

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCLC. NO. E162 OF 2025

CECILY WANGARI KARIUKI.....
.....PLAINTIFF

VERSUS

DENNIS MITHAMO KARIUKI.....1ST
DEFENDANT

ANNE MUMBI KARIUKI.....2ND
DEFENDANT

CYKA ESTATES LIMITED.....3RD
DEFENDANT

COOPERATIVE BANK OF KENYA LIMITED.....4TH
DEFENDANT

RULING

1. Before this court is the notice of preliminary objection dated 7th May, 2025 filed by the 1st, 2nd and 3rd defendants challenging the suit on the following grounds:-

i. That this court has no jurisdiction to hear and determine commercial matters.

ii. That the suit is incompetent, bad in law, an abuse of the court process and ought to be struck out with costs.

2. The preliminary objection was canvassed through written submissions. The 1st, 2nd and 3rd defendants filed their written submissions dated 6th August, 2025 where they raised one issue for determination which is ***whether this court has jurisdiction to hear and determine this suit.***

3. On this issue, the 1st, 2nd and 3rd defendants submitted that the plaint as drawn, the particulars, and the prayers sought are not within the ambit of this court to delve into and determine. Besides the challenge on the validity of charges created over the suit properties, the plaintiff has sought for production of rent income accounts and that the rent be shared proportionally.
4. They submitted that the differences between the plaintiff, and the 1st and 2nd defendants on the control and management of the 3rd defendant can only be resolved by the High Court. That as such, it is evident that the issues for determination are commercial in nature and can only be determined by the Commercial Division of the High Court.
5. The plaintiff filed her written submissions dated 15th September, 2025 where she raised one issue which is ***whether the Environment and Land Court has jurisdiction to hear and determine the issues***. On this issue, the plaintiff submitted that this court is clothed with the jurisdiction to hear and determine this suit even though one of the prayers sought can be determined by a commercial court. She submitted that this court cannot transfer this suit to another court of equal status when it is the only court clothed with jurisdiction to hear and determine this suit. To buttress on this issue, the plaintiff relied on the cases of **National Land Commission v Afrison Export Import**

Limited & 10 others [2019] eKLR, and Kanegeni v County Government of Nyeri (Constitutional Petition E008 of 2022) [2024] KEHC 9796 (KLR).

6. The plaintiff further submitted that the issues raised in the plaint are hybrid, and that the predominant issue involves land use and land administration of the suit properties which can only be determined by this court.
7. I have considered the preliminary objection, and the written submissions filed by the respective parties. I am of the view that the issue for determination is *whether this court has jurisdiction to hear and determine the suit filed by the plaintiff.*
8. Law, J.A. in **Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors (1969) EA 696** stated as follows: -

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”
9. Also, the case of **John Musakali vs. Speaker County of Bungoma & 4 others (2015) eKLR**, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”

10. From the above authorities, it is clear that a preliminary objection ought to be based on a pure point of law, and consists of facts which are not disputed by either party. In this case, I am satisfied that the preliminary objection raises a pure point of law as it challenges the jurisdiction of this court to hear and determine this suit.
11. The plaintiff filed the plaint dated 17th March, 2025 seeking the following orders:-
 1. ***That the decision of charging and registration of charge dated 30th March 2023 by the 4th defendant on all those parcels of land registered as Nairobi/Block 93/1508 and Nairobi/Block 93/1509 was illegal, null and void.***
 2. ***Declaration that the decision of charging and registration of charge dated 16th May 2023 by the 4th defendant on all that parcel of land registered as Nairobi/ Block 93/1442 was illegal, null and void.***
 3. ***Declaration that the decision of charging and registration of charge dated 31st January, 2024 by the***

4th defendant on all parcels of land registered as Nairobi/Block 93/1508 and Nairobi/ Block 93/1509 by the 4th defendant was illegal, null and void.

4. The 4th defendant and the Chief Land Registrar be ordered to cancel entries of charges of the 4th defendant on the land register on all those parcels of land registered as Nairobi/ Block 93/1508, Nairobi/ Block 93/1509 and Nairobi/Block 93/1442 and discharge the said certificates of title.

