



**PWK v JMI & another (Civil Suit E011 of 2025)
[2025] KEHC 11877 (KLR) (Family) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11877 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E011 OF 2025
H NAMISI, J
AUGUST 7, 2025**

BETWEEN

PWK APPLICANT

AND

JMI 1ST RESPONDENT

THE FIREARMS LICENSING BOARD 2ND RESPONDENT

RULING

1. By Plaintiff dated 8 May 2025, the Plaintiff instituted these proceedings against the Defendants seeking the following orders:
 - i. That this Honourable Court be pleased to grant a permanent injunction prohibiting and/or restraining the 1st Defendant, his servants, agents from collecting rent, dealing or interfering in any way with the Applicant’s 30 single rooms located in Kariobangi North on Land Title No. Nairobi/Block 251/1970;
 - ii. That this Honourable Court be pleased to issue an order compelling the 2nd Defendant from ever issuing the Defendant with a firearm
 - iii. Any other relief the Court deems fit to grant.
2. Along with the Plaintiff, the Applicant filed Notice of Motion of even date seeking the following orders:
 - i. Spent;
 - ii. That this Honourable Court be pleased to issue a Protection Order to the Applicant against the 1st Defendant/Respondent prohibiting the 1st Respondent from threatening, harassing or interfering with the Applicant in any way;



- iii. That this Honourable Court be pleased to grant a temporary injunction prohibiting and/or restraining the 1st Respondent/his servants/agents from collecting rent, dealing or interfering in any way with the Applicant's 30 single rooms located in Kariobangi North on Land Title No. Nairobi/Block251/1970 pending the Hearing and determination of this Application;
 - iv. That this Honourable Court be pleased to grant a temporary injunction prohibiting and/or restraining the 1st Respondent/his servants/agents from collecting rent, dealing or interfering in any way with the Applicant's 30 single rooms located in Kariobangi North on Land Title No. Nairobi/Block251/1970 pending the Hearing and determination of this suit;
 - v. That this Honourable Court be pleased to issue an order compelling the 1st Defendant/Respondent to immediately remit all rental income amounting to Kshs. 3,768,000/=, collected from the Applicant's 30 single rooms located in Kariobangi North on Land Title No. Nairobi/Block251/1970 the property since 2023 to the Applicant;
 - vi. That this Honourable Court be pleased to issue an order compelling the 1st Respondent/Defendant to immediately surrender his firearm to the 2nd Defendant/Respondent for safe custody;
 - vii. That the OCS Kasarani to provide the Applicant with security and protection while she inspects her rental property and collects rent from the tenants;
 - viii. That the OCS Kariobangi to ensure compliance with the above orders.
 - ix. costs of this Application be provided for.
3. According to the Plaintiff/Applicant, she and the 1st Respondent have been married for 29 years. Their union was blessed with 3 children. During their marriage, the Applicant and 1st Respondent acquired multiple properties jointly, including rental properties. It is the Applicant's case that the 1st Respondent has been violent towards her throughout their marriage. When his behaviour escalated to extreme levels, the 1st Respondent threatened to use his firearm against the Applicant, thus compelling her to flee their matrimonial home in Thome Estate in 2022.
 4. The Applicant avers that she acquired the property Land Title No. Nairobi/Block 251/1970 before she got married and constructed rental houses consisting of 30 single rooms. The rental income is Kshs 157,000/= per month. However, in 2023, the 1st Respondent, without any color of right, took over collection of the rent and even went as far as changing the account into which the rent is paid. The Applicant claims that the 1st Respondent has employed threats and acts of violence to intimidate the Applicant, preventing her from accessing her rental property and denying her the only source of income she had left.
 5. The Application is brought under sections 8 and 19 of the *Protection Against Domestic Violence Act*, Article 53(2) of *The Constitution* and various provisions of the *Civil Procedure Act*.
 6. In response thereto, the 1st Respondent raised a Preliminary Objection on the following grounds:
 - i. The Orders sought do not fall under the jurisdiction of the Honourable Court.
 - ii. The Application dated 8th May 2025 is defective, misconceived, legally untenable, and/or otherwise bad in law.
 7. Parties canvassed the preliminary objection orally.



