



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
CASE NO. ELCL E375 OF 2024

ALY ENTERPRISES LIMITED 1ST

PLAINTIFF

-VERSUS-

ABSA BANK KENYA PLC 1ST

DEFENDANT

ABIB ZAMZAM ABDI t/a

ABIB & ASSOCIATES ADVOCATES 2ND

DEFENDANT

STARK FAST LIMITED 3RD

DEFENDANT

GULF AFRICA BANK LIMITED 4TH

DEFENDANT

CHIEF LAND REGISTRAR 5TH

DEFENDANT

HON. ATTORNEY GENERAL 6TH

DEFENDANT

AND

MAFUTA PRODUCTS LIMITED 1ST

INTERESTED PARTY

HALAL MEAT PRODUCTS LIMITED 2ND

INTERESTED PARTY

RULING

A. Introduction

1. Before this Court for determination are several **Preliminary Objections** raised by the Defendants challenging the jurisdiction of this Court to entertain the suit filed by **Aly Enterprises Limited** and seeking to have the same struck out in limine.
2. The **5th and 6th Defendants** (the Chief Land Registrar and the Hon. Attorney General) filed their Preliminary Objection dated **28th November 2024**, contending that this Honourable Court lacks jurisdiction to hear and determine the present dispute, which they submit is purely commercial in nature, arising from a charge and the exercise of a statutory power of sale, and thus falls within the jurisdiction of the **High Court** under Article 165(3) of the Constitution and not the **Environment and Land Court** established under Article 162(2)(b).
3. The **1st Defendant, Absa Bank Kenya PLC**, filed its Preliminary Objection dated **6th January 2025** on similar grounds. It asserts that the dispute relates to a **financial transaction** involving a charge, loan facilities, and the realization of a security through a private treaty sale, and therefore lies within the **commercial and civil jurisdiction of the High Court**. The 1st Defendant further argues that the present suit is an **abuse of the court process**, the same having been previously filed as **ELC Case No. E039 of 2024** between the same parties over the same subject matter, which was withdrawn for want of jurisdiction.
4. The **3rd Defendant, Stark Fast Limited**, filed its Preliminary Objection dated **28th January 2025**, equally challenging this Court's jurisdiction. It contends that the dispute, as pleaded, revolves around the **exercise of a chargee's statutory power of sale, loan accounts**, and the **transfer of the charged property** to the 3rd Defendant. It further

argues that questions raised regarding company directorship and authority under the Companies Act fall outside the mandate of this Court.

5. The **4th Defendant, Gulf African Bank Limited**, filed a separate Preliminary Objection dated **30th January 2025**, asserting that this Court lacks jurisdiction to determine disputes pertaining to the **creation, validity, or enforcement of legal charges**, the **statutory power of sale**, or related commercial transactions. The 4th Defendant relies on decisions of the Court of Appeal, including **Bank of Africa Kenya Limited & Another v TSS Investment Limited & 2 Others (Civil Appeal No. E055 of 2022)** and **Co-operative Bank of Kenya Limited -Vs- Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR**, to argue that such disputes fall within the exclusive province of the High Court.
6. **The Court thereafter directed that the Preliminary Objections be dispensed with by way of written submissions.**

B. Submissions by the Parties

a) Submissions by the 1st Defendant

7. The **1st Defendant**, submitted that the dispute as pleaded is **purely commercial**, arising from a borrower-lender relationship and the subsequent **exercise of a statutory power of sale** under a charge instrument. It argued that the **Environment and Land Court** lacks jurisdiction to deal with disputes relating to **charges, mortgages, and the realization of securities**, as these do not involve issues of land use or occupation. Counsel relied on **Article 162(2)(b)** of the Constitution and **Section 13(2)** of the Environment and Land Court Act, submitting that the suit falls within the **civil jurisdiction of the High**

Court.

