

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC CASE NO. E006 OF 2024

WAGATERI & SONS INVESTMENT LTD.....1ST

PLAINTIFF

KEFA MAINA MWANGI.....2ND

PLAINTIFF/APPLICANT

GEDEON GATERI MWANGI.....3RD

PLAINTIFF

DANIEL KIMANI MWANGI.....4TH

PLAINTIFF

ANTONY NJUGUNA MWANGI.....5TH

PLAINTIFF

VERSUS

SIMON MACHARIA MWANGI.....1ST

DEFENDANT/RESPONDENT

BENJAMIN KARIUKI MWANGI.....2ND

DEFENDANT/RESPONDENT

LAND REGISTRAR, NAIVASHA.....3RD

DEFENDANT/RESPONDENT

RULING.

1. Vide a Notice of Motion Application dated 14th July 2025 brought under the provisions of Section 13 of the Environment and Land Court Act; Order 2 Rule 15; Order 51 Rule 1 of the Civil Procedure Rule 2010 and all enabling provisions of law, the 2nd Plaintiff/Applicant herein sought for orders that the 1st and 2nd Defendant's counterclaim be struck out for failure to disclose any cause of action known to law. That the Honorable Court is not clothed with jurisdiction to handle company and corporate law matters. He also sought that the costs of the application be provided for.

2. The said Application was premised on the grounds therein and the Supporting Affidavit of an even date sworn by Kipkorir Shadrack the Applicant's Advocate who deponed that the counterclaim in the nature and manner pleaded did not disclose any cause of action known in law whether reasonable or otherwise. That the counterclaim pleaded to issues regarding the management of the affairs of the Wagateri & Sons Investment Limited, the 1st Plaintiff herein, which was the Company's legal issues a preserve of:
 - i. The board of directors of the company.
 - ii. The shareholders of the company.
 - iii. The High Court of Kenya.
3. That the cause of action determinable before the court were those listed under Section 13 of the Environment and land Court whereas the instant counterclaim had not invoked the court's jurisdiction in as far as the court's limited jurisdiction was concerned. That the counterclaim could not be cured by way of amendment as any amendment would be contra to the Civil Procedure Rules on Amendments. That indeed, the 1st and 2nd Defendants on their own admission did concede that company law affairs were a preserve of the High Court of Kenya hence the matters raised in the counterclaim should be ventilated at the High court of Kenya in accordance to and in compliance with the provisions of Article 165 of the Constitution.
4. He thus deponed that without a cause of action known to law, the Honourable Court had no basis with which to proceed, had not been moved properly and should dismiss the counterclaim with costs to the Applicant. That it was in the interest of justice that the Applicant's Application be allowed as prayed.
5. The 1st and 2nd Defendants did not file any response to the Applicant's Application.
6. On 23rd September, 2025 directions were taken for the disposal of the Application dated 14th July, 2025 by way of written submissions wherein

the Applicant and the 1st and 2nd Defendants/Respondents complied to which I shall proceed to summarize their submissions as herein under.

Applicants' Submissions.

7. The Applicants vide their submissions dated 23rd September 2025 framed his issues for determination as follow:

- i. Whether the Honorable Court is not clothed with the jurisdiction to handle company and corporate law matters.
- ii. Whether the 1st and 2nd defendant's counterclaim should be struck out for failure to disclose any cause of action known to law.

8. On the first issue for determination the Applicant argued that the Environment and Land Court (ELC) was not clothed with jurisdiction to handle the matters raised in the counterclaim. That the core of the counterclaim revolved around company and corporate law matters, shareholding issues, and company operations of the 1st Plaintiff (Wagateri & Sons Investment Limited). The Applicant pointed out that the Defendants themselves conceded to this fact on page 32 of their counterclaim.

9. That corporate issues were legally preserved for:

- i. The Board of Directors of the company.
- ii. The Shareholders of the company.
- iii. The High Court of Kenya (which has unlimited original jurisdiction).

10. The Applicant relied on the case of **Republic v Resident Magistrate's Court at Kiambu Ex parte Geoffrey Kariuki Njuguna, Esther Wanja Nganga, Peter Mwaura Kamau, Julius Mwangi Kuria George Nderitu Kaguora, Joyce Rukaria Gitau, Richard Njogu**

Ndungu & 13 others [2017] KEHC 7988 (KLR) to emphasize that the ELC was a specialized court under Article 162 of the Constitution wherein its jurisdiction was strictly defined and could not be extended to include company law matters. He invited the court to "down its tools".

