



Rama & 27 others v Inspector General of National Police Service & 2 others (Constitutional Petition E004 of 2024) [2024] KEELC 13833 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13833 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CONSTITUTIONAL PETITION E004 OF 2024**

EK MAKORI, J

DECEMBER 16, 2024

BETWEEN

LYDIA NJOROGE RAMA & 27 OTHERS & 27 OTHERS PETITIONER

AND

**THE INSPECTOR GENERAL OF NATIONAL POLICE SERVICE & 2 OTHERS
& 2 OTHERS & 2 OTHERS RESPONDENT**

RULING

1. The matter is concerned with the question of whether the Petitioners herein - successful parties on various issues wherein the court delivered judgment in their favour and that the warrants for execution had been issued directing the Respondents and their agents to render supervision in compliance thereof and that the said Respondents having failed to do so, the Petitioners herein have a right to bring this petition against the Respondents.
2. Petitioners allege that Before they moved this court, they had previously filed a petition in the High Court seeking the same relief, vide HCCHRPET No. E001 of 2024, in which the court downed its tools and precisely referred the Petitioners to this court,
3. The Petitioners allege that being issued with various warrants of attachments and vacant possession upon their successful litigations, the Respondents have failed to exercise the supervisory mandate expected from them in compliance with the court orders and or directions as sought by the Petitioners who have no powers to remove those who are in their properties illegally unless by the intervention the Respondents whose assistance is inevitable.
4. That upon service of the petition, as directed by the court, the Respondents opposed the petition by filing Grounds of Opposition dated 26th May 2024 and a Notice of Preliminary Objection of an even date. The Preliminary objection raised the following grounds:
 - a. This court does not have jurisdiction to hear and determine this petition.



- b. That this court does not have jurisdiction to supervise the 1st and 2nd Respondents as the same is a preserve of the High Court under Article 165(6) of *the Constitution* of Kenya, 2010.
 - c. That Article 162 (2) (b), as enabled by Sections 13(1), (2), (3), and (7) of the *Environment and Land Court Act*, No. 19 of 2011, bars the Environment and Land Court from hearing and determining suits for redress on violation and/or infringement of fundamental rights and freedoms except those related to clean and healthy environment under Articles 42, 69 and 70 of *the Constitution* of Kenya, 2010.
5. The court directed that parties canvass the Preliminary Objection through written submissions. After reviewing the materials and submissions placed before me and the provisions of *the Constitution*, enabling provisions of the law, and judicial precedents cited by the parties, the main issue that this Court must determine is whether it has jurisdiction to hear the petition and who should bear the costs of the current motion.
6. The Respondent believes that the letter dated 16th May 2023 in the Petitioners' list of documents contains a list of cases. A quick perusal will reveal that:
 - a. Some suits are before ELC Court 1.
 - b. Some suits are before the ELC Chief Magistrate Court - (6,9,10,15,18).
 - c. Some suits are Magistrates' Civil Suits. (7).
 - d. There is also a High Court Matrimonial cause. (25).
7. Respondent avers that the ELC cannot supervise courts of coordinate jurisdiction like the High Court or ELRC, nor can it supervise Magistrates Courts when not dealing with environmental and land matters. This is in tandem with Article 165(6) closing words. See the decisions in *MWK v PKI* [2021] eKLR, *Republic v Karisa Chengo & 2 others* (Supreme Court Petition No. 5 of 2015) [2017] eKLR, *Patrick Musimba v National Land Commission & 4 others* [2016] eKLR and *Sabina Moraa Swanya v Everly Kemunto Ontiri & another* [2021] eKLR.
8. The Respondent in this Petition is of the view that the Environment and Land Court is a creature of Article 162 (2) (b) of *the Constitution* of Kenya, whose jurisdiction is clearly outlined in the *Environment and Land Court Act* at Section 13 that the ELC cannot arrogate itself the mandate to redress all violations envisaged under the Bill of Rights but is limited to redress violations as outlined - violation of fundamental rights to only rights related to clean and healthy environment.
9. The Respondent concludes that this court cannot deal with the execution of decrees from Magistrate Courts, Civil Cases, and Matrimonial Causes.
10. The Petitioners aver that given the background, as highlighted, they subscribe to the jurisdiction of this court, which is within the purview of Article 162(5)(b) of *the Constitution*, which ousts the jurisdiction of the High Court and hence holds that this court to be the court with the jurisdiction and proceed to urge the court to find that the objection is devoid of merit and the same be dismissed with costs.
11. This Court reiterates what the Court of Appeal stated in *Public Service Commission & 4 others v Cheruiyot & 20 others* (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8