8. The 1st Defendant relied on the Court of Appeal decision in **Co-operative Bank of Kenya Limited -Vs- Patrick Kang’ethe Njuguna & 5 Others [2017] eKLR**, where it was held that disputes over mortgages and charges are not within the ELC’s jurisdiction. It further cited **Owners of the Motor Vessel “Lillian S” -Vs- Caltex Oil (Kenya) Ltd (1989) KLR 1** for the proposition that where a court lacks jurisdiction, it must “down its tools.” Counsel also argued that this suit amounts to an **abuse of the court process**, having been previously filed and withdrawn under **ELC Case No. E039 of 2024**.

b) Submissions by the 3rd Defendant

9. The 3rd Defendant, averred similar submissions to those of the 1st Defendant adding that the present suit’s **core issue** is a challenge to the **statutory power of sale**, the **loan accounts**, and the **validity of sale documents** executed following that power. It was submitted that these issues are commercial in nature and do not fall within the ambit of “use, occupation or title to land. “The 3rd Defendant relied on the Court of Appeal decision in **Bank of Africa Kenya Limited & Another -Vs- TSS Investment Limited & 2 Others (Civil Appeal No. E055 of 2022)**, which reaffirmed that disputes relating to **charges, mortgages, and enforcement of securities** belong to the **High Court**.

c) Submissions by the 4th Defendant

10. The 4th Defendant, submitted that the **jurisdiction of the Environment and Land Court** is expressly limited to matters

concerning **use, occupation, and title to land**, as provided under **Article 162(2)(b)** of the Constitution and **Section 13 of the ELC Act**. The bank contended that the Plaintiff's grievances concern **enforcement of contractual and financial obligations** under a charge, not issues of land use or tenure.

11. In support, counsel cited the binding decisions of the Court of Appeal in **Bank of Africa Kenya Limited & Another -Vs- TSS Investment Limited & 2 Others (Civil Appeal No. E055 of 2022)** and **Co-operative Bank of Kenya Ltd -Vs- Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR**, which held that the ELC's jurisdiction does not extend to disputes arising from **mortgages and statutory power of sale**. It was urged that the **predominant issue** in this case is the enforcement of financial rights under a loan agreement, and that this Court should therefore **down its tools** for want of jurisdiction.

d) **Submissions by the 5th and 6th Defendants**

12. The **5th and 6th Defendants**, represented by the Hon. Attorney General, submitted that the **Environment and Land Court** lacks jurisdiction to hear this dispute as it emanates from a **commercial transaction**, not a land-use or ownership question. They argued that the Plaintiff's allegations about irregular sale and transfer of the charged property arise from **enforcement of a charge**, which is a **commercial remedy** governed by the Land Act and the Law of Contract Act, and thus properly lies with the **High Court**.

13. Counsel cited **Article 162(2)(b)** of the Constitution and **Section 13 of the ELC Act**, as well as the persuasive authority of **Joel Kitatha Mbaluka t/a Mbaluka & Associates Advocates -Vs- Daniel Ochieng Ogola t/a Ochieng Ogola & Co. Advocates [2019] eKLR**, in

which the Court of Appeal reiterated that charges and mortgages are outside the ELC's remit. The 5th and 6th Defendants therefore urged the Court to **strike out** the suit for want of jurisdiction, with costs.

e) **Submissions by the Interested Parties (in Opposition)**

14.The **1st and 2nd Interested Parties**, *Mafuta Products Limited* and *Halal Meat Products Limited*, opposed the Preliminary Objections. They argued that the **Plaintiff's prayers** seek declarations touching on **ownership, title, and registration of land**, which fall squarely within the jurisdiction of this Court under **Article 162(2)(b)** and **Section 13(2)** of the ELC Act. It was submitted that the dispute goes beyond the loan or charge instruments and extends to the **validity of the transfer and title** obtained by the 3rd Defendant, matters that lie exclusively within the ELC's domain.

