courts of competent jurisdictions, which decisions have not been appealed against.
45. To my mind, the instant Petition cannot be disguised as an appeal against the decisions arising from the various court cases or at all. Consequently, and in this regard, it is my finding and holding that the amended Petition is also untenable and cannot take the place of an appeal.
46. Other than the foregoing, I also come to the conclusion that this court is devoid of jurisdiction to entertain the amended Petition, whose import and tenor is calculated to rescind and or set aside decisions of courts of competent jurisdiction, which decisions were never appealed against.

Issue Number 3 Whether the honourable court is seized of jurisdiction to reconsider and/or set aside the orders of a court of a coordinate/concurrent jurisdiction issued vide ELC No. 671 of 2017 or otherwise.

47. The amended Petition has also impleaded a relief pertaining to reconsideration of the orders made vide ELC No. 671 of 2017. Instructively, the orders sought to be impugned and/or reconsidered were made by a court of coordinate jurisdiction in a separate and distinct file.
48. Notwithstanding the foregoing, it is also not clear whether the Petitioner herein preferred any appeal against the orders made by the judge in the file under reference, or otherwise.
49. Be that as it may, the import and tenor of the orders sought pertaining to and concerning ELC No 671 of 2017 is to the effect that this court should vary and/or set aside the said orders courtesy of [sic] the Petition beforehand.



50. In my humble view, what is implicit in the Petition beforehand is that a judge handling a Petition like the one beforehand can purport to supervise and/or superintend the decisions and workings of another Judge of concurrent jurisdiction.
51. Quite clearly, what I hear the Petitioner to be asking for is that this court should constitute itself as an appellate court over the decisions of a court of concurrent and coordinate jurisdiction and thereafter proceed to impeach such a decision. To my mind, the invitation at the foot of the current Petition is likely and/or bound to occasion an absurdity.
52. Furthermore, the orders sought by and on behalf of the Petitioner herein, namely, reconsideration of the orders which were issued vide ELC No. 671 of 2017 [which is a separate and distinct matter], would be antithetical to the rule of law and hence such an invitation, must not only be frowned upon but must be eschewed by all and sundry.
53. To highlight the position that a Judge cannot purport to supervise and/or superintend the decision and working of another Judge of concurrent jurisdiction, it is worthy to adopt and reiterate the holding of the Court of Appeal in the case of *Bellevue Development Company Ltd v Gikonyo & 3 others; Kenya Commercial Bank & 3 others (Interested Parties) (Civil Appeal 239 of 2018)* [2018] KECA 330 (KLR) (21 September 2018) (Judgment), where the court stated and held thus;
14. I have no difficulty upholding the learned Judge's holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of *the Constitution* in these terms;
- “The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.” (Our emphasis)
15. The learned Judge reasoned, correctly in my view, that an enquiry into the complaints in the appellant's petition against the Judges called upon him to determine the lawfulness or good faith basis of both their decisions and their conduct, and he could not purport to arrogate to himself the power to review their decisions over which he had no authority. Such an undertaking would have been a plain nullity as had been stated by this Court in *Peter Ng'ang'a Muiruri v Credit Bank Ltd & 2 others Civil Appeal No 203 of 2006* which the learned Judge cited. The Court in dispelling the notion that a judge of concurrent jurisdiction could supervise fellow judges had stated as follows;
- “It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity.”
54. Without belabouring the point, I beg to underscore that this court is not seized of the requisite jurisdiction to superintend and supervise the workings of the judge who handled ELC No. 671 of 2017 and or to purport to calibrate upon the orders issued thereunder, with a view to discerning their propriety or otherwise.



55. Suffice it to point out that such an endeavour, would be a plain nullity and if undertaken, has the potential of breeding violence and anarchy in the corridors of justice.
56. Flowing from the forgoing, my answer to issues number Three [3] is also to the effect that this court is divested of jurisdiction to interrogate the proceedings and orders which were issued vide ELC No. 671 of 2017, either in the manner sought or at all.

Final Disposition:

57. Arising from the discussion [details highlighted in the body of the Ruling] there is no gainsaying that the amended Petition before the court is not only misconceived and legally untenable, but same also constitutes an abuse of the due process of the court.
58. At any rate, the court has also found and held that the reliefs sought of the amended Petition dated the 26th May 2023, fall[s] outside of the jurisdiction of this court.
59. In the premises, the court proceeds to and do make the following orders;
- i. The Amended Petition dated the 26th May 2023, be and is hereby struck out.
 - ii. Cost of the proceedings and those flowing from the amended Petition be and are hereby awarded to the 2nd and 3rd Respondent herein.
 - iii. Such costs shall be agreed upon between the parties and in default same to be tasked by the deputy registrar of the court.
60. It is so ordered.

DATED, SIGNED AND DELIVERED ON THE 9TH DAY OF AUGUST 2024

OGUTTU MBOYA

JUDGE.

In the presence of:

Benson – Court Assistant

Ms Oduor h/b for Mr. Wangira Okoba for the Petitioner.

Ms Michelle Dande h/b for Mr. JB Macharia for the 2nd Respondent

Mr. Njugi BG for the 3rd Respondent.

Mr. Kiplagat for the 1st Respondent.

N/A for the 4th Respondent.

