



Anytime Limited v Hussein & another; Kenya Revenue Authority (Interested Party) (Environment & Land Petition E083 of 2024) [2024] KEELC 13489 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 13489 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E083 OF 2024**

JO MBOYA, J

OCTOBER 31, 2024

**N THE MATTER OF ARTICLES 1, 2, 20, 21, 22, 23, 27, 28,
31, 40,46, 48, 258 & 259 OF THE CONSTITUTION, 2010**

AND

IN THE MATTER OF THE DISTRESS FOR RENT ACT

AND

IN THE MATTER OF THE VALUE ADDED TAX ACT, 2013

AND

**IN THE MATTER OF SECTION 71 OF THE ENGLISH
TRIBUNALS, COURTS AND ENFORCEMENT ACT, 2007**

AND

**IN THE MATTER OF THE ENGLISH TRIBUNALS, COURTS AND
ENFORCEMENT ACT 2007 (COMMENCEMENT NO. 11) ORDER 2014**

BETWEEN

ANYTIME LIMITED PETITIONER

AND

MOHIB TEHERALI ABDUL HUSSEIN 1ST RESPONDENT

KENNEDY SHIKUKU T/A ESHIKONI AUCTIONEERS 2ND RESPONDENT

AND

KENYA REVENUE AUTHORITY INTERESTED PARTY



RULING

Introduction and Background:

1. The Petitioner herein approached the court vide Petition dated 8th October 2024 pursuant to the provisions of Articles 1, 2, 20, 21, 22, 23, 27, 28, 31, 40, 46, 48, 258 and 259 of the Constitution 2010 and in respect of which the Petitioner seeks for the following reliefs [verbatim]:
 - i. A Declaration that the right to distress for rent ceased to exist or accrue in Kenya on 19th March, 2014 upon commencement of Section 71 of the English Tribunals, Courts and Enforcement Act 2007;
 - ii. A Declaration that the Distress for Rent Act is invalid in so far as it lacks a foundational basis following the repeal of the common law right to distress for rent in England;
 - iii. A Declaration that the Distress for Rent Act is invalid in so far as it denies, violates, infringes and threatens a Tenant's rights to; (i) equality and freedom from discrimination, (ii) human dignity, (iii) privacy, (iv) Property, (v) consumer rights, and (vi) access justice
 - iv. A Declaration that impounding and carting away of the Petitioner's assets by the Respondents was a violation to its rights to; (i) equality and freedom from discrimination, (ii) human dignity, (iii) privacy, (iv) property, (v) consumer rights, and (vi) access justice;
 - v. A Declaration that the impounding and carting away of the Petitioner's assets by the Respondents was null and void ab initio;
 - vi. A Mandatory Injunction does issue directing the Respondents to immediately release to the Petitioner;
 - vii. Motor vehicle registration number KCH 130B, (ii) Motor Vehicle registration number KCJ036T, (iii) 71 containers of 20 litres cooking oil and (iv) goods being ferried in the motor vehicle registration number KCCJ 036T worth Kshs.164,435/-;
 - viii. The court be pleased to grant Compensation in the sum of Kenya Shillings Nine Hundred and Fifty-Seven Two Hundred and Eighty Shillings (Kshs.957,280/-) for hire of transport;
 - ix. (h) The Court be pleased to grant Interest on (g) above from the date of filing the suit till payment in full;
 - x. Further to (b) the Court be pleased to grant the Petitioner General; Constitutional and Aggravated damages for the impounding of its assets;
 - xi. A Declaration that, under the provision of the Value Added Tax Act, 2013, a tax invoice for commercial rent must be issued at the time of the taxable supply, namely; the issuance of the rent invoice;
 - xii. A Declaration that the 1st Respondent violated the Petitioner's rights to; (i) Human dignity, (ii) property and (iii) consumer rights by failing issue it with tax invoices for the period February, 2022 to date;
 - xiii. Further to (g) the Petitioner be granted General, Constitutional and Aggravated damages for the violation of its rights



