

KENYA / JUDGMENT

Mwatibo & 7 others v Mramba & 6 others; Maungu Ranching (DA) Co Ltd & 3 others (Interested Parties) [2025] KEELC 4828 (KLR) [2025] KEELC 4828 (KLR)

COURT

Environment and Land Court

BEFORE

EK Wabwoto

CASE / FILE NUMBER

Environment and Land Miscellaneous Application
E007 of 2025

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Mwatibo & 7 others v Mramba & 6 others; Maungu Ranching (DA) Co Ltd & 3 others (Interested Parties) (Environment and Land Miscellaneous Application E007 of 2025) [2025] KEELC 4828 (KLR) (Environment and Land) (30 June 2025) (Ruling)

Neutral citation:

[2025] KEELC 4828 (KLR)

Republic of Kenya

In the Environment and Land Court at Voi

Environment and Land

Environment and Land Miscellaneous Application E007 of 2025

EK Wabwoto, J

June 30, 2025

Between

Manuel Ndeleko Mwatibo & 7 others & 7 others

Applicant

and

Nathaniel Mramba

1st Respondent

Newton Mkala

2nd Respondent

Crispus Mbashu

3rd Respondent

Philip Marami

4th Respondent

Fanuel Mwandawiro

5th Respondent

Manuel M. Kitololo

6th Respondent

Al Nas Company Ltd

7th Respondent

and

Maungu Ranching(Da) Co Ltd

Interested Party

Diamond Trust Bank (Voi Branch)

Interested Party

Kenya Commercial Bank (Voi Branch)

Interested Party

County Government Of Taita Taveta)

Interested Party

Ruling

1. The Applicants moved this court vide their application dated 17th May 2025 which application sought inter alia leave to commence and prosecute derivative action against the Respondents.
2. The court on its own motion directed the parties to address it on whether it has jurisdiction to consider the matter. Counsel for the Applicants also raised an issue of conflict of interest in respect to the representation of the 1st to 6th Respondents and the 1st Interested Party by the law firm of Odongo B. O & Company Advocates.

3. In considering the aforementioned issues and pursuant to the directions issued by the court, the parties were directed to file and exchange their written submission on the same. The Applicants filed written submissions dated 26th May 2025 while the Respondents and 1st Interested Party filed written submissions dated 4th June 2025.
4. Citing Article 162(2)(6) of the Constitution and Section 13(1) of the Environment and Land Court Act, it was submitted by the Applicants that this court has powers to determine matters relating to the environment and the use, occupation of and title to land.
5. It was argued that the issues before this court are mixed ranging from management of ranch affairs and the lease entered into between the officials of Maungu Ranch and the 7th Respondent herein. It was also submitted that in the annexure NMW – 13 the draft plaint, the Applicants are seeking an order for a declaration that the further lease agreement dated 24th December 2020 entered between the 1st to 6th Defendants and the 1st Interested Party is illegal null and void and that the said relief can only be granted by this court.
6. It was also submitted that in the event this court finds that it has no jurisdiction then for the interest of justice, this matter be transferred to the court with the competent jurisdiction.
7. As to whether the representation of the law firm of M/S Odongo B. O & Company Advocates for the 1st to 6th Respondents and the 1st Interested Party amounts to conflict of interest, it was argued that the firm of M/S Odongo B. O. & Company Advocates seeks to represent both Respondents and the 1st Interested Party who have contrasting interests. The 1st to 6th Respondents have on one part done injury to the company as enumerated in the Applicants application dated 17th May 2025. The Applicants on the other side are in pursuit of fleecing the company from the 1st to 6th Respondents who have used their position for personal gain resulting to loss and damage to the company. The wellbeing and success of the Interested party on the other hand cannot be achieved with the 1st to 6th Respondents in position. Therefore, the nature or scope of representation of one of the parties herein by the firm will and is likely to materially limit the Advocate's responsibilities to either of them as a result real mischief and prejudice is likely to be occasioned on the part of the Applicants and there will be conflict of interest.
8. The Applicants contended that the firm of M/S Odongo B. O & Company Advocates herein seeking to represent both the 1st to 6th Respondents and 1st Interested Party is seemingly faced with a situation where is confronted by two adverse interests whereby serving one interest would be against the other interest. The Respondents are unwilling to leave their seats in the company because they are illegally benefiting at the detriment of both the Applicants and the company which is the Interested Party. The Interested Party also is looking forward to good governance and operation by removing the 1st to 6th Respondents from management. What the Applicants are claiming is to sanitize and streamline the operations of the Interested Party in which the Respondents have refused to pen down. Allowing the firm to represent both parties herein is mischievous and would likely cause prejudice to the Applicants interests.