15.The Interested Parties relied on **Nguruman Limited -Vs- Jan Ronde Nielsen & Another [2014] eKLR**, where the Court held that the ELC retains jurisdiction even where commercial aspects exist, so long as title or ownership is in dispute. They also invoked **Article 165(5)(b)** of the Constitution, which expressly bars the High Court from handling matters reserved for the ELC. Counsel urged that the POs be dismissed as premature, asserting that the suit raises substantial **questions of title, registration, and possession** that must be determined on their merits.

f) **Submissions by the Plaintiff**

16.The **Plaintiff**, *Aly Enterprises Limited*, opposed the Preliminary Objections and submitted that this Court is **properly seized of jurisdiction** to determine the matter. It narrated that it had initially filed **ELC Case No. E039 of 2024**, which was withdrawn after jurisdiction was contested, and subsequently re-filed in the High Court as **HCCOMM**

E376 of 2024, where Hon. Justice Visram Aleem Alnashir expressly held that the dispute revolved around **ownership and title to land** and should therefore be heard before the **Environment and Land Court**. Acting on that directive, the Plaintiff filed the present suit. It was urged that the current dispute challenges the **sale, transfer, and registration** of the suit property and raises issues of **title, possession, and ownership**, not loan enforcement or accounting, thus falling within the scope of **Article 162(2)(b)** of the Constitution and **Section 13(2)** of the Environment and Land Court Act.

17. Counsel emphasized that the **predominant issue** before the Court is not the charge instrument itself but the **process and legality of the private treaty sale**, subsequent **transfer of ownership**, and registration of a new charge in favour of the 4th Defendant. The Plaintiff relied on the decisions in **Suzanne Achieng Butler & 4 Others -Vs- Redhill Heights Investments Ltd [2016] eKLR** and **Lydia Nyambura Mbugua -Vs- Diamond Trust Bank Kenya Ltd & Another [2018] eKLR**, where the courts adopted the *predominant issue test*, holding that where the central dispute concerns the **sale, disposition, or ownership of land**, jurisdiction rests with the ELC. The Plaintiff further invoked **Section 150 of the Land Act**, which empowers this Court to determine disputes arising under that Act, including those relating to **sale of charged property**.

18. It was also contended that the **Defendants' objections are a dilatory tactic** aimed at frustrating substantive justice. The Plaintiff cited **Independent Electoral & Boundaries Commission -Vs- Cheperenger & 2 Others [2015] KESC 2 (KLR)** where the Supreme Court cautioned against misuse of preliminary objections as a "sword" to avoid a hearing on the merits. The Plaintiff urged the Court to note that it has been **dispossessed of its property** and seeks reliefs founded

squarely on **ownership, registration, and rectification of title**, all of which are core questions within this Court's constitutional mandate. Reliance was placed on **Lydia Nyambura Mbugua (supra)** and **TKM Maestro Ltd & Another -Vs- Bank of Africa (K) Ltd & Another [2023] KLR**, where it was held that challenges to the process of sale by a chargee touch on **title and ownership of land** and thus fall within the ELC's jurisdiction. The Plaintiff therefore prayed that the Preliminary Objections be dismissed with costs.

Issues for Determination

- 19.** I have carefully considered the Preliminary Objections raised by the 1st, 3rd, 4th, 5th, and 6th Defendants, the respective submissions by all parties, and the authorities relied upon. From the pleadings and the nature of the prayers sought in the Plaint, it is evident that the objections raise a singular question concerning this Court's jurisdiction.
- 20.** Consequently, the Court distills the following **three issues for determination**:
- a)** Whether this Honourable Court has jurisdiction to hear and determine the present dispute as framed in the Plaint;
 - b)** Whether, the dispute is properly characterized as a commercial matter falling within the jurisdiction of the High Court or as a land dispute within the mandate of the Environment and Land Court;
and
 - c)** Whether the filing of the present suit amounts to an abuse of the court process in view of the previous proceedings involving the same parties and subject matter.