- xiv. A Declaration that monies currently held in ABC Bank Account No. 007243001000793 as rent be utilized, upon payment of the current Value Added Tax, to pay any outstanding value added tax arrears owed to the Interested Party in relation to rent paid for the period February, 2022 to October, 2023 with a tax invoice being issued to the Petitioner;
 - xv. The Petitioner be granted Cost of the Petition;
 - xvi. The Court be pleased to issue any other order it deems fit in the circumstances of the case.
2. The Petition beforehand is anchored on various grounds which have been enumerated in the body thereof. Furthermore, the Petition is also supported by the affidavit of Ashok Madala, [the Deponent] who is said to be a director and shareholder of the Petitioner Company.
 3. Contemporaneous with the filing of the Petition, the petitioner also filed a Notice of Motion Application dated 8th October 2024; and wherein the Petitioner seek[s] the following reliefs;
 - i. That this Honourable Court do certify this Application as urgent and place the same to be heard on a priority basis and service of the same be dispensed with in the first instance;
 - ii. That pending hearing and determination of the application an Ex-parte conservatory order does issue maintaining payment of the monthly rent into Account No. 007243001000793, jointly held by the advocates for the Petitioner & 1st Respondent, pending hearing and determination of this application;
 - iii. That pending hearing and determination of the Petition a conservatory order does issue maintaining payment of the monthly rent into Account No. 007243001000793, jointly held by the advocates for the Petitioner & 1st Respondent, pending hearing and determination of this application
 - iv. That such further and other relief be granted to the Applicant as this Honourable Court deems fit and expedient in the circumstances; and
 - v. That the costs of this Application be in the cause.
 4. The application by and on behalf of the Petitioner came up for hearing on the 22nd October 2024, whereupon the court brought to the attention of learned counsel for the Petitioner, the issue/question of jurisdiction of the Environment and Land court to entertain the petition beforehand. In particular, the court drew the attention of learned counsel for the Petition to the provisions of Article 162 [2] [b] of *the Constitution* 2010 and Section 13[2] and [7] of the *Environment and Land Court Act*.
 5. Arising from the foregoing, the court sought to be addressed on the question of the jurisdiction of the court and more particularly, whether the court is seized of the requisite jurisdiction to grant the various reliefs highlighted/ enumerated at the foot of the Petition.
 6. Flowing from the foregoing, learned counsel for the Petitioner intimated to the court that same [learned counsel] was prepared to address the court on the question of jurisdiction. In this regard, learned counsel for the petitioner ventured forward and rendered submissions on the question of jurisdiction of the court.



Parties' Submissions:

a. Petitioner's Submissions:

7. Learned counsel for the Petitioner herein adopted the contents of the Petition as well as the reliefs sought thereunder together with the supporting affidavit and thereafter contended that the Environment and Land Court is seized of the requisite jurisdiction to grant the reliefs sought at the foot of the Petition.
8. In particular, learned counsel for the Petitioner contended that the critical aspect of the Petition touches on and concerns the invalidity of the *Distress for Rent Act*, which counsel contended ceased to exist on the 19th March 2024; upon the commencement of Section 71 of the English Tribunal, Courts & Enforcement Act 2007.
9. On the other hand, learned counsel contended that the rest of the reliefs sought arise from the primary relief, namely, the invalidity of the *Distress for Rent Act*. Furthermore, learned counsel submitted that the Environment and Land Court is seized of the jurisdiction to address the question of [sic] violation of the right to equality and freedom from discrimination, human dignity, privacy, consumer rights and access to justice.
10. It was the further submissions by learned counsel that the Environment and Land Court was also seized of the requisite jurisdiction to address the question of impounding and carting away the movable properties of the Petitioner.
11. In addition, learned counsel for the Petitioner also contended that the Environment and Land Court is also seized of the jurisdiction to make declaration pertaining to the provisions of Value Added Tax 2013, Laws of Kenya.
12. Based on the foregoing, learned counsel for the Petitioner invited the court to assume jurisdiction and to proceed and entertain both the Petition and the Application for conservatory orders.
13. To buttress the submissions that the Environment and Land Court is seized of the jurisdiction to entertain the Petition and by extension to grant the various reliefs sought thereunder, learned counsel cited and referenced the decision of the Supreme Court of Kenya in the case of Kenya Tea Growers Association & 2 others v The National Social Security Fund Board of Trustees & 13 others (Petition E004 & E002 of 2023 (Consolidated)) [2024] KESC 3 (KLR) (21 February 2024) (Judgment).
14. Secondly, learned counsel for the Petitioner submitted that even though the acts complained of, namely, the levying of distress, took place in Eldoret, the Environment and Land court sitting at Nairobi is still seized of the requisite jurisdiction to handle and adjudicate upon the matter beforehand.
15. For good measure, it was submitted that the Respondent and in particular the 2nd Respondent has his offices at Nairobi. Besides, it was posited that the Interested Party, namely Kenya Revenue Authority is also headquartered at Nairobi.
16. Owing to the foregoing, learned counsel for the Petitioner invited the court to find and hold that the Petition has therefore been filed in a court that is seized of the requisite jurisdiction. In this regard, learned counsel for the Petitioner cited and referenced Sections 12 and 13 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.
17. Consequently and in view of the foregoing, learned counsel for the Petitioner contended that the Environment and Land Court is therefore possessed of the requisite jurisdiction and should proceed to entertain the petition on merits.