9. The 1st to 6th Respondents and the 1st Interested Party on the other hand submitted that the application before this court seeks leave to commence a derivative action and thus pursuant to Part XI of the Companies Act and Section 3 of the said Act, only the High Court has the jurisdiction to hear and determine the said application.
10. On the issue of conflict of interest, it was argued that the court cannot consider the said issue at this stage since the Respondents and Interested Parties are yet to file any response to the application. The court was urged to down its tools for want of jurisdiction.
11. As earlier stated the main issues for consideration by this court at this stage are:-i.Whether this court has jurisdiction to hear the application.ii.Whether the representation of the 1st to 6th Respondents and the 1st Interested Party by the law firm of Odongo B. O & Company Advocates amounts to conflict of interest.
12. The application before court is the one dated 17th May 2025 which essentially seeks leave of this court to commence and prosecute a derivative action against the Respondents. The grounds in support of the application are that the 1 – 6th Respondents have totally breached their duty as directors to exercise reasonable care, skill and diligence, avoid conflicts of interest and promote the success of the company as provided for in the Company's Act 2015, that the 1st – 6th Respondents have resorted to run the affairs of the company with iron fists in total disregard and isolation of the Applicants and all the shareholders including making decisions which are detrimental to the shareholders at large.
13. It was also averred that pursuant to a resolution passed on a meeting held by parties herein the shareholders voluntarily resolved that the 1st – 6th Respondents cease to be company directors and a caretaker committee be appointed to assume the roles of the suspended directors and that the 1st – 6th Respondents have made it difficult for the caretaker committee to work and have therefore continued to be in office illegally.
14. It was further contended that due to embezzlement and mismanagement of funds from the ranch, the shareholders passed a resolution that the 7th Respondents herein occupying 20,000 acres be removed from the land upon his lease expiring. However, the 1st – 6th Respondents without any color of right went further to renew and execute the same lease without the shareholders knowledge/consent which they have denied its whereabouts and further that the 1st, 3rd, 4th and 5th Respondents have recently been charged with a serious criminal offence in Voi MCCR E137/2025 for an offence of making false statement by company official contrary to Section 329(a) of the Penal Code and giving false information to a person employed in the public service contrary to Section 129(a) of the Penal Code.
15. A derivative action is a lawsuit filed by a shareholder on behalf of a Company to address harm caused to the Company, typically due to the actions or omissions of its directors or management. The core idea is that the company itself has a right to sue, but for various reasons, it is not doing so, often because the wrongdoers are in control.

16. Proceedings of this nature are governed by sections 238 to 242 of the Company's Act. By dint of section 238 (1) of the Company's Act 2015 a derivative claim is that which is brought by a member of a Company in respect of a cause of action vested in the Company, seeking relief on behalf of the Company.
17. As rightly submitted by the Respondents the Company's Act defines the court with the requisite jurisdiction as the "High Court".
18. Jurisdiction is not assumed but is explicitly granted by the Constitution or other enabling legislation and in this case the Company's Act 2015.
19. Consequently, and in view of the foregoing analysis it is the finding of this court that the ELC Court does not have the jurisdiction to consider an application for leave seeking to commence and prosecute derivative action against Directors of a Company as stipulated under the Companies Act. The same is exclusively within the domain of the High Court.
20. Having found that the High Court is the appropriate forum for this dispute, I must answer a second, consequential question: must I then strike out the application? The Applicants have urged me not to take the "draconian" step of striking it out but instead transfer it to High Court. They cite, in their aid, the needs for substantive justice.
21. In the case of *Pamoja Women Development Programme & 3 Others v Jackson Kihumbu Wang'ombe & Another* (Kiambu H.C. Civil Suit No. 16 of 2016), Justice Prof. Ngugi (as he then was) when faced with a similar issue had this to say: "Kenyans desired specialised courts to deal with certain matters that they felt should be dealt with by these courts with special expertise and repeated experience in the questions they deal with. What Kenyans bargained for, and got in constitutionalizing the two Article 162(2) courts are the benefits associated with the creation of specialized courts in environment and law (as well as employment relations and labour): improved substantive decision making in the two areas fostered by having experts decide complex cases in the two areas and improving judicial efficiency through decreasing the judicial time it takes to process complex cases by having legal and subject-matter experts with repeated experience on the subject-matter adjudicate them. These were the advantages Kenyans bargained for in creating Article 162(2) Equal Status Courts. Kenyans' objective was not to set up judicial booby traps for unsuspecting litigants who after timeously filing and pleading their cases would have to undergo a technical game of jurisdictional Russian Roulette to determine if their case will survive or be struck out. While Kenyans did not wish to give litigants a blank cheque to file suits in the wrong fora in bad faith, they intended to give parties a fair chance to have their cases determined on their merits. This intention is defeated if, in close cases filed in a Court of cognate jurisdiction but where the parties subsequently or the Court makes a determination that the particular Court in which the matter has been filed does not have the requisite jurisdiction and that the requisite jurisdiction lies in a cognate court, the Court responds by striking out the suit and requiring the parties to file a fresh the suit."

22. Similarly, in the case of *Spinners & Spinners Limited v Spinners & Spinners Limited* [2017] eKLR, it was held as follows; “In my view, this incidental concurrent jurisdiction includes the ability of both the High Court and the Equal Status Courts to deal with certain procedural or administrative questions that present quasi-judicial issues where the Court in question is requested to act in the interests of justice or due administration of justice. This is where I would locate the ability of any of the three superior courts of cognate jurisdiction to transfer to the counterpart superior court any case filed before it that would more appropriately be adjudicated in the cognate superior court. Under this incidental concurrent jurisdiction, the High Court was able, for example, to transfer certain matters to the Environment and Land Court and the Environment and Labour Relations Court initially.”
23. In view of the foregoing, I see no to reason depart from the aforementioned decisions.
24. Considering that this court does not have jurisdiction to consider the matter, I need not address myself on the second issue as to whether or not the representation of the 1st to 6th Respondents and 1st Interested party by the law firm of Odongo B.O & Co. Advocates amounts to conflict of interest as that is an issue that shall be considered by the appropriate court.
25. In respect to courts, having considered that the issue of jurisdiction was raised by the court on its own motion, the appropriate order on costs is to direct each party to bear own costs.
26. The upshot of the foregoing and for the interest of justice, this court hereby issue the following orders:-i.This matter is hereby transferred to the High Court, Voi and the Deputy Registrar of this court is directed to facilitate the same.ii.There shall be no orders as to cost.It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 30TH DAY OF JUNE 2025. E. K. WABWOTOJUDGEIn the presence of:-Mr. Mwazighe for the Applicants.Mr. Odongo for the 1st to 6th Respondents and 1st Interested party.N/A for the other Parties.Court Assistant: Mary Ngoira.

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