



Mwang v Indigo Universe Supply Limited & another (Environmental and Land Originating Summons E020 of 2023) [2025] KEELC 7212 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E020 OF 2023
TW MURIGI, J
OCTOBER 9, 2025**

BETWEEN

JULIA WANJIRU MWANG PLAINTIFF

AND

INDIGO UNIVERSE SUPPLY LIMITED 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

RULING

1. By a Chamber Summons dated 7th November 2024, brought under the *Environment and Land Court Act*, *Evidence Act*, *Access to Information Act*, Fair Administrative Actions Act, Landlord and Tenant (Shops, Hotels, and Catering Establishments) Act, Sections 1A, 1B, 3, 3A, 22, 23 of the *Civil Procedure Act* Cap. 21 of the Laws of Kenya, and Orders 8, 14, 16, 20, 26, 27, 40, 50, 51 of the Civil Procedure Rules.2010, Articles 25, 35, 50, 159 of *the Constitution*, the 1st Defendant/Applicant seeks the following orders:-

- i. Spent.
- ii. That the Plaintiff/Respondent be cited for perjury
- iii. That the 1st Defendant amends its Reply and Counterclaim as per the attached draft.
- iv. That the interim orders of 17/07/2023 herein be set aside, altered, or discharged
- v. That the 1st Defendant/Applicant collects rents from the suit property.

Alternatively And Or Further That the rents of the suit property be deposited into a joint interest-earning account of the Plaintiff/Respondent and the 1st Defendant/Applicant; alternatively into court pending determination of this suit. THAT Plaintiff/Respondent provides an account of rents collected for the suit property from 17/08/2021 to date.



- vi. That Equity Bank Limited and its agents be compelled to adduce material evidence in this matter. (Evidence regarding the Ownership and Tenancy of the suit property between 2009 and 2021)
 - vii. That the following court files be brought before this Honourable Court for inspection;
 - a. Nairobi Bprt Case No. 156, 157, 158, & 159 Of 2016: Chris Mwangi Kamutu & Others Vs Ebony Estates
 - B. Nairobi Hccomm 402/2016: Kamu And Wang Industries Ltd. Vs Richard Kariuki & Equity Bank Ltd.
 - C. Nairobi Hccomm 302/2017: Jackson Mutugi Kamau Vs Equity Bank Ltd & Joseph Mungai Kamu T/a Garam Investments
 - d) Others to be adduced
 - viii. That Plaintiff/Respondent does provide security for the costs of this suit for the 1st Defendant
 - ix. That the Plaintiff/Respondent does provide an account/schedule of her assets and income
 - x. That the Plaintiff/Respondent's assets be preserved to secure costs and damages for the suit, among them
 - a. Movables Plaintiff/Respondent has in the suit premises (Connections Medical Clinic)
 - b. Motor vehicle registration KBZ 473Q
 - c. Motor vehicle registration KCA 118U
 - d. Motor vehicle registration
 - e. Mavoko Town Block 12/326
 - f. All other properties of the Plaintiff/Respondent sufficient to satisfy the costs and damages herein
 - xi. That any other orders that meet the ends of justice do issue.
 - xii. That the costs of this Application be provided.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Moses Michira, sworn on even date.

The Applicant's Case

- 3. The deponent averred that the Applicant is the registered owner of L.R. 9042/587(I.R. No. 72111), having acquired the property at a public auction conducted by Equity Bank Ltd.
- 4. He further averred that the previous owner, Jackson Mutugi Mwangi, had attempted to stop the sale in NBI HCOMM No. 302 of 2017.
- 5. Prior to the sale, the Defendant appointed Ebony Estates Limited and subsequently Homeplus Realtors Ltd to manage the property, including collecting rent to offset the loan obtained by Jackson Mutugi Mwangi.
- 6. The deponent stated that the record for the suit property indicates that the Plaintiff was a tenant, which contradicts her allegations in this case.