Issues for Determination:

18. Having reviewed the Petition, the application for conservatory orders and upon listening to the submissions by learned counsel for the Petitioner, the sole issue that crystalizes for determination relates to the question of jurisdiction. Simply put, the issue that arises is as hereunder:
 - i. Whether the Environment and Land Court is seized of the requisite jurisdiction to entertain and adjudicate upon the issues underpinning the subject Petition.

Analysis and Determination

Issue Number 1

Whether the Environment and Land Court is seized of the requisite jurisdiction to entertain and adjudicate upon the issues underpinning the subject Petition.

19. The Petition beforehand touches on and concerns a plethora of reliefs. For ease of appreciation, the various reliefs that underpin the Petition have been highlighted and reproduced in the introductory aspect of the ruling. Suffice it to point out that the Petition seeks various reliefs, a majority of which do not touch on and or concern ownership of, title to or use of land.
20. Notwithstanding the fact that the Constitutional Petition beforehand touches on and concern a plethora of reliefs, learned counsel for the Petitioner still contended that the Environment and Land Court is seized of the requisite jurisdiction to entertain and adjudicate upon the entirety of the petition. In this regard, the question of jurisdiction of the Court becomes critical and worthy of determination.
21. Instructively, the jurisdiction of a court to entertain and adjudicate upon a particular matter, the dispute beforehand not excepted, is central and integral. For good measure, jurisdiction lies at the heart of the courts mandates/authority to adjudicate upon and pronounce itself on issues brought before same [court]. To this end, where the jurisdiction of a court is in question, then it behoves the court to interrogate the jurisdictional aspect and to render a determination thereon at the very earliest.
22. Put differently, jurisdiction is everything and without jurisdiction a court of law cannot undertake any proceedings and/or or make any decision in the impugned matter. In any event, where a court proceeds and entertains a dispute where the court is divested of the jurisdiction, the impugned proceedings and the decision, if any, shall be void ab initio.
23. To buttress the foregoing exposition of the law, it suffices to take cognizance of the holding of the Supreme Court of Kenya in the Matter of the Interim Independent Electoral Commission (Applicant) (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR) (20 December 2011) (Ruling), where the court stated and held as hereunder;
 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*.

24. The centrality of jurisdiction and the need to ascertain same before undertaking any step in a designated matter was also elaborated by the Court of Appeal in the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service (Civil Appeal 244 of 2010)* [2019] KECA 767 (KLR) (Civ) (10 May 2019) (Judgment), where the court stated thus:

1. At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
2. In common English parlance, 'Jurisdiction' denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.

25. Likewise, the integral position occupied by jurisdiction in the ability of the court to handle and adjudicate upon disputes brought before the court was highlighted in the case of *Kakuta Maimai Hamisi v Peris Pesi Tobiko, Independent Electoral and Boundary Commission (IEBC) & Returning Officer Kajiado East Constituency (Civil Appeal 154 of 2013)* [2013] KECA 279 (KLR) (Civ) (8 August 2013) (Judgment), where the court stated thus;

So central and determinative is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain.

The proper place of jurisdiction and the necessity to deal with it as the first order of business before an enquiry into merits of a cause was best captured in the timeless words of Nyarangi J.A in *The Owners of the Motor Vessel Lillian 's' Vs. Caltex Kenya LTD* [1989] KLR 1;

“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. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.



Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority;

‘By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist, where a court takes it upon itself to exercise a jurisdiction which it does not possess, its acquired before judgment is given.’

26. At any rate, all courts, this court not excepted is called upon to exercise due caution and circumspection to ensure that its jurisdiction to entertain a particular matter [dispute] is donated either by *the constitution* or by statute; or both. To this end, the dictum of the Supreme Court in the case of *Macharia & another v Kenya Commercial Bank Limited & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling)*, is instructive and apt.

27. For coherence, the Supreme Court stated thus;

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.

28. Duly guided by the ratio decidendi in the foregoing decisions, it is now apposite to revert to the subject matter and to discern whether the issues that underpin the Petition beforehand fall within the constitutional and statutory jurisdiction of the Environment and Land Court. Suffice it to underscore, that the primary jurisdiction of the Environment and Land Court flows from the provisions of Article 162[2][b] of *the Constitution* 2010.