C. Analysis and Determination

Issue 1: Whether this Honourable Court has jurisdiction to hear and determine the present dispute as framed in the Plaintiff

- 21.** The starting point in any judicial inquiry is whether the Court is properly seized of jurisdiction. As stated in the celebrated case of **Owners of the Motor Vessel “Lillian S” -Vs- Caltex Oil (Kenya) Ltd [1989] KLR 1,** jurisdiction is everything; without it, a court must down its tools. Jurisdiction flows from the Constitution, statute, or both, and cannot be conferred by the parties' consent or the court's discretion.
- 22.** The jurisdiction of this Court emanates from **Article 162(2)(b)** of the Constitution of Kenya, which establishes courts with the status of the High Court to hear and determine disputes relating to the *environment and the use, occupation, and title to land*. Pursuant to that provision, Parliament enacted the **Environment and Land Court Act, 2011**, and under **Section 13(2)** thereof, this Court is empowered to hear and determine disputes relating to, among others, *title, tenure, boundaries, rates, rents, valuations, and any other dispute relating to environment and land*.
- 23.** In the instant case, the Plaintiff's Plaintiff dated 11th September 2024 seeks the following substantive reliefs: A declaration that the purported sale by private treaty over **Title No. Nairobi/Block 95/38** is illegal and void; A declaration that the **transfer and registration** of the said property in the name of the 3rd Defendant is unlawful and that the **Chief Land Registrar** should cancel the title and **revert ownership** to the Plaintiff; A declaration that the **charge in favour of the 4th Defendant** is null and void and an order for its discharge; and a **permanent injunction** restraining the Defendants from interfering with the Plaintiff's

ownership and possession of the said land.

- 24.** From the above, the **gravamen of the dispute** is the validity of the sale, transfer, registration, and charge over the suit property matters that touch squarely on **title, ownership, and possession of land**. The Plaintiff does not contest the initial charge or loan facility as a commercial transaction but rather challenges the **legality of the disposition** of its land through alleged fraud and irregular processes.
- 25.** The Defendants, on the other hand, argue that because the dispute originates from a **charge and exercise of a statutory power of sale**, it is a **commercial dispute** that properly falls within the jurisdiction of the High Court. They rely on the Court of Appeal's holdings in **Co-operative Bank of Kenya Ltd -Vs- Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR** and **Bank of Africa Kenya Ltd & Another -Vs- TSS Investment Ltd & 2 Others (Civil Appeal No. E055 of 2022)**, where it was held that disputes arising from *mortgages, charges, collection of dues, or accounting* fall within the civil jurisdiction of the High Court, not the ELC.
- 26.** However, as the Court observed in **Lydia Nyambura Mbugua -Vs- Diamond Trust Bank Kenya Ltd & Another [2018] eKLR**, the ELC's jurisdiction extends to cases where the **core issue concerns the process of sale, transfer, and registration of title** as these are matters of land ownership rather than banking transactions. Similarly, in **Suzanne Achieng Butler & 4 Others -Vs- Redhill Heights Investments Ltd & Another [2016] eKLR**, the Court developed the "**predominant issue test**," holding that jurisdiction must be determined based on the dominant issue disclosed in the pleadings and prayers sought.

27. Applying that test, it is evident that the **predominant issue** in this case is not the commercial loan agreement but the **integrity of the title** to the property known as *Nairobi/Block 95/38*, the **legality of the transfer** to the 3rd Defendant, and the **validity of the subsequent charge**. The Plaintiff seeks orders that directly affect the **Land Register** and the **proprietary interests** in the suit property remedies that fall exclusively within this Court's mandate under **Section 13(2)(d) and (e)** of the Environment and Land Court Act.
28. This position was further affirmed in **TKM Maestro Ltd & Another -Vs- Bank of Africa (K) Ltd & Another [2023] KLR**, where the Court held that where a plaintiff challenges the sale or disposition of land pursuant to a charge as opposed to the terms of the charge itself the dispute relates to **ownership and title** and falls within the jurisdiction of the ELC. Likewise, in **Stephen Kibowen -Vs- Agricultural Finance Corporation [2015] eKLR**, it was held that a dispute over an allegedly illegal sale of charged land is a land dispute as it affects ownership and title.
29. The Court also takes cognizance that paragraph 22 of the Plaint discloses that the Plaintiff had previously filed a similar matter before the High Court (HCCOMM E376 of 2024), where the Learned Judge, **Hon. Visram Aleem Alnashir**, directed that the dispute concerns **ownership and title to property**, and therefore properly belongs before the Environment and Land Court. That prior judicial pronouncement provides persuasive guidance as to the proper forum for the determination of this matter.
30. Guided by the above authorities and the specific reliefs sought, this Court finds that the Plaint raises **questions of ownership, registration, and cancellation of title**, all of which fall squarely within the **jurisdiction of the Environment and Land Court** as envisaged