7. He claimed that the Plaintiff, as a tenant, had previously filed a reference in BPRT Case No. 157 of 2016 against her former landlord, Jackson Mutugi Mwangi, who had proclaimed her moveable property and sought her eviction.
8. The deponent contends that the Plaintiff's claim of being a squatter amounts to perjury because in 2009, the suit property was owned by Kamau and Wang Industries Ltd, with the Plaintiff's late husband, Richard Kariuki, as a shareholder. The Plaintiff and her husband lived on the property with their children before it was sold to Jackson Mutugei Mwangi, who later secured a loan from Equity Bank to finance the purchase.
9. He further contended that the tenancy of Richard Kariuki and his family, including the Plaintiff, was confirmed in NBI HCCOMM No. 402 of 2016 and NBI HCCOM No. 302 of 2017, which contradicts the Plaintiff's claim that she is a squatter. The Plaintiff asserted that during the period Equity Bank appointed agents to manage the suit property, the Plaintiff was a tenant paying rent, although she often defaulted.
10. The deponent urged the court to order the files to be produced in court to prove that the Plaintiff was at the material time lawfully in the suit property as a tenant.
11. He stated that the Applicant was neither a party nor privy to the previous proceedings, and its defense is based on issues that the Plaintiff has dismissed as hearsay and fraudulent.
12. He argued that Equity Bank Ltd and its agents should be compelled to provide relevant material information necessary for the determination of this case since its attempt to join the Bank to the proceedings had failed.
13. According to the deponent, the Plaintiff's blatant misrepresentation amounts to perjury. He stated that the Plaintiff deliberately misrepresented facts to obtain the interim orders of 17/07/2023, and as a result, she has been collecting rent from the suit property, resulting in a loss to the Applicant.
14. The deponent asserts that the court should allow him to collect the rent from the suit property, or that the rent be deposited into a joint interest-earning account or with the court.
15. He also argued that the Plaintiff should be ordered to provide security for costs and disclose her properties, and that the same be preserved to satisfy the judgment in favor of the Applicant.
16. The Applicant seeks to amend its counterclaim to address the issues raised therein.

The Plaintiff/respondent's Case

17. The Respondent opposed the application through her replying affidavit dated 5th December 2024.
18. The deponent averred that the Applicant is attempting to re-litigate similar applications dated 8/5/2023 and 11/12/2023, which have already been dismissed, and no appeal has been filed. She deposed that there is no evidence indicating that the 1st Defendant is the registered owner of the suit property.
19. She further averred that the 1st Defendant's transaction with Equity Bank is of a commercial nature and, therefore, the court lacks jurisdiction to hear, having rendered itself as such.
20. The Respondent contends that the instant application is intended to delay the hearing and determination of this suit.



21. She argued that the claims to set aside the orders issued on 17th July 2023 are unfounded as the Applicant has not filed an appeal against the orders.
22. She asserted that the application is an afterthought and an abuse of the court process. She averred that she has no objection to the Applicant being granted leave to amend its counterclaim as long as she is granted corresponding leave to respond.
23. She asserted that there is no reason to provide a list of her assets or income since she is not on trial. She argued that the claim that Richard was her husband is unfounded.

The Response

24. The Applicant filed a further affidavit in which he reiterated the contents of the affidavit in support of the application.
25. The 1st Defendant filed a Notice of Preliminary Objection dated 14th March 2025 on the following grounds:-
 1. That the suit is defective, misguided, incompetent, prejudicial, and constitutes an abuse of the court process.
 2. That the Plaintiff consistently maintained that the 1st Defendant is not the registered owner of L.R 9042 (LR No 27111), Nairobi County, per paradoxically, irrationally, and in abuse of court process asserts a claim of adverse possession against the 1st Defendant.
 3. That the Plaintiff seeks to unfairly condemn the registered proprietor of L.R No 9042/587 (L.R No 72111) without affording them a right to be heard in violation of the principles of fair hearing and natural justice.
 4. That in the Honourable Court's ruling of 20/03/2024 at paragraph 31, Mogeni J held that there is no evidence laid before the court attesting the 1st Defendant's claim of ownership of L.R No 9042/587
 5. That the Plaintiff's Originating Summons is defective, prejudicial, unlawful, irrational, scandalous, and vexatious and ought to be struck out or dismissed with costs forthwith.
26. The application and preliminary objection were canvassed by way of written submissions.

