



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mkaya v Gitimu & another (Environment and Land Case E009 of 2025)  
[2025] KEELC 6438 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6438 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E009 OF 2025  
JM ONYANGO, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**CHRISTINE ATIENO MKAYA ..... PLAINTIFF**

**AND**

**MARTIN WANYOIKE GITIMU ..... 1<sup>ST</sup> DEFENDANT**

**JACOB OMONDI ODHIAMBO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction**

1. The Plaintiff has moved this Court vide a Notice of Motion application seeking the following Orders:
  1. Spent...
  2. That pending the hearing and determination of this application, a temporary injunction do issue restraining the Defendant/ Respondents by themselves, their servants or agents from trespassing upon, vandalizing, dividing, transferring or in any way interfering with the use of the property situate on title No. Nachu/Mikuyu/116 of which the Plaintiff/Applicant is the registered owner.
  3. That pending the hearing and determination of the Main Suit, a temporary injunction do issue restraining the Defendant/ Respondents by themselves, their servants or agents from trespassing upon, vandalizing, dividing, transferring or in any way interfering with the use of the property situate on title No. Nachu/Mikuyu/116 of which the Plaintiff/Applicant is the registered owner.



4. That a permanent injunction restraining the Defendants by themselves, their servants or agents from trespassing upon, vandalizing, dividing, transferring or in any way interfering with the use of the property situate on title No. Nachu/ Mikuyu/116 of which the Plaintiff/Applicant is the registered owner.

That in the alternative and due to reasons hereinabove stated, the Defendant/ Respondent be declared contemptuous of the Court process.

5. That the Court be pleased to grant an Order compelling the Officer in Charge of Station (OSC) at Nachu Police Station to enforce Orders 2,3 & 4 above.
6. That this Honourable Court be pleased to make all such further Orders and/ or Directions as it deems fit and just to grant.
7. That the costs of this application be provided for.

2. The application was vehemently opposed by the fairly comprehensive replying affidavit of the 1<sup>st</sup> Respondent, Martin Wanyoike Gitimu deponed on 6<sup>th</sup> February 2025.
3. The 1<sup>st</sup> Respondent contends that he entered into an agreement for the purchase of the property known as Land Parcel No. Nachu/ Mikuyuni/116 (hereinafter the 'suit property') for a consideration of Ksh. 6,500,000/-. He contends that the 2<sup>nd</sup> Respondent was the vendor in the sale agreement having obtained a power of attorney dated 6<sup>th</sup> March 2024 duly signed by the applicant herein.
4. The 1<sup>st</sup> respondent contends that the power of attorney under which the 2<sup>nd</sup> Respondent stood as donee, bore the stamp of legitimacy as it was verified by the firm of Elvis Nanda, Weke & Company Advocates, the very same firm that drew the sale agreement.
5. The 1<sup>st</sup> Respondent further maintains that, in reliance upon that sale agreement between himself and the 2<sup>nd</sup> Respondent, he paid a deposit of Kshs. 1,000,000/- and even assumed possession of the suit property. He contends that on 9<sup>th</sup> January 2025 the applicant went to the suit property and informed his employees she was the owner of the land.
6. Effectively, it is the 1<sup>st</sup> Respondent's position that the application is mala fides and asserts that the applicant herein is a con-artist who is has the intention of defrauding him and asserts his right as a purchaser for value.
7. Moreover, the 1<sup>st</sup> Respondent challenges the jurisdiction of this court on the ground that the value of the suit property is estimated to be Ksh. 7,000,000/- which falls within the province of the magistrate's court.
8. It is the 1<sup>st</sup> Respondent's contention that the application is misconceived and ought to be dismissed with costs.
9. On 18<sup>th</sup> June 2025, the parties were directed to canvas the application by way of written submissions. The applicant duly filed their submissions on 26<sup>th</sup> July 2025 with the respondent's failing and/ or neglecting to comply with the Court's directions.



## Issues

10. Having perused the application, the affidavit in support, the replying affidavit in opposition and the submissions filed, the key issue that emerges for determination is:

Whether the application is before the appropriate forum for the grant of an injunctive relief?

