



REPUBLIC OF KENYA



**Kioko v Samuel Mutisya Muthangya t/a Samumu Auctioneers (Civil Appeal E1241 of 2024) [2025] KEHC 3739 (KLR) (Civ) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3739 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1241 OF 2024**

**LP KASSAN, J**

**MARCH 26, 2025**

**BETWEEN**

**ROBERT KIOKO ..... APPELLANT**

**AND**

**SAMUEL MUTISYA MUTHANGYA T/A SAMUMU  
AUCTIONEERS ..... RESPONDENT**

**RULING**

1. The Respondent herein raised a preliminary objection dated 29.11.2024 seeking to have the suit dismissed in its entirety and citing the following grounds:-
  1. The subject matter relates to a dispute on interest to land and this court thus lacks jurisdiction under Article 162 (2) (b), section 13 of the Environment & [Land Act](#) and Section 150 of the [Land Act](#).The preliminary objection was canvassed by written submissions which this court has considered.
2. The Respondent argued that the dispute pertains to land interests and thus falls within the exclusive jurisdiction of the Environment and Land Court (ELC) under Article 162(2)(b) of [the Constitution](#), Section 13 of the [Environment and Land Court Act](#), and Section 150 of the [Land Act](#). Consequently, the High Court Civil Division lacks jurisdiction to hear the appeal.
3. The Appellant, in opposing the P.O., structured the submissions around two main issues: First, whether the P.O. meets the legal threshold as set out in Mukisa Biscuit case. The Appellant argues that the objection is based on contested facts (i.e., whether the case relates to land), which disqualifies it from being a valid preliminary objection as it does not raise a pure point of law. Second, whether the High Court Civil Division has jurisdiction over the matter. The original matter was filed as a Miscellaneous



Civil Case No. E874 of 2024 before the Milimani Commercial Civil Court, not the Environment and Land Court.

4. The Appellant contends that the designation of a matter (Civil vs. ELC) dictates the appellate path. Since the matter was heard under the Civil Division, the appropriate appellate court is the High Court Civil Division, not the ELC. Even if the subject matter involves land, jurisdiction of the ELC must be properly invoked at the point of filing, which was not done. The Appellant supports the argument with Article 165(3)(a) of *the Constitution*, which gives the High Court unlimited jurisdiction in civil matters, and relevant provisions from the *Environment and Land Court Act* and Magistrates' Court Act.

Reliance is also placed on the case of Charles Maina Wambugu v Tsuyoshi Yoshino [2020] eKLR, affirming that matters designated as civil cannot be transferred to the ELC after the fact.

5. I have considered the preliminary objection together with the parties' submissions. the main issue for determination is whether the preliminary objection was merited. The central issue in this case is whether the High Court has jurisdiction to hear a dispute arising from an application to distress for rent, or whether such a dispute falls within the exclusive jurisdiction of the Environment and Land Court (ELC).
6. What amounts to a preliminary objection was discussed in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA, the court held that a Preliminary Objection must raise a pure point of law that can dispose of the suit. The Defendants' objection meets this threshold as it challenges the court's jurisdiction.
7. The Respondent challenged the jurisdiction of this court as the dispute pertained to land interests.
8. It is trite that the issue of jurisdiction should to be determined at the earliest time possible. In Owners of the Motor Vessel 'Lillian '(S) versus Caltex Oil (Kenya) Ltd [1989] KLR1, it was held as follows:-

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

“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 had cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristic. 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.”

9. Article 162(2)(b) of *the Constitution* establishes the ELC to hear disputes relating to the environment, use, occupation, and title to land.



10. Article 165(5)(b) of *the Constitution* explicitly states that the High Court shall not have jurisdiction over matters falling within the jurisdiction of the ELC.
11. Section 13(2)(e) of the *Environment and Land Court Act* grants the ELC jurisdiction over disputes relating to land, including leases, tenancies, and contracts involving land.
12. Section 150 of the *Land Act*, 2012, reinforces the ELC's jurisdiction over land-related disputes.
13. In *Suzanne Butler & 4 Others v Redhill Investments & Another* [2017] eKLR the Court held that:-

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the Courts utilize the Pre-dominant Purpose Test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the High Court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works. The Court must first determine whether the pre-dominant purpose of the transaction is the sale of land or construction. Whether the High Court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse. Ordinarily, the pleadings give the Court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other Courts have done and therefore lends predictability to the issue.”
14. In line with the court in the *Suzanne Butler* case supra, in the case of *Amina Mohamed Harith v Chakama Ranching Company Limited & 5 others* (2023) KEHC 1572 (KLR), the court applied the "predominant purpose test" to determine whether a dispute primarily concerns land. If the predominant purpose of the transaction is land-related, the ELC has jurisdiction.
15. In the case of *Paul Mwai & another v John Muiruri* [2020] eKLR, the court held that disputes involving land use, occupation, and title must be heard by the ELC. The court emphasized that the High Court cannot usurp the jurisdiction of the ELC.
16. This Court notes that there have been several matters involving the Appellant herein over the subject issue, first Civil Misc E986 of 2021 seeking to evict him from the suit property. The trial court granted the orders and he appealed in HCCA E543 of 2021 which was heard and dismissed by the High Court for want of jurisdiction vacating any status quo orders given therein. An ELC case no. E027 of 2023 was filed and the Appellant listed as the 1<sup>st</sup> Defendant. The ELC court delivered a ruling dated 15.06.2023 striking out the entire suit as it was subjudice before the High Court. The irony is that the High Court has now dismissed the matter before it for want of jurisdiction as the matter ought to have been filed before the ELC. Another Civil Misc E874 of 2024 was filed distressing for rent in the said property which the Appellant opposed and the Respondent herein was granted the orders the subject of the appeal herein.
17. The Respondent contends that although the High Court in HCCA E543 of 2021 had granted status quo orders (which have now been vacated) that did not absolve the Appellant from paying rent and as such they had the right to distress for rent. I note that the issue in HCCA E543 of 2021 was eviction orders granted by the lower court sitting as an Environment and Land Court wherefor the appeal from that ruling lay before the Environment and Land Court.
18. Upon perusal of the record coupled with the averments made by the respective parties, it is evident that the subject matter of the dispute herein is that of outstanding rent arrears allegedly owed by the



Appellant to the Respondent's client for which it sought to distress for rent to recover the arrears. Claims arising out of a breach of contract are primarily civil in nature and would therefore fall within the jurisdiction of the High Court. This position was reaffirmed by the Court of Appeal in the case of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna, Edward Njuguna Kangethe, George James Kangethe, Nguru Auctioneers, Leakey Auctioneers & Joserick Merchants Auctioneers* [2017] KECA 79 (KLR) when it rendered itself thus:

“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.

...

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.”

19. From the foregoing, the court is therefore satisfied that the nature of the dispute; and consequently, the appeal; falls well within the purview of the High Court and therefore, this court has jurisdiction in the matter.
20. The Preliminary Objection raised by the Respondent is not merited. The costs to abide the outcome of the appeal.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.**

**HON. L. KASSAN**

**JUDGE**

In the presence of;

Kimosoi for the Applicant

Olala for the Respondent

Carol – Court Assistant

Right of appeal within 30 days.