under **Article 162(2)(b)** of the Constitution, **Section 13(2)** of the ELC Act, and **Section 150** of the Land Act.

31. Accordingly, the Court finds and holds that it is **properly seized of jurisdiction** to hear and determine this dispute. The Defendants' objection on jurisdiction is therefore **without merit**

Issue 2: Whether the dispute is properly characterized as a commercial matter falling within the jurisdiction of the High Court or as a land dispute within the mandate of the Environment and Land Court

32. The second issue arises from the Defendants' contention that the dispute originates from a **charge and the exercise of a statutory power of sale**, and is therefore a **commercial matter** within the jurisdiction of the High Court under Article 165(3) of the Constitution. Conversely, the Plaintiff maintains that the dispute concerns the **ownership, registration, and cancellation of title** to land, which falls squarely within the jurisdiction of this Court as provided for under **Article 162(2)(b)** and **Section 13 of the Environment and Land Court Act**.

33. In resolving this issue, the Court is guided by the principle that **jurisdiction is determined from the pleadings**, not the defences or the manner in which the cause of action arose. The Court of Appeal in **Co-operative Bank of Kenya Ltd -Vs- Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR** observed that where the core of the dispute is *the creation or enforcement of a charge, mortgage, or recovery of monies secured thereby*, the matter falls within the **commercial jurisdiction of the High Court**. However, where the dispute concerns *title, occupation, or use of land*, it falls within the **Environment and**

Land Court's jurisdiction.

34.The Court in **Bank of Africa Kenya Ltd & Another -Vs- TSS Investment Ltd & 2 Others (Civil Appeal No. E055 of 2022)**

reaffirmed that position, holding that disputes centered on the **exercise of a chargee's statutory power of sale** are commercial in nature, unless they go further to question the **legality of the resultant title**. The Court stated that the ELC is concerned with *the legal consequences of transactions that directly affect ownership or title to land*, rather than with the commercial agreements that precede them.

35.Turning to the present case, the Plaint dated **11th September 2024** is explicit in its prayers. The Plaintiff seeks, among others: A **declaration** that the sale by private treaty was **illegal and void**; A **cancellation of title** issued to the 3rd Defendant and a **reversion of ownership** to the Plaintiff; and A **discharge of the charge** registered in favour of the 4th Defendant, alongside a **permanent injunction** restraining interference with the Plaintiff's possession of the land. These prayers are not merely ancillary to a loan dispute but go to the **core of ownership and proprietary rights** over the land.

36.The **predominant issue test**, enunciated in **Suzanne Achieng Butler & 4 Others -Vs- Redhill Heights Investments Ltd & Another [2016] eKLR**, provides that in determining jurisdiction, the Court must consider the *dominant issue or subject matter* of the suit as revealed by the pleadings and the reliefs sought. Applying this test, it is clear that the dominant issue before this Court is not the charge itself or the repayment of the loan but the **validity of the transfer and the existence of competing proprietary interests**.