29. Having taken cognizance of the foregoing, I beg to state that whereas the environment and land court would be seized and possessed of the jurisdiction to interrogate the validity or otherwise of a statute, and in particular the *Distress for Rent Act*, it is imperative to outline that the Environment and Land Court can only do so if the question of such validity or otherwise, arose in a dispute that was being entertained by the Environment and Land court and not otherwise.
30. To my mind, this reflects and accords with the position espoused by the Supreme Court of Kenya in the case of Kenya Tea Growers Association *¶ 2 others v The National Social Security Fund Board of Trustees ¶ 13 others (Petition E004 ¶ E002 of 2023* (Consolidated)) [2024] KESC 3 (KLR) (21 February 2024) (Judgment), where the court stated as hereunder:
79. In our view, there is nothing in *the Constitution*, the ELRC Act, or indeed in our decision in the Karisa Chengo Case to suggest that in exercising its jurisdiction over disputes emanating from employment and labour relations, the ELRC court is precluded from determining the constitutional validity of a statute. This is especially so if the statute in question lies at the centre of the dispute. What it cannot do, is to sit as if it were the High Court under article 165 of *the Constitution*, and declare a statute unconstitutional in circumstances where the dispute in question has nothing or little to do with employment and labour relations within the context of the ELRC Act. But, if at the commencement or during the determination of a dispute falling within its jurisdiction, as reserved to it by article 162(2)(a) of *the Constitution*, a question arises regarding the constitutional validity of a statute or a provision thereof, there can be no reason to prevent the ELRC from disposing of that particular issue.
- Otherwise, how else would it comprehensively and with finality determine such a dispute? Stripping the court of such authority would leave it jurisdictionally hum-strung; a consequence that could hardly have been envisaged by the framers of *the Constitution*, even as they precluded the High Court from exercising jurisdiction over matters employment and labour pursuant to article 165(5)(b). We are therefore in agreement with the appellants' submissions regarding this issue as encapsulated in paragraph 69 of this Judgment.
80. Having said so, we have to emphasize that the High Court retains the residual jurisdiction to determine whether any law is inconsistent with *the Constitution* within the meaning of article 165, bearing in mind the provisions of article 165(5)(b). It must also be restated that the High Court (as between it and courts established under article 162 of *the Constitution*), has the original and exclusive jurisdiction (without exception) to hear and determine applications for redress of denial, violation, or infringement of rights and fundamental freedoms in the Bill of Rights pursuant to articles 22 and 23 of *the Constitution* (See Supreme Court Judgment in the County Assemblies Forum v Attorney General & others; Pet No 22 of 2017, at Paragraph 56).
31. However, where the question of invalidity of statute and in this case the *Distress for Rent Act* is the sole and primary issue being canvassed, it suffices to underscore that such a question ought to be canvassed before the High Court. Instructively, the provisions of Article 165[3] [d] of *the Constitution* reserves the right to interrogate the validity or otherwise of any laws to the High Court.
32. For ease of appreciation, it suffices to reproduce the provisions of Article 165[3] of *the Constitution*. Same are reproduced as hereunder:
- (3) Subject to clause (5), the High Court shall have—
- (a) unlimited original jurisdiction in criminal and civil matters;



- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - i. the question whether any law is inconsistent with or in contravention of this Constitution;
 - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - iv. a question relating to conflict of laws under Article 191; and
- (e) any other jurisdiction, original or appellate, conferred on it by legislation.

33. In my humble view, the determination of whether or not the *Distress for Rent Act* is invalid, which is being brought to this court as the main issue falls within the jurisdiction of the High Court under Article 165[3], [d] [i] of *the Constitution*. In this regard, the said aspect of the Petition ought to and should be canvassed before the High Court and not otherwise.

34. Other than the foregoing, the Petitioner has also sought for a plethora of declarations including declaration as to the violation of the Petitioner’s right to human dignity, consumer rights, equality and freedom from discrimination, privacy and access to justice. Furthermore, the Petitioner has also sought declarations underpinned by the provisions of the *Value Added Tax Act*, 2013.

35. To my mind, the various human rights and fundamental freedoms which have been highlighted by the Petitioner falls within the jurisdiction of the High Court by dint of Article 165[3] [b] of *the Constitution*, 2010. Notably, the provisions of Article 165[3][b] [Supra] stipulates as hereunder;

- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

36. The other aspect that has been captured at the foot of the Petition touches on and concerns declaration that monies currently held at ABC Bank Account xxxxxxxxxx [details withheld] be utilized for payment of the current value added tax as well as any outstanding value added tax arrears, if any, owed to the interested party [Kenya Revenue Authority].