## Analysis and Determination

11. The applicant contends that she is the registered proprietor of the suit property and is inter alia seeking injunctive orders against the respondents alleging that they entered into a fraudulent sale agreement with the object of dispossessing her.
12. Learned counsel for the applicant has submits that the application herein warrants the grant of an injunction.
13. However, before I proceed to consider where the application warrants the grant of an injunctive relief, I take note that in his replying affidavit, 1<sup>st</sup> respondent has placed in issue the jurisdiction of this Court.
14. Jurisdiction is the very foundation upon which the authority of any court is built, and without it, the edifice crumbles into nothingness.
15. It is trite that a court of law cannot validly take even a single step where jurisdiction is absent. The Supreme Court of Kenya pronounced itself in In the Matter of the Interim Independent Electoral Commission [2011] eKLR as follows:
  - “29 Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”
  - 30 The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such 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. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by *the Constitution*.”
16. In essence, jurisdiction is not a matter to be negotiated or implied, but a solemn endowment of the law itself, and where it is lacking, any judicial act taken is rendered void, no matter how well-intentioned.
17. This Court has the jurisdiction of to hear and determine disputes relating to the environment and the use and occupation of and title to land as provided for under Article 162(2) (b) of *the Constitution* of Kenya, 2010 and at Section 13 of the *Environment and Land Court Act*, 2011.



18. The said Section 13 provides as follows:

“ 13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes—
  - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land.”

19. Additionally, the judicial framework of Kenya incorporates the magistrates’ courts, established under Article 169 of *the Constitution* of Kenya, 2010.

20. Pursuant to Article 169(2), Parliament bears the mandate to confer upon those courts their jurisdiction, functions, and powers through legislation. In execution of that mandate, Parliament enacted Section 26(3) and (4) of the *Environment and Land Court Act*, 2011, in the following terms:

- “ (3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.
- (4) Subject to Article 169(2) of *the Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —
  - (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
  - (b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates’ Courts Act.”

21. Accordingly, Parliament enacted the *Magistrates’ Courts Act*, 2015, with the express purpose, among others, of giving effect to Articles 23(2) and 169(1)(a) and (2) of *the Constitution*, and of vesting the magistrates’ courts with their constitutionally sanctioned jurisdiction, functions, and powers.



22. The Act came into force on 2<sup>nd</sup> January 2016, and Section 9(a) provides as follows:

“A magistrate’s court shall -

- (a) in the exercise of the jurisdiction conferred upon it by section 26 of the *Environment and Land Court Act* (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims 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) environment and land generally.” (emphasis added)

23. It follows, therefore, that a magistrate’s court, duly constituted and acting within its pecuniary and statutory limits, is empowered to adjudicate a broad spectrum of disputes touching on land and the environment, including matters of title, possession, and enforceable interests.

24. While it is beyond dispute that this Court, as a superior court, possesses jurisdiction to entertain the present application, the pecuniary value of the dispute brings it squarely within the ambit of the magistrates’ courts.

25. Section 9(a) of the *Magistrates’ Courts Act*, 2015, read together with Section 26 of the *Environment and Land Court Act*, confers upon magistrates’ courts the authority to hear and determine claims relating to land and environmental matters, subject only to statutory pecuniary limits.

26. It is a fundamental principle of judicial administration that matters should be heard in the forum that is both competent and proportionate to the subject matter.

27. In *Patrick Ndegwa Munyua v Benjamin Kiiru Mwangi & Another* [2020] eKLR, the Court affirmed that while a superior court may entertain such disputes, matters falling within the magistrates’ court’s statutory and pecuniary jurisdiction ought to be heard in that forum, thereby promoting judicial efficiency, minimizing unnecessary costs, and respecting Parliament’s allocation of jurisdiction.

28. In this instance, although this Court may entertain the instant application, the value and nature of the claims render the magistrates’ court the more suitable forum.

29. Accordingly, this matter is hereby transferred to the Magistrates’ Court at Kikuyu which is duly vested with jurisdiction over the subject matter considering the pecuniary value of the dispute. Liberty is granted to the Applicant to pursue her claim therein. The interim orders are extended until such time as the lower court shall be seized of the matter.

29. Cost shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED, AT THIKA THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025**



.....  
**J. M. ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr Agimba for the Plaintiff /Applicant
2. No appearance for the Defendant /Respondent

Court Assistant: Hinga

