



2. The Defendant/Applicant seeks orders to vacate the order of this court issued on 28<sup>th</sup> August 2025, that the plaint and all pleadings be struck out for want of jurisdiction and that the plaintiff lacks *locus standi*.
3. The application is supported by an affidavit sworn by Abdullah Mohamed Mohamud, a shareholder of the 1<sup>st</sup> Plaintiff Company holding 490 ordinary shares. He deposes that this dispute properly falls within the jurisdiction of the Environment and Land Court (ELC) under Section 13 of the Environment and Land Court Act. According to him, the Plaintiffs' pleadings disclose no commercial dispute but rather a dispute concerning the *use, lease and transfer of interest* in L.R. No. 9030/3 Portion C2, situated at Utawala near Embakasi GSU (the suit property).
4. He states that on or about 1<sup>st</sup> July 2023, the Defendant entered into a 20-year lease agreement with one Anne Wanjiru Kiriga for the purpose of constructing a petrol station and convenience store. During the subsistence of that lease, the lessor allegedly entered into another lease dated 12<sup>th</sup> August 2025 with the Plaintiff. He contends that the petrol station construction is almost complete, and that the Plaintiff lacks *locus standi* to institute a derivative suit under Section 238 of the Companies Act because the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are the majority shareholders. He asserts that the Defendant has not been shown to have spent Kshs. 80 million on the project, and no commercial dispute has been established. He urges the Court to find that jurisdiction lies with the ELC, particularly

since the validity of the two lease agreements is the core issue.

5. The Plaintiff opposed the application and filed a replying affidavit sworn on 9<sup>th</sup> September 2025 by Abdiaziz Ali Hassan, who terms the application frivolous, unnecessary, and an abuse of the process of the Court. He states that the dominant issue in dispute is corporate governance, specifically whether the Defendant has frustrated the interests of the 1<sup>st</sup> Plaintiff Company and breached