



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Eleri Company Limited v Cabinet Secretary, Ministry of Lands
& 2 others (Environment and Land Petition E009 of 2024)
[2025] KEELC 6287 (KLR) (Environment and Land) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6287 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION E009 OF 2024**

MC OUNDO, J

SEPTEMBER 25, 2025

**IN THE MATTER OF APPLICATION UNDER ARTICLES 22(1), 23,
60 AND 64 OF THE CONSTITUTION OF KENYA 2010 FOR THE
ENFORCEMENT OF THE FUNDAMENTAL RIGHTS AND FREEDOMS**

AND

**IN THE MATTER OF SECTIONS 4, 7, SECTION 128 OF THE
LAND ACT, AND REGISTRATION OF LAND ACT CAP 300 (NOW
REPEALED); THE LAND REGISTRATION ACT NO. 3 OF 2012;**

AND

**IN THE MATTER OF THE KENYA GAZETTE NOTICE NO. 7127 THE LAND
REGISTRATION ACT NO. 3 OF 2012 ON CLOSURE OF THE LAND REGISTER
ON CONVERSION OF LAND PARCELS L.R 8622 GRANT I.R. 10805, SITUATE
IN WEST OF KIJABE DISTRICT IN NAIVASHA (NOW LONGONOT/KIJABE
BLOCK 1), L.R NO. 2781/2 GRANT I.R. 30096, L.R NO. 2755/1 GRANT I.R.
17806, L.R NO. 10712 GRANT I.R NO. 19109 AND L.R NO. 2754/2 GRANT
I.R 1891 (NOW NANYUKI MARURA BLOCK 5 (ERERI) ALL SITUATE IN
THE NORTH WEST OF NANYUKI TOWNSHIP IN NANYUKI DISTRICT;**

AND

**IN THE MATTER OF PETITION FOR REVOCATION OF THE KENYA GAZETTE
NOTICE NO. 7127 THE LAND REGISTRATION ACT NO. 3 OF 2012 ON CLOSURE
OF THE LAND REGISTER ON CONVERSION OF LAND PARCELS L.R 8622
GRANT I.R. 10805, SITUATE IN WEST OF KIJABE DISTRICT IN NAIVASHA (NOW
LONGONOT/KIJABE BLOCK 1), L.R NO. 2781/2 GRANT I.R. 30096, L.R NO. 2755/1
GRANT I.R. 17806, L.R NO. 10712 GRANT I.R NO. 19109 AND L.R NO. 2754/2
GRANT I.R 1891 (NOW NANYUKI MARURA BLOCK 5 (ERERI) ALL SITUATE
IN THE NORTH WEST OF NANYUKI TOWNSHIP IN NANYUKI DISTRICT;**



AND
**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION
OF RIGHTS AND FUNDAMENTAL FREEDOMS RULES, 2013**

BETWEEN

ERERI COMPANY LIMITED PETITIONER

AND

CABINET SECRETARY, MINISTRY OF LANDS 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

THE REGISTRAR OF TITLES 3RD RESPONDENT

RULING

1. Vide a Notice of Motion dated 12th September 2024 brought pursuant to the provisions of Articles 22(1), 23, 50, 60, 64 and 159(d) of *the Constitution* of Kenya 2010, Sections 4, 7 and 128 of the *Land Act*, Sections 1A, 1B, 31 and 3B of the *Civil Procedure Act*, Order 40 Rule 1&4 and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, the Applicant seeks for the following orders.
 - i. Spent.
 - ii. That pending the hearing and determination of the Application and Petition, the honorable court be pleased to stay, suspend and/or stop all consequential processes being conducted and/or purported to be conducted upon the illegal, fraudulent and unlawful closure on conversion of the land register in the suit properties herein pursuant to the gazette Notice No. 7127 dated 7th June, 2024.
 - iii. That pending the hearing and determination of the application and Petition, the honorable court be pleased to issue a temporary injunction restraining the Respondents jointly by themselves, their agents, servants, workers, employees, hoodlums, hirelings, licensees or any other person acting on their behalf from dealing with the properties in whatsoever manner including effecting subdivision, transfers, charging and/or in any other manner.
 - iv. That pending the hearing and determination of the Application and suit, the honorable court be pleased to issue a temporary injunction restraining the Respondents jointly by themselves, their agents, servants, workers, employees, hoodlums, hirelings, licensees or any other person acting on their behalf from interfering in whatsoever manner with the process of subdivision of the suit properties herein that had been begun by the Applicant.
 - v. That the court be pleased to issue any other order it deems just and expedient in the circumstances.
2. The said Notice of Motion application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by David Muchiri Ndungu, a member of the Applicant who deponed that at all material times to the instant case, the Applicant owned all of the land properties known as L.R. 8622 Grant I.R. 10805, situate in West of Kijabe District in Naivasha (now Longonot/Kijabe



Block 1, L.R. No. 2781/2 Grant I.R. 30096, L.R. No. 2755/1 Grant I.R. 17806, L.R. No. 10712 Grant I.R. No. 19109 and L.R. No. 2754/2 Grant I.R. 1891 (now Nanyuki Marura Block 5 (Eleri) all situate in North West of Nanyuki Township in Nanyuki District.