February 2022) (Judgment) in a decision rendered on 8th February 2022 on the jurisdiction question in general as follows:

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders, in “Words and Phrases Legally Defined,” Volume 3, Page 113, defines court jurisdiction as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the 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 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 decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

37. The locus classicus on jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S’ v Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:

“...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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

38. A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

39. The Supreme Court, In the Matter of Interim Independent Electoral Commission [2011] eKLR, Constitutional Application No 2 of 2011 held that jurisdiction of courts in Kenya is regulated by *the Constitution*, statute, and principles laid out in judicial precedent. The Supreme Court at, paragraph 30 of its decision, held in part as follows:

“...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.”

40. In Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, Application No 2 of 2011, the Supreme Court reiterated its holding on a court’s jurisdiction. In the matter of the Interim



Independent Electoral Commission (supra) at paragraph 68 of its ruling, the Supreme Court held as follows:

“(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 itself jurisdiction exceeding that which is conferred upon it by law.”

12. The issue of the jurisdiction of the ELC and other coordinate Courts and the jurisdiction of the Magistrates Court, Tribunals, and other organs falling under the ELC has attracted lots of litigation and boundaries set following the Constitution and the relevant provisions of the law and through judicial precedents and not through judicial craft.
13. I agree with the Respondents in this petition that the ELC cannot entertain all constitutional violations or threats to violations of the fundamental rights as enshrined in the Bill of Rights – since, unlike the High Court, the ELC does not have unlimited jurisdiction, nor can it purport to supervise Coordinate Courts or Magistrates Court, Tribunals, Organs or Quasi-Judicial bodies where the Constitution or enabling legislation donating its power does not permit, but the parameters are set in Article 162(2)(b) and Section 13 of the ELC Act. The ELC will consider constitutional violations or threats to rights in the Bill of Rights limited and within the purview of ‘the environment and the use and occupation of, and title to, land.’
14. If I understand the Petitioners correctly, they approached the High Court with a similar petition; Githinji J., on 7th March 2024, rightly found that the issues raised in the petition involved - “ownership, use, and occupation of land.” He referred the matter to be filed before the ELC.
15. The letter or the directives issued by the Principal Secretary of Interior and Citizen Services dated 5th January 2022 addressed to Regional and County Commanders of Police gave a raft of directions regarding the manner and how police should be involved in evictions. The PS rightly observed that evictions should be conducted humanely so as not to soil the image of the Government not only here but abroad. This is provided under Section 152A - I of the Land Laws (Amendment) Act No. 28 of 2016, featuring the UN Standards on forced evictions – with a human face. The Petitioners believe those directives have stalled genuine evictions and brought a standstill in the enforcement of evictions and that no evictions are being undertaken due to the red tape imposed by those directives; hence, this petition to impugn those directives. The Petitioners believe their rights to own property - land under Article 40 of the Constitution have been infringed, and if those directions are not withdrawn – they will have Court orders in paper form that will remain unenforceable. I can see under Section 152G (2) of the said Act:

“(2) The Cabinet Secretary shall prescribe regulations to give effect to this section.”

16. That will be the discussion in the petition and cannot be disposed of through a Preliminary Objection.
17. Insofar as the petition seeks to question those directives, which revolve around enforcing evictions under lawful Court orders emanating from the ELC, it does not mean the Court will be sitting under the supervision banner and superintending other Coordinate Courts or subordinate Courts. To that extent, this Court will have jurisdiction to proceed further and will not down tools. This petition may bring out the lacuna on evictions generally by failing to enact the Evictions and Resettlement Bill 2012.



18. The Preliminary Objection is hereby dismissed—costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Metto, for the Petitioners

Mr. Wakhungu, for the Respondents

Happy: Court Assistant