37. Quite clearly, the various issues that colour the Petition are not issues that fall with the circumscribed jurisdiction of the Environment and Land Court. Suffice it to point out that any claimant, the petitioner herein not excepted, who seeks to approach the Environment and Land Court must appreciate the circumscribed jurisdiction donated thereto by *the constitution*.



38. For the umpteenth time, it is imperative to underscore that unlike the High Court which has unlimited original jurisdiction in civil and criminal matters subject only to the provisions of Article 162 and 165[5] of *the Constitution*, the Environment and Land Court does not enjoy the same latitude.
39. To this end, it is instructive to take cognizance of the decision of the Supreme Court in the case of Republic v Chengo & 2 others (Petition 5 of 2015) [2017] KESC 15 (KLR) (26 May 2017) (Judgment) where the court held thus:
51. Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court's operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from *the Constitution*, or legislation (see In the Matter of the Interim Independent Electoral Commission, at paras. 29 and 30; and Samuel Kamau Macharia and Another v. Kenya Commercial Bank and Two Others, Sup.Ct. Civil Application No. 2 of 2011 [para. 68]). In this instance, the jurisdiction of the specialized Courts is prescribed by Parliament, through the said enactment of legislation relating, respectively, to the ELC and the ELRC. Such legislation is to be interpreted in line with relevant constitutional provisions hence our position in Gatirau Peter Munya v. Dickson Mwenda Kithinji and Two Others, Sup. Ct. Civil Application No. 5 of 2014; [2014] eKLR, where we examined the constitutional provisions alongside legislative provisions on elections, and held [para. 77] that "the *Elections Act*, and the Regulations thereunder, are normative derivatives of the principles embodied in Articles 81 and 86 of *the Constitution*, and that in interpreting them, a Court of law cannot disengage from *the Constitution*." In the instant case too, we take guidance from *the Constitution*, as we interpret it alongside the relevant statute law, pertaining to the specialized Courts.
52. In addition to the above, we note that pursuant to Article 162(3) of *the Constitution*, Parliament enacted the *Environment and Land Court Act* and the Employment and *Labour Relations Act* and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of Courts, with *suis generis* jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.
40. To my mind, the High Court; the Employment and Labour Relations Court and the Environment and Land Court enjoy equal status. However, status is a distinct concept from jurisdiction. Suffice it to point out that jurisdiction relates to the mandate and authority of the court to entertain and adjudicate upon certain cadre of matters.
41. Furthermore, it must not be lost on this court that jurisdiction is donated either by *the constitution* or statute. Additionally, a court of law must be careful not to arrogate unto itself jurisdiction by craft, innovation or adopting an activist approach which ventures beyond the four corners of *the constitution* and statute. [See S. K Macharia & Another v Kenya Commercial Bank & Another [2012] eKLR].
42. Flowing from the foregoing, my answer to the question of jurisdiction is twofold. Firstly, if the invalidity or otherwise of the *Distress for Rent Act* was canvassed in a matter that fell within the dispute before the Environment and Land Court, then this court would have been seized of the requisite



jurisdiction. However, where it is independently raised like in the manner beforehand such a matter falls within the jurisdiction of the High Court vide Article 165[3][d][i] of *the Constitution* 2010.

43. Secondly, the issues that colour the petition beforehand are clearly outside the jurisdiction of the Environment and Land Court. Quite clearly, the court cannot be called upon to assume jurisdiction on matters that falls elsewhere. Such an endeavour must not only be frowned upon but must be declined.

Final Disposition:

44. Arising from the foregoing analysis, I come to the conclusion that the various reliefs and remedies sought at the foot of the Petition beforehand do not fall within the constitutional and statutory remit of the Environment and Land Court. Quite clearly, the various reliefs can only be canvassed before the High Court in accordance with the provisions of Article 165 [3] [a] to [d] of *the Constitution*, 2010.

45. In the premises, the final orders that commend themselves to the Court are as hereunder;
- i. The Environment and Land Court is not seized of the requisite jurisdiction to entertain and adjudicate upon the subject Petition.
 - ii. Consequently, the Petition dated the 8th of October 2024; be and is hereby struck out.
 - iii. No orders as to costs.

46. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2024

OGUTTU MBOYA

JUDGE.

In the presence of:

Benson – court Assistant.

Mr. Michuki for the Petitioner/Applicant.

N/A for the Respondents.

N/A for the Interested Party.