- 37.** This reasoning finds support in Lydia Nyambura Mbugua -Vs- Diamond Trust Bank Kenya Ltd & Another [2018] eKLR, where the Court held that even where a charge exists, once the plaintiff challenges the *process of sale and transfer of title*, the dispute ceases to be a commercial matter and becomes a **land dispute**. Similarly, in TKM Maestro Ltd & Another -Vs- Bank of Africa (K) Ltd & Another [2023] KLR, the Court stated that the ELC is the proper forum to determine allegations of *illegal disposition and registration of title*, even if those acts originated from a charge.
- 38.** The Plaintiff's cause of action as set out in Paragraphs 16 of the Plaint alleges *fraudulent sale, forged instruments, unlawful transfer, and illegal registration of a new charge*. These allegations are squarely anchored in the **Land Registration Act** and the **Land Act**, both of which fall under this Court's jurisdiction as per **Section 150 of the Land Act**, which expressly vests in the ELC the power to hear and determine disputes concerning land under the Act.
- 39.** The Court therefore agrees with the Plaintiff that, although the dispute emanated from a charge, the **predominant character** of the suit is one of **ownership, title, and registration of land**. The Plaintiff is not seeking to enforce or contest the charge agreement; rather, it challenges the *manner in which proprietary rights were extinguished and transferred* through alleged fraud and irregular sale.
- 40.** Accordingly, this Court finds that the present dispute is **not a commercial dispute** as alleged by the Defendants but a **land dispute** falling squarely within the jurisdiction of the **Environment and Land Court** under **Article 162(2)(b)** of the Constitution, **Section 13(2)** of the Environment and Land Court Act, and **Section 150** of the Land Act.

41.The Court therefore holds that the dispute has been properly instituted before this forum and that it possesses the requisite jurisdiction to hear and determine the same.

Issue 3: Whether the filing of the present suit amounts to an abuse of the court process in view of the previous proceedings involving the same parties and subject matter

42.The Defendants contended that the Plaintiff's filing of this suit amounts to an **abuse of the court process**, arguing that a similar matter **ELC Case No. E039 of 2024, Aly Enterprises Limited -Vs- Absa Bank Kenya PLC & Others** had previously been filed, raising identical issues and involving the same parties and subject property, but was withdrawn after jurisdiction was contested. They urged that the withdrawal of that matter followed by the re-filing of the present suit constitutes forum-shopping and re-litigation of a matter already settled.

43.The Plaintiff, in response, explained that it **voluntarily withdrew** ELC Case No. E039 of 2024 after the Defendants raised jurisdictional objections, and thereafter refiled the matter in the **High Court (HCCOMM E376 of 2024)**. In that case, the Learned Judge, **Hon. Visram Aleem Alnashir**, delivered a ruling on **15th July 2024**, finding that the dispute primarily concerned issues of **ownership and title to land**, and therefore properly fell within the jurisdiction of the **Environment and Land Court**. Pursuant to that judicial direction, the Plaintiff withdrew the High Court matter and filed the present suit before this Court. The Plaintiff therefore submits that its actions were made in **good faith** and in compliance with the Court's directive, not to abuse the process.

44. It is settled that the term “abuse of the court process” refers to the **improper use of the judicial machinery** to harass, oppress, or prejudice an opponent or to bring multiple suits aimed at achieving the same relief in a manner that is vexatious or scandalous. The Court of Appeal in **Muchanga Investments Ltd -Vs- Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR** defined abuse of process as the “multiplicity of actions on the same subject matter, against the same opponent, on the same issues,” but qualified that not every repeated filing amounts to abuse only where it is actuated by malice or aimed at obstructing justice.
45. In the present case, the record shows that **ELC Case No. E039 of 2024** was **withdrawn before any determination on merits**. Similarly, **HCCOMM E376 of 2024** was also **withdrawn following judicial guidance** that the issues fell within the purview of this Court. There is therefore no existing or concluded decision that can give rise to the doctrine of **res judicata** under Section 7 of the Civil Procedure Act. Nor can the filing of the present suit, which was brought in obedience to a High Court directive, be deemed to be oppressive, frivolous, or malicious.
46. The Court in **Independent Electoral and Boundaries Commission - Vs- Cheperenger & 2 Others [2015] KESC 2 (KLR)** cautioned that a Preliminary Objection should not be used “as a sword” to prematurely terminate a matter that is otherwise destined to be determined on its merits. That caution is particularly apt here. The Court finds that the Plaintiff’s filing of this suit was a bona fide effort to seek the proper forum as directed by the High Court, and therefore cannot be characterized as an abuse of process.
47. In the circumstances, the Court holds that the **filing of this suit does not amount to an abuse of the court process**. The previous matters