11. On the second issue for determination, the Applicant argued that the counterclaim should be struck out for failure to disclose any cause of action known in law. That a review of the pleading revealed that the counterclaim did not disclose any recognizable cause of action or claim against any party in the instant suit. He then cited the case of **Kenyariri v Double Win Company Ltd & 2 others [2024] KEELC 1609 (KLR)**, where Angote J held that a pleading including a counterclaim that was deemed as a "sham" should be struck out straight away.
12. The Applicant then sought that the costs of the application be awarded to them, in accordance with Section 27 of the Civil Procedure Act and the principle that 'costs follow the event'.

1st and 2nd Respondents Submissions.

13. The 1st and 2nd Defendants/Respondents, in their submissions dated October 7, 2025, primarily addressed the Applicant's request to withdraw the suit and their counterclaim, focusing heavily on the issue of costs.
14. They characterized the Applicant's application dated 14th July 2024 as an abuse of the court process. They consented to the Applicant withdrawing their original suit as well as agreeing to the withdrawal of their own counterclaim but with costs.
15. They strongly submitted that costs should be awarded in their favour for reasons that the Plaintiffs (Applicants) had lodged the suit despite knowing the 1st and 2nd Defendants were their relatives. That they had declined mediation attempts and were uncooperative, which was a show of mischief and bad will. That granting costs was necessary to discourage litigants from lodging frivolous suits and to compensate the innocent party.

16. That the Applicant's decision to withdraw the suit after a protracted legal process amounted to subverting and aborting an expensive process. The 1st and 2nd Defendants claimed to have incurred costs not less than Kshs. 5,000,000/= as the subject suit value, as expressed in their Preliminary Objection dated 7th May 2025, was Kshs. 500,000,000/=, a contention which they claim had not been denied.

Determination.

17. I have considered the Applicants application the response, their submissions as well as the applicable law. I have also considered the fact that the Respondents herein did not participate in this application by filing their respective responses and that whereas the 1st and 2nd Respondents filed their submissions, the same cannot be considered by the court in the absence of a Replying Affidavit which is a foundational pleading as was held by the Supreme Court in **Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR**, where the court held as follows;

“A Replying Affidavit is the principal document wherein a respondent’s reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1st Respondent on 17th August, 2018 are of no effect. Curiously, we further note that even the said Written Submissions are not dated, though this possibly might not have been fatal had the foundational document, the Replying Affidavit, been in order. From a perusal of the Written Submissions, it is clear to us that they are substantially based and relies on the undated and unsworn Replying Affidavit. Also, there are no Grounds of Objection

raising any specific points of law of any preliminary or jurisdictional nature. The upshot is that as the 2nd and 3rd Respondents had categorically stated that they do not oppose the application, the Court will be excused for therefore deeming the application as being unopposed entirely.”

18. Pursuant to the above Supreme Court holding, I find that the application dated the 14th July 2025 is herein deemed as unopposed.
19. It is to be noted that vide a Notice of withdrawal of the suit dated the 3rd July 2025, by consent the suit was withdrawn through adoption of the said Notice on the 16th July 2025 with no costs as the court noted that the parties herein, save for then 3rd Respondent, were siblings.
20. What remained for determination thereafter was the 1st and 2nd Respondents' counterclaim for which the 2nd Plaintiff/Applicant through his current application dated the 14th July 2025 seeks that the same be struck out for reason that Environment and Land Court (ELC) was not clothed with jurisdiction to handle the matters raised in the counterclaim. That the core of the counterclaim revolved around company and corporate law matters, shareholding issues, and company operations of the 1st Plaintiff (Wagateri & Sons Investment Limited). That secondly, the said Counterclaim raised no cause of action known in law.
21. Having found as herein above that this Application was not opposed, and also being cognizance of the fact that not all unopposed applications ought to be allowed but that they should be decided on their merit, I find the issues that arises herein for my determination being as follows;
 - i. Whether the 1st and 2nd Respondents' Counterclaim should be struck out there having been no cause of action established.
 - ii. Who bears the costs?