5. The 4th defendant does surrender the certificates of title of all those parcels of land registered as Nairobi/ Block 93/1508, Nairobi/ Block 93/1509 and Nairobi/Block 93/1442 that it is holding as security to the plaintiff's advocate for onward transmission to the Chief Land Registrar to ensure the discharge of charges dated 30th March 2023, 16th May 2023 and 31st January 2024 on the certificates of title is effected and thereafter surrender the discharged certificates of title to all the Directors of the 3rd defendant.

6. The 1st, 2nd and 3rd defendants be ordered to furnish a statement of account of rental income received from all those parcels of land registered as Nairobi/Block 93/1508 and Nairobi/ Block 93/1509 and Nairobi/Block 93/1442 from May 2018 till date of Judgment.

7. That the net monthly rental income from the suit premises be deposited in court and the same to be shared proportionally according to the shares of each shareholder of the 3rd defendant.

8. Any other order that this court deems fit.

9. Costs and interest of the suit.

12. The plaintiff avers in paragraph 9 of the plaint that the 1st and 2nd defendants in collusion with the 4th defendant, and without her knowledge, charged the parcels of land registered as Nairobi/Block 93/1508, Nairobi/Block 93/1509 and Nairobi/Block 93/1442 with the 4th defendant and secured a loan of KShs.320,000,000/- from the 4th defendant.

13. In paragraph 13, the plaintiff pleaded particulars of fraud, forgery, misrepresentation and collusion by the defendants. Further, the plaintiff is also displeased with the manner in which the 1st and 2nd defendants are managing or operating the 3rd defendant without her knowledge, consent and authority. In **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] KECA 79 (KLR)**, it was held as follows:-

“36. By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfillment of any condition (see Section 2 of the Land Act). As such, it gives rise to a relationship where one person acquires rights over the land of another as security in exchange for money or money’s worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the Land Act). The creation of that relationship therefore,

has nothing to do with use of the land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced the chargor.

37. Further, Section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land. As seen before, land use connotes the alteration of the environmental conditions prevailing on the land and has nothing to do with dispositions of land. Saying that creation of an interest or disposition amounts to use of the land, is akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use. The mere acquisition or conferment of an interest in land does not amount to use of that land. Else we would neither speak of absentee landlords nor would principles like adverse possession ever arise. If a disposition were held to constitute land use, an absentee landlord with a subsisting legal charge over his land would never have to contend with the consequences of adverse possession, for he would always be said to be 'using' his land simply by virtue of having a floating charge/disposition over the property.

41. Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be

understood within the context of the court's jurisdiction to deal with disputes connected to 'use' of land as discussed herein above. Such contracts, in our view, ought to be incidental to the 'use' of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. In Paramount Bank Limited vs. Vaqvi Syed Qamara & another [2017] eKLR, this Court while discussing the jurisdiction of the Employment and Labour Relations Court over a claim of malicious prosecution expressed itself thus;

"The origin of the dispute between the 1st respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant accused the 1st respondent of theft followed by a criminal charge of stealing by servant. This was further followed by suspension and finally summary dismissal. There cannot therefore be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the Employment and Labour Relations Court Act, the court could entertain the dispute in all its aspects and award damages appropriately."

- 14.** The decision to charge the suit properties and the operations of the 3rd defendant by the 1st and 2nd defendants are issues that ought to be heard and determined by the High Court. By a general reading of the plaint, there is no claim on the interest to the suit property in terms of use, ownership and occupation. In other words, the actual dealings on the suit properties are not pleaded, which leave this court without jurisdiction to proceed further with this suit.
- 15.** From the above, this court finds merit in the notice of preliminary objection dated 7th May, 2025 and it is hereby upheld. This court lacks jurisdiction to hear and determine the dispute between the parties, as it is a matter which ought to be placed before the High Court for determination.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 13TH DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
13/11/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mungai for the Plaintiff

*Mr. Karwanda holding brief for Mr. Wachira Maina for the 1st to 3rd
Defendants
No appearance for the 4th Defendant/Respondent*

ORIGINAL