3. That at all material times, the Applicant had never, either by itself or authorized agent/representative sub-divided the said properties owing to several court orders preventing them from dealing with the suit properties herein in whatsoever manner. That however, whilst the said orders were still in force, fraudulent and illegal transfers were being done on the suit properties and the titles issued unlawfully, fraudulently and illegally.
4. He deponed that the Applicant was still in possession of the head/mother titles relating to the suit properties having not surrendered the same thus it would not have been practically possible to issue new titles in whatsoever manner. That further, due to the existence of the interim orders, it would not have been legally possible to deal with the suit properties in whatsoever manner or even purport to subdivide and issue subsequent titles.
5. That the closure of title Nos. L.R. 8622 Grant I.R. 10805, situate in West of Kijabe District in Naivasha (now Longonot/Kijabe Block 1, L.R. No. 2781/2 Grant I.R. 30096, L.R. No. 2755/1 Grant I.R. 17806, L.R. No. 10712 Grant I.R. No. 19109 and L.R. No. 2754/2 Grant I.R. 1891 (now Nanyuki Marura Block 5 (Eleri) all situate in North West of Nanyuki Township in Nanyuki District vide the Gazette Notice No. 7127 dated 7th June, 2024 had therefore been illegal, fraudulent, unlawful and equally incompetent and an infringement on the Petitioner/Applicant's fundamental rights under Articles 22(1), 23, 60 and 64 of *the Constitution* of Kenya 2010.
6. That indeed, the High Court in Nakuru HCCC. 220 of 2010 had decreed that any title deeds that had been issued for Longonot/Kijabe Block 1, that is, L.R. No. 8622 had been fraudulent and illegal. That subsequently, vide a letter dated 7th November 1991, the Chief Land Registrar had advised the Land Registrar Nakuru to stop the preparation and issuance of individual titles to the members of the Petitioner/Applicants. That the Chief Land Registrar had in her letter dated 16th August, 1994 addressed to the Land Registrar Nakuru, also stated among other things, that no titles should be issued and that the titles which had been the subject of her letter of 27th July, 1994 to the said Land Registrar must have been issued in error hence the same should be restricted.
7. That further, the Chief Land Registrar had issued yet another letter dated 24th July 1998 in dismay that the Land Registrars Laikipia and Nanyuki respectively had continued to selectively issue titles in respect of L.R. 8622 Grant I.R. 10805, situate in West of Kijabe District in Naivasha (now Longonot/Kijabe Block 1, L.R. No. 2781/2 Grant I.R. 30096, L.R. No. 2755/1 Grant I.R. 17806, L.R. No. 10712 Grant I.R. No. 19109 and L.R. No. 2754/2 Grant I.R. 1891 (now Nanyuki Marura Block 5 (Eleri) all situate in North West of Nanyuki Township in Nanyuki District when surrenders had never been registered in respect of the Head Titles of the suit properties herein.
8. That on 14th May 2009, the Commissioner of Lands had sought information from the District Land Registrar Nakuru on how the parcels of land had been converted to RLA (Cap 300) from RTA (Cap 281) without the RTA title being surrendered and there being in existence court orders registered against the said title more so in Nairobi HCCC No. 3200 of 1990.
9. That subsequently, the Gazette Notice that had been issued by the Registrar of Titles dated 7th June 2024 was illegal as the Applicant still had the Head Titles which had never been surrendered. That in a letter dated 15th June, 2011, the Chief Land Registrar unlawfully purported to validate titles that had been issued illegally without the surrender of the Head Title wherein vide a letter dated 14th February



