

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM NO. E072 OF 2025

ADEN ABUBAKAR SHEIKH.....PLAINTIFF/1ST
RESPONDENT

VERSUS

GALACTIC ELECTRONICS.....1ST DEFENDANT/2ND
RESPONDENT

SGT. MAJOR KAMUCOBE t/a
STREET TRADERS.....2ND DEFENDANT/3RD
RESPONDENT

NGAMAU LIMITED.....3RD
DEFENDANT/APPLICANT

RULING

1. Before me for determination is the Chamber Summons application dated 22nd April 2025 brought by the 3rd Defendant/Applicant. The Applicant was enjoined to the suit on 23rd July 2025 and now seeks, in the sole surviving prayer, an order striking out the Plaintiff’s suit.
2. The application is supported by the affidavits of Ngamau Mungai Muigai, a director of the 3rd Defendant, sworn on 22nd April 2025 and 21st August 2025. He avers that the 3rd Defendant is the registered proprietor of property L.R. No. 36/105/VII (now Nairobi Block 49/157) (hereinafter “the suit property”). According to him, the Plaintiff is engaging in fraudulent activities aimed at depriving the 3rd Defendant of

its land. He states that the alleged purchase by the Plaintiff from one Kiarie Githukurio is a forgery of a statutory instrument, and that the matter has been escalated to the DCI for investigation.

3. The 3rd Defendant further avers that Kiarie Githukurio is the registered owner of L.R. No. 36/VII/584 (Nairobi/Block 49/1466) and L.R. No. 36/VII/585 (Nairobi/Block 49/1467), properties entirely distinct from the applicant's parcel. It is contended that the Plaintiff filed this suit in bad faith, with the intention of fraudulently obtaining court orders to dispossess the 3rd Defendant. The interlocutory orders issued herein, the applicant argues, were obtained through material non-disclosure, are unmerited, and ought to be set aside. The applicant further asserts that the dispute concerns ownership of land, occupation, rent, and mesne profits, and was therefore wrongly filed as a commercial dispute.
4. The Plaintiff opposes the application vide a Replying Affidavit sworn on 22nd July 2025. He contends that he is the rightful registered proprietor of the suit property, currently undergoing conversion under the land registration regimes. According to him, he and another purchased the suit property on 3rd August 2005 from Kiarie Githukurio, and they were registered as tenants in common, with an indenture of conveyance issued to Kiarie Githukurio, Baij Nath, and Aden Abubakar.
5. The Plaintiff avers that the suit property was subsequently subdivided into L.R. No. 36/VII/105 and L.R. No. 36/VII/27, and that Kiarie later transferred his undivided interest in L.R. No.

36/VII/105 to him. He contends that the 3rd Defendant's 1998 Indenture of Conveyance is riddled with fraud, misdescription of parcel numbers, and irregularities. He accuses the 3rd Defendant of trespass, unlawful collection of rent, and permitting the 1st and 2nd Defendants to erect shops, stalls, and other structures on the suit property. According to the Plaintiff, the interim orders issued were in vain since the 3rd Defendant has no known lawful interest in the suit property.

6. The application was canvassed through written submissions

Analysis and determination

7. The 3rd Defendant/Applicant raises a pure question of jurisdiction, contending that this dispute concerns ownership, occupation, use, and title to land, and therefore exclusively falls within the jurisdiction of the Environment and Land Court (ELC).

8. **Article 162(2)(b)** of the **Constitution** establishes the ELC with jurisdiction to hear and determine disputes *“relating to the environment and the use and occupation of, and title to, land.”* This jurisdiction is expanded under Section 13(2) of the Environment and Land Court Act, which expressly includes matters relating to: title, tenure, boundaries, compulsory acquisition, land administration and management, and *“any other dispute relating to land.”*

9. A careful reading of the pleadings reveals that both the Plaintiff and the 3rd Defendant assert competing roots of title to the same land, variously referred to as L.R. No. 36/105/VII, Nairobi Block 49/157, or through subsequent subdivisions and

conveyances. Each party asserts that, they hold the valid title, they lawfully purchased and were validly conveyed the property; and they are entitled to occupation, possession, and rental income.

10. The Plaintiff alleges trespass, unlawful occupation, and illegal collection of rent by the Applicant. He also seeks injunctive relief, including a mandatory injunction compelling the removal of structures. Conversely, the Applicant alleges that the Plaintiff's claim is fraudulent and relates to different parcels altogether. These are quintessential questions of ownership, title, trespass, and proprietary rights.
11. Such disputes are premised entirely on the validity of competing titles and the history and identity of the suit property. The Commercial and Tax Division has no jurisdiction to adjudicate these proprietary claims.
12. The Supreme Court in **Republic v Karisa Chengo & 2 Others (2017) eKLR** held that courts established under Article 162(2) are distinct from the High Court and have exclusive jurisdiction over matters constitutionally assigned to them. A court cannot exercise jurisdiction reserved for a specialized court.
13. Similarly, the Court of Appeal in **Co-operative Bank of Kenya Ltd v Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR** reiterated that jurisdiction flows from the Constitution and statute, and cannot be inferred or assumed.
14. The prayers in the Plaint including permanent injunctions restraining trespass, mandatory injunctions for

removal of structures, and declarations touching on title, fall squarely within Section 13(2) of the ELC Act.

15. It is evident that the core of this dispute is the ownership and title to land, intertwined with allegations of fraud, competing conveyances, and entitlement to rents. These are matters that only the ELC is constitutionally empowered to determine.
16. Jurisdiction is everything; without it, a court must down its tools - See **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**.
17. Since the core issue is ownership and title, this Court, sitting as a Commercial and Tax division, lacks jurisdiction under the constitutional and statutory framework. The matter ought to be heard before the Environment and Land Court, the court constitutionally mandated to adjudicate disputes of this nature.
18. Having found that this Court lacks jurisdiction, it would be improper to proceed to determine the merits of the striking-out application. The Court must immediately down its tools.
19. In the result, I find that the Chamber summons application dated 2nd April 2025 is merited. Accordingly, I make the following orders:
 - i. *The Plaintiff's suit is struck out against the 3rd Defendant/Applicant.*

- ii. The interlocutory orders issued in favour of the Plaintiff are set aside and annulled.*
- iii. Costs of this application shall be borne by the Plaintiff.*

RULING delivered virtually, dated and signed at **NAIROBI**

This **20th** day of **November** 2025.

P.M. MULWA
JUDGE

In the presence of:

Mr. Ng'ayu h/b for Mrs. Akadi for 3rd Defendant

Court Assistant: Carlos