The 1st Defendant's Submissions

27. The 1st Defendant filed its submissions dated 27th March 2025.

On behalf of the 1st Defendant, Counsel outlined the following issues for the court's determination:-

- a. The Respondent's perjury, concealment, misrepresentation, and abuse of the court process.
- b. Admission of tenancy.
- c. Estoppel/Duplicity
- d. Whether the Applicant should be permitted to amend its reply and counterclaim?
- e. Whether the interim orders issued on 17th July 2023 should be set aside or varied?
- f. Whether the Applicant should be allowed to collect rents or rents should be deposited in a joint account?



- g. Whether Equity Bank Limited and its agents should be compelled to produce evidence?
 - h. Whether the court should call for and inspect related court files?
 - i. Whether the Respondent should be ordered to provide security for costs?
 - j. Whether the Respondent's assets should be preserved to ensure satisfaction of costs and damages
28. On the first issue, Counsel relied on the contents of the supporting affidavit to submit that the Respondent has consistently misrepresented her past relationship with the suit property. Counsel asserts that these misrepresentations amount to perjury, thereby justifying the striking out of her pleadings.
29. Regarding the second issue, Counsel submitted that the Plaintiff filed BPRT No. 157 of 2016 and confirmed in her affidavit dated 9/2/2016 that she was a tenant in possession of the suit property, paying Kshs 100,000/= as rent, which occurred during the alleged period of adverse possession.
30. Regarding the third issue, Counsel submitted that it is well established that adverse possession cannot start until the tenancy has been terminated. Counsel also argued that the Plaintiff's admission does not meet the criteria for claiming ownership through adverse possession. Additionally, Counsel maintained that the Plaintiff is estopped from claiming adverse possession after her admission in the BPRT. To support this point, reliance was placed on Section 39(c) of the *Limitation of Actions Act*, Section 129 of the *Evidence Act*, and on the case of Safaris Unlimited (Africa) Limited v. Muchanga Investment Limited (2009) eKLR.
31. Regarding the fourth issue, Counsel stated that the proposed amendment aims to clarify existing issues based on facts before the court, not to introduce a new cause of action.
32. On the fifth issue, Counsel argued that the injunction should be set aside because it was obtained through concealment and misrepresentation of facts.
33. It was argued that the injunction is motivated by an ulterior motive to collect rents surpassing Kshs 1,100,000/= per month from the disputed property, an amount the Plaintiff cannot afford to pay, especially since she is a squatter who has repeatedly failed to pay the Kshs 100,000/= monthly rent.
34. Counsel argued that the orders of 17/07/2023 should be set aside or varied to prevent the Plaintiff from unjustly enriching herself at the expense of the 1st Defendant. It was also contended that the application is not res judicata because it was filed after new evidence of misrepresentation was discovered.
35. On the sixth issue, Counsel argued that the Plaintiff is unlawfully collecting rent from the suit property, thereby depriving the Applicant, the lawful owner, of income. It was also submitted that the interim orders did not address the issue of rent collection.
36. Counsel further argued that the Applicant has proven it is the registered owner of the suit property, having acquired it through a public auction carried out by Equity Bank Ltd under its statutory power of sale. Counsel also contended that the Plaintiff does not have standing to challenge the Applicant's ownership because she is neither the chargor nor an Interested Party.
37. It was further submitted that the Applicant will suffer irreparable harm if the interim orders are not set aside and the rental income preserved, since the Plaintiff's financial capacity is unknown. Counsel argued that the Plaintiff has not demonstrated her ability to compensate the Defendant if the suit is determined in its favour.