8. The legal threshold for a preliminary objection was articulated in the locus classicus case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd EA 696, where it was stated that a preliminary objection must consist of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which, if argued as a preliminary point, may dispose of the suit. It is imperative that such an objection cannot be founded on facts that are disputed or require evidence to be adduced.
9. In the present case, the 1st Respondent's primary ground directly challenges this Court's jurisdiction, which challenge is inherently a pure point of law since it questions the fundamental power and authority of the Court to hear and determine a matter, irrespective of the factual merits of the case. If a court determines that it lacks jurisdiction, it cannot proceed further, and any steps taken would be a nullity. Such a finding would effectively dispose of the application, even the entire suit, thereby satisfying the Mukisa Biscuit (supra) test.
10. The second ground of the objection, which broadly asserts that the Application is defective, legally untenable and/or otherwise bad in law is intrinsically linked to the first. Should this Court find itself without jurisdiction, then the Application would, indeed, be rendered legally untenable, making the jurisdiction challenge the dispositive issue for consideration at this stage.
11. Based on the Preliminary Objection, this Court finds that there are two core issues for determination:
 - i. Whether this Court has the jurisdiction to hear and determine matters relating to the collection of rent and disputes over ownership and possession of property;
 - ii. Whether this Court has the jurisdiction to hear and determine matters relating to issuance, revocation, or surrender of firearm licences
12. Jurisdiction is the very foundation of the Court's authority. Without it, a court is powerless to take even a single step, and any action undertaken in its absence would be rendered a nullity. This fundamental principle was famously articulated in *The Owners of Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd KLR1*.
13. The implication of this principle is profound; even if a party's case appears meritorious, if the court lacks the legal authority to hear it, the entire proceeding is void ab initio. This places a heavy burden on the Court to satisfy itself of its jurisdiction before delving to the substantive merits of any dispute.
14. The Application and Plaint seek temporary and permanent injunction against the 1st Respondent from collecting rent or interfering with the suit property. The Applicant states that she is the absolute proprietor of the said property, which she acquired before marriage.
15. To ascertain the appropriate forum for such a dispute, it is imperative to examine the constitutional and statutory framework governing land matters in Kenya. Article 162(2)(b) of *The Constitution* establishes courts with the status of the High Court to hear and determine disputes relating to the environment and use and occupation of, and title to, land.
16. Section 13 (2) of the *Environment and Land Court Act* unequivocally grants the Environment and Land Court the exclusive jurisdiction to hear and determine disputes relating to:
 - i. environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - ii. compulsory acquisition of land;
 - iii. land administration and management;



- iv. public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - v. (e)any other dispute relating to environment and land.
17. Furthermore, Article 165(5)(b) of *The Constitution* explicitly provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2). This constitutional provisions clearly delineates the boundaries of jurisdiction, ensuring that matters specifically assigned to specialised courts are not encroached upon by the High Court.
 18. In Republic v Chengo & 2 others (Petition 5 of 2015) [2017] KESC 15 (KLR), the Supreme Court authoritatively affirmed the distinct and specialised jurisdictions of the Environment and Land Court and the Employment and Labor Relations Court. The Supreme Court emphasized that the High Court’s jurisdiction is expressly limited by Article 165(5)(b) in matters specifically assigned to these specialised courts. The Court held that where a statute establishes a specialised court to deal with specific matters, that court has exclusive jurisdiction over those matters.
 19. Applying these principles to the case at hand, the Applicant’s claim, while arising within the context of a domestic relationship, fundamentally concerns title to land, use and occupation of land and the rent derived therefrom. This claim falls squarely within the exclusive jurisdiction of the Environment and Land Court. Entertaining a dispute over sole ownership and rent collection of a property by this Court would amount to an encroachment of the Environment and Land Court’s exclusive mandate, thereby undermining the very purposes of establishing specialised courts.
 20. With respect to the firearm, the Application seeks an order compelling the 1st Respondent to immediately surrender his firearm to the 2nd Respondent for safe custody. In the Complaint, she seeks a permanent injunction compelling the 2nd Defendant from ever issuing the 1st Defendant with a firearm. The legal framework governing firearms is primarily the *Firearms Act*. The Act establishes the office of the Chief Licencing Officer and sets out the procedures for the grant of firearms certificates. Section 33 of the Act provides a specific mechanism for appeals against the decisions of the Chief Licensing Officer to the Cabinet Secretary, whose decision is final.
 21. Generally, administrative decisions concerning firearm licences, including their issuance and revocation, fall within the administrative purview of the Chief Licensing Officer, with statutory appeal mechanisms in place. Direct intervention by the Court to permanently bar an individual from holding a firearm licence, as sought by the Applicant, would be pursued through judicial review proceedings to challenge the administrative decision, rather than a direct suit such as this. The role of the Court in such matters is supervisory, ensuring that administrative actions are lawful, rational and procedurally fair, not to issue direct administrative prohibitions that bypass the established statutory processes.
 22. Further, pursuant to section 24 of the *Protection Against Domestic Violence Act*, any proceedings under the Act ought to be pursued in the Resident Magistrate Court.
 23. In the premise, the Preliminary Objection is upheld. The Notice of Motion dated 8 May 2025 and the entire suit are struck out. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:



Applicant: N/A

1st Respondent: Mr. Mbichire

2nd Respondent: N/A

Court Assistant: Lucy Mwangi