- 2014, the District Land Registrar had been informed on the restriction in force concerning the suit properties hence any dealings with the same had been illegal.
10. That subsequently, upon their application and payment of the requisite fees, the Applicant had been granted an approval by the County Council of Nakuru to undertake subdivision, change of user, extension of lease and development plan for L.R No. 8622 wherein by a letter dated 7th July, 2022 issued by the Land Control Board, they had been granted consent to proceed with the subdivision.
 11. That on several occasions, the Respondents had jointly and severally confirmed and admitted that no surrender of the titles to the suit properties had ever been registered or effected to enable or to give way for issuance of any new title documents on closure of the head titles. He thus maintained that the purported closure of the land register on conversion of the suit properties herein by the Registrar of Titles dated 7th June 2024 was illegal, fraudulent and unlawful as it had denied the Applicant its fundamental right to ownership of private property. That as a result of the violation and deprivation of the suit properties, they had suffered and continue to suffer loss and damage.
 12. That the Court had the power to grant such remedy as stipulated under the provisions of Article 165(3) of *the Constitution* thus it was only fair and just that the instant Application be allowed as prayed.
 13. Despite the Respondents having been served, they did not file any response to the Applicant's Application.
 14. The application was disposed of by way of written submissions wherein the applicant in its submissions dated 13th March, 2025 first summarized the factual background of the matter in details before framing its issues for determination as follows:
 - i. Whether the Applicant has a prima facie case with a probability of success.
 - ii. Whether the Applicant has proved its case on a balance of convenience.
 - iii. Whether the Applicant will suffer irreparable injury which damages cannot adequately compensate.
 15. On the first issue for determination as to whether the Applicant had a prima facie case with a probability of success, the Applicant hinged its reliance in the decided case of *Mrao Ltd v First African Bank of Kenya* [2003] eKLR to submit that it was the absolute owner of the suit properties. That the closure of the titles on conversion for the suit properties had been done without their knowledge or consent and there being in existence court orders in Nairobi HCCC No. 3200 of 1990 preventing any dealings with the said properties.
 16. That further, the High Court in Nakuru HCCC No. 220 of 2010 had decreed that any titles issued for Longonot/Kijabe Block 1, that is, L.R 8622 was fraudulent and illegal thus tainting the legality of all the other titles that had been issued by the Respondents including the purported closure herein since procedurally and legally, the closure of the head title could only be done where surrender of the old regime title had occurred.
 17. Its reliance was placed on the decisions in the case of *Somerset Africa Limited & another v Mwangi & 5 others* (Environment & Land Case 436 of 2010) [2023] KEELC 20321 (KLR) (28 September 2023) (Judgment) and *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR to submit that having been the absolute owner of the suit properties, and being in possession of proof of ownership, that is, a valid certificate of title, the Respondents had breached the said right by fraudulently, illegally and un-procedurally dealing with the suit properties by causing a closure for the said titles. It thus submitted that it had established a prima facie case with a high probability of success.



18. On the second issue for determination, the Applicant submitted that the balance of convenience lay in its favour as the registered proprietor of the suit properties having in its possession the head titles. Reliance was placed on the decided case of Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR to submit that it had adduced sufficient material to show that the inconvenience caused to it was greater than that which may be caused to the Respondent.
19. The Applicant further placed reliance on the decisions in the Nguruman's case (supra) and Francis Githinji Karobia v Stephen Kageni Gitau [2008] KEHC 3108 KLR to submit that it would suffer irreparable injury for which damages could not be an adequate remedy. That since it had discharged its onus of proving that it had met the threshold set out in Giella v Cassman Brown (1973) EA 358 that the court grants the orders as prayed in its Notice of Motion Application dated 12th September, 2024.

Determination.

20. I have considered the Applicant's application, the submissions, the authorities cited and the applicable law. The Applicant herein seeks for temporary injunctive orders restraining the Respondents from dealing in any way with the property comprised in L.R. 8622 Grant I.R. 10805, situate in West of Kijabe District in Naivasha (now Longonot/Kijabe Block 1, L.R. No. 2781/2 Grant I.R. 30096, L.R. No. 2755/1 Grant I.R. 17806, L.R. No. 10712 Grant I.R. No. 19109 and L.R. No. 2754/2 Grant I.R. 1891 (now Nanyuki Marura Block 5 (Eleri) all situate in North West of Nanyuki Township in Nanyuki District, pending the hearing and determination of the Petition.
21. There was no response to the application which is herein deemed as being unopposed. I have however anxiously considered the said application and noted that the Applicant seeks interim orders of parcels of land both within and outside this court's territorial jurisdiction.
22. The general rule is that a court has jurisdiction to hear and determine a case, and issue orders like an injunction, only if the subject matter or the Defendant is within its territorial or pecuniary jurisdiction. Under Section 12 of the *Civil Procedure Act*, a suit for recovery of immovable property (land) must be filed in the court within whose local limits the property is situated where it is stipulated as follows;

“Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”
23. The overriding objective of the Act and the Rules is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In furtherance of this objective the courts are mandated to ensure the just determination of proceedings, efficient disposal of the business of the court, the efficient use of available judicial and administrative resources and timely disposal of proceedings at a cost affordable to the respective parties.
24. The case herein involves a dispute where the Applicant seeks to recover land so as to subdivide it for its members and where part of the property is within the court's territorial jurisdiction and the other part is outside the said jurisdiction of the court namely North West of Nanyuki Township in Nanyuki District. The principle of law and indeed it is trite that if a suit is filed in the first instance in a court which does not have pecuniary and/or territorial jurisdiction to try it, it can neither be heard nor transferred by the court in which has no such jurisdiction. In the matter before me however having noted the hybrid of the suit parcels of land, the court cannot sieve the matter that falls within its



jurisdiction from the matter that falls outside its jurisdiction as parties shall be held accountable to their pleadings.

25. Indeed, the Court of Appeal in the case of Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR had held as follows;

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks, parties cannot even seek refuge under the “O2” principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of *the Constitution* to remedy the situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer.”

26. The end result is and I find that both the Application herein as well as the Petition are incurably defective and I proceed to strike them out with no costs since the same were undefended.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 25TH DAY OF SEPTEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