22. I have gained sight of the 1st and 2nd Respondents' Counterclaim herein to which they sought that the court ensures that all parcels of the subject land remain cautioned and preserved from any interference or tampering of records by third parties by issuing the orders of status quo to avoid adverse disruption, including existing businesses and residences.
23. They had admitted the court's jurisdiction only in so far as it addressed the land ownership issue (Paragraph 32) and argued that the court lacked jurisdiction over the corporate aspects of the case in so far as an address on the commercial, corporate, and shareholding issues of the 1st Plaintiff (Wagateri & Sons Investment Limited) (Paragraph 32) was concerned. They opined that Plaintiffs seek suitable remedy in the right forum for all corporate matters, as the Environment and Land Court lacked jurisdiction since it was a land court (Paragraph 28).
24. They also sought that the 2nd, 3rd, 4th and 5th Plaintiffs be restrained from addressing shareholding issues in the Land Court (Paragraph 29) as well as from adversely dealing with the 1st Plaintiff's assets (land, machinery, livestock, etc.) (Prayer d) asserting that they were the "guardian angles and custodian of the affairs" of the 1st Plaintiff for which they had not issued authority to sue. They sought that all parties be ordered to sit in a structured, facilitated meeting under Article 159 of the Constitution to address the development agenda, financial contribution, and administration of the suit land (Paragraph 27 & Prayer (b)) and for the Plaintiff's suit to be struck off (prayer c).
25. The provision of Order 2 Rule 15(1) (a) of the Civil Procedure Rules states that at any stage of the proceedings the court may order to be struck out or amend any pleading on the ground that it discloses no reasonable cause of action or defence in law. The said provision of the law provides:

"1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

a) it discloses no reasonable cause of action or defence in law; or

b) it is scandalous, frivolous or vexatious; or

c) it may prejudice, embarrass or delay the fair trial of the action; or

d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

26. The main objective of Order 2 Rule 15(1) (a) of the Civil Procedure Rules is to prevent the court's time and resources from being wasted on cases that are doomed to fail from the start because they lack a legal foundation. If a Plaintiff's claim, even if all facts pleaded are taken as true, does not give rise to a right recognized by law, it discloses no reasonable cause of action and should not proceed to trial.

27. By striking out legally unsustainable claims or defences at an early stage, the rule promotes the overriding objective of the Civil Procedure Act: the just, expeditious, proportionate, and affordable resolution of civil disputes. It saves time for judges, court staff, and the litigants themselves, who would otherwise incur unnecessary costs in preparing for a full trial.

28. It also serves to protect Defendants from having to defend themselves against "sham" or frivolous claims that are purely aimed at harassment or delay and implicitly encourages legal practitioners to draft pleadings with clarity and legal grounding thereby compelling them to ensure that the facts they present logically and legally support the remedy they are seeking, aligning the claim with a recognized head of law.

29. I have considered the 1st and 2nd Respondents' Counterclaim as herein above enumerated wherein they had sought for the preservation of the

land as well as for orders to issue in matters that were strictly speaking corporate matters (shareholding, company management, etc.) which they consented that the Environment and Land Court lacked jurisdiction.

30. On the 8th October 2025, Counsel for the 1st and 2nd Respondents conceded the Applicants' application save on the issue for costs. Based on this position, once the Plaintiffs/ Applicants withdrew their original suit and the 1st and 2nd Respondents consented to the Application to withdraw their Counterclaim, the entire legal matter before the Court was effectively concluded and therefore the court does not need to decide the primary question of whether or not it has jurisdiction over the corporate matters (shareholding, company management, etc.) that were the subject of the Applicant's submissions apart from the issue on who bears the costs which is a standard judicial function exercised by all courts.
31. The fact that the court did not award costs when the suit was withdrawn and the Respondents herein having confirmed in their counter claim that the court had no jurisdiction in the matter owing to its underlying issues involving both corporate management and shared land, and further the court having recognized the familial nature of the dispute (siblings), I find provides a strong indication of the court's stance and its intention for the parties moving forward.
32. By denying costs, the court avoids penalizing either party for it would likely poison their relationship further, making future cooperation impossible. I would like to effectively give a "neutral exit" to this litigation, and strongly urge the siblings toward finding an amicable, family-based solution rather than an adversarial one.
33. The Application dated the 14th July 2025 is herein allowed. The 1st and 2nd Respondents' Counterclaim is struck out wherein each party shall bear their own costs.

Dated and delivered via Teams Microsoft at Naivasha this 20th day of November

2025.



M.C. OUNDO

ENVIRONMENT & LAND COURT - JUDGE