were not determined on their merits, and the Plaintiff's conduct demonstrates compliance with judicial guidance rather than an attempt to manipulate or misuse the legal process.

48. Consequently, this issue is answered in the **negative**.

D. Disposition and Orders

49. Having carefully considered the pleadings, the Preliminary Objections raised by the 1st, 3rd, 4th, 5th, and 6th Defendants, the rival submissions filed by all parties, and the applicable law, the Court now renders its findings as follows:

50. On the **first issue**, whether this Court has jurisdiction to hear and determine this matter, the Court has found that the **predominant issue** arising from the pleadings and the prayers sought in the plaint relates to **ownership, title, and possession of land**, particularly the validity of the transfer and registration of the suit property, *Title No. Nairobi/Block 95/38 (formerly L.R. No. 7752/72)*. The Plaintiff's cause of action does not merely concern the enforcement of a charge, but rather, allegations of **fraudulent disposition and unlawful deprivation of title**, matters which fall squarely within the mandate of the Environment and Land Court as provided under **Article 162(2)(b)** of the Constitution, **Section 13** of the Environment and Land Court Act, and **Section 150** of the Land Act. Consequently, this Court finds and holds that it has **jurisdiction** to hear and determine the suit.

51. On the **second issue**, whether the Plaint discloses a commercial dispute falling under the jurisdiction of the High Court, this Court has found that the pleadings, taken as a whole, do not raise questions of accounting or enforcement of financial obligations under a charge, but rather challenge the **legality of the transfer, registration, and charge** of land arising

from alleged **fraud, forgery, and unlawful dispossession**. These are not purely commercial questions but issues directly touching on land title and registration, which the ELC is constitutionally and statutorily empowered to adjudicate. The argument that this is a 7

52. On the **third issue**, whether the filing of this suit amounts to an **abuse of the court process**, the Court finds that the Plaintiff withdrew the earlier matters ***ELC Case No. E039 of 2024 and HCCOMM E376 of 2024*** before any determination on the merits. Further, the filing of the present suit was in compliance with the direction of the High Court that the matter concerned questions of title and should be filed before the Environment and Land Court. The Court is therefore satisfied that the Plaintiff acted in good faith and that the present suit does not amount to an abuse of process or re-litigation of issues previously determined.

53. Accordingly, having considered all the Preliminary Objections, the Court finds that none of them meets the threshold of a **pure point of law** capable of disposing of this suit at this stage as defined in ***Mukisa Biscuit Manufacturing Co. Ltd -Vs- West End Distributors Ltd (1969) EA 696***. The objections raised instead invite the Court to interrogate factual issues surrounding the nature of the transaction, which can only be resolved through evidence at the hearing.

54. The upshot is that the Preliminary Objections dated **6th January 2025 (1st Defendant), 28th January 2025 (3rd Defendant), 30th January 2025 (4th Defendant), and 28th November 2024 (5th and 6th Defendants)** are **without merit** and are hereby **dismissed**.

55.Costs of the Preliminary Objections shall be borne by the **1st, 3rd, 4th, 5th, and 6th Defendants** jointly and severally, to be paid to the Plaintiff.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **7TH** day of **November, 2025.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Oduyo.....for the Plaintiff

Mr. Otieno for 2nd Defendant & 2nd Interested Party

Mr. Maweu for the 3rd Defendant

Mr. Ongeri for the 4th Defendant

No appearance for 1st, 5th and 6th Defendants, and the 1st Interested Party

Philomena W...... Court Assistant