38. Counsel further submitted that the balance of convenience tilts in favour of the Applicant since it is the owner of the suit property.
39. On the seventh issue, Counsel argued that the Plaintiff is required to account for all income received from the suit property, which she has failed to do.
40. Regarding the eighth issue, Counsel contended that although the Applicant had previously requested the production of material evidence from Equity Bank, the bank declined to cooperate without a court order. It was further submitted that the evidence is pertinent for establishing the chain of title, tenancy arrangements, and ownership history.
41. On the ninth issue, Counsel submitted that the proceedings in BPRT Case No 156- 159, HCCOMM 402 of 2016, and HCCOMM 302 of 2017 should be brought to court for inspection as they contain crucial evidence that proves the Plaintiff's status and prior admissions.
42. On the tenth issue, Counsel submitted that the Plaintiff should be ordered to provide security for costs.
43. Concluding his submissions, Counsel urged the court to allow the application with costs to the Applicant.

The Plaintiff/respondent Submission

44. The Plaintiff filed her submissions dated 13th March 2025.
On behalf of the Plaintiff, Counsel submitted that the application is an abuse of the court process because the Applicant is seeking similar orders to those in its earlier applications dated 8th May 2023 and 11th December 2023, which were dismissed, and no appeal was preferred against the rulings.
45. It was submitted that in the application dated 8th May 2023, the Applicant sought to be reimbursed by the Plaintiff for rent collected from the suit property, while in the application dated 11th December 2024, the Applicant sought leave to join Equity Bank as an Interested Party or to make them a party to the proceedings.
46. Counsel further argued that the Plaintiff should not be penalized by reversing the orders, as the temporary injunction was granted after hearing both parties. It was also argued that the delay in scheduling this matter for hearing was caused by the Defendant.
47. Counsel further submitted that the Applicant has not demonstrated that the Respondent will be unable to cover the costs in the event that he is successful. To buttress this argument, Counsel relied on the case of Aggrey Shivona v Standard Group IC (2020)eKLR.
48. It was argued that it is premature to compel third parties to attend court since the matter has not been set down for hearing. It was further argued that the 1st Defendant has not demonstrated that it had sought for summons for the intended witnesses who have failed to appear and testify in court.
49. In summary, Counsel argued that the issues raised by the Applicant are factual matters that should be addressed during the hearing.

Analysis And Determination

50. Having considered the application, the preliminary objection, the respective affidavits, and the rival submissions, the following issues fall for determination:-
 - a. Whether the preliminary objection is merited?



- b. Whether the Applicant is entitled to the orders sought in the application?
51. The law on Preliminary Objections is well settled. A Preliminary Objection must be based on a pure point of law.
52. In *Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd* (1969) EA 696, Law JA stated;
- “So far as I’m aware, a preliminary objection consists of point of law which have been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
53. Further on, Sir Charles Newbold JA stated;
- “The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”
54. In *Oraro Vs Mbaja* (2005) eKLR Ojwang J (as he then was), described it as follows;
- “I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”
55. It is thus clear that a preliminary objection must raise a pure point of law which is premised on the presumption that all facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained or where the court is called upon to exercise judicial discretion. In the matter at hand, the 1st Defendant’s preliminary objection is based on the ownership of the suit property. The issue of ownership of the suit property is contested and involves facts that must be established through evidence. Consequently, this court finds and holds that the preliminary objection does not raise a pure point of law.
56. The 1st Defendant accused the Plaintiff of perjury.
- Perjury is defined in *Black’s Law Dictionary*, 9th Edition, as;
- “The act or an instance of a person’s deliberate making material false or misleading statements while under oath.”



57. The offence of false swearing is provided under Section 114 of the Penal Code as follows:
- “ Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or to take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration of such committed in a judicial proceeding would have amounted to perjury is guilty of a misdemeanour.
58. In the case of Julius Mulinge v Freight Ltd Vegro (K) Ltd, Simba Colt Motors Ltd & High Class Auctioneers (2016) KEELRC 11 (KLR), the court identified the elements of perjury as follows.
- That a person
- A) being a lawfully sworn witness or interpreter
 - b) in judicial proceedings
 - b) Deliberately makes a material statement that is false and
 - d) knowing that it is false or not believing it to be true.
59. The 1st Defendant claims that the Plaintiff has misrepresented her past relationship with the suit property. It was argued that the Plaintiff in previous proceedings claimed she was a tenant of the suit property, which contradicts her allegations in this case. It was further argued that her tenancy was confirmed in BPRT No. 157 of 2016 against her former landlord, who sought her eviction, NBI HCCOMM No. 302 of 2017, and 402 of 2017
60. Based on the above, the Applicant sought to have the interim orders set aside because they were obtained through concealment of facts and misrepresentation. From the pleadings, it is clear that the 1st Defendant’s defence is anchored on the statements made by the Plaintiff in various suits before the High Court and the BPRT. In my view, the issue of perjury would require parties to interrogate the documents and statements in a full trial.
61. The Applicant sought an order to collect rent from the suit property or to have it deposited into a joint interest-earning account or with the court. In the application dated 8/05/2023, the Applicant had sought an injunction restraining the Plaintiff from collecting rent from the suit property, amongst other orders. The application was dismissed vide the ruling delivered on 17th July 2023. No appeal has been filed against the order and therefore the order sought is res judicata. Based on the foregoing, I find that the prayer for the Plaintiff to provide an account of rents collected from 17/08/223 is untenable.
62. On whether the court files in BPRT Nos. 156 – 159 of 2016, NBI HCCCOM No 402 of 2016, and 302 of 2017 should be brought to court for inspection. This court is of the view that the Applicant should request certified proceedings of the same.
63. The Applicant is seeking to amend its reply to the Originating Summons and counterclaim as per the annexed amended affidavit. There is no provision for filing an amended affidavit. The Applicant ought to have filed a further affidavit in response thereto. Be that as it may, the Applicant is at liberty to seek the amendment of its reply to the originating summons and counterclaim in accordance with the law.
64. On whether Equity Bank and its agents should be compelled to adduce material evidence, this court finds and holds that the Applicant may apply for summons to issue to the witnesses in line with Order 16 Rule 1 of the Civil Procedure Rules.



- 65. On the issue of security for costs, Order 26 Rule 1 of the CPR 2010 provides as follows: -

“In any suit, the court may order that security for the whole or part of the costs of defendant or their or subsequent party be given by any other party”
- 66. In the case of Shah v Shah (1982), the court stated thus: _

“The general principle rule is that security is normally required from Plaintiffs resident outside the jurisdiction; however a court a court has discretion to be exercised reasonably and judicially to refuse to order the security be given. The test on an application for security of costs is not whether the plaintiff has established a prima facie case but whether the defence has shown a bona fide defence.”
- 67. The onus of proving the Plaintiff would be unable to pay costs if the suit fails squarely lies on the 1st Defendant. It is not enough to allege that the Plaintiff will be unable to pay costs in the event that she is unsuccessful. The Applicant has not presented any evidence to demonstrate that the Plaintiff would be unable to pay costs if she is unsuccessful.
- 68. Consequently, the prayer to preserve the Plaintiffs' properties to secure costs and damages fails.
- 69. In the end, I find that the preliminary objection and application dated 7th November 2024 is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 9TH DAY OF OCTOBER, 2025.

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HON. T. MURIGI
JUDGE

In The Presence Of:
Aketch for the 1st Defendant/Applicant
Karanja for the Respondent
Ahmed – court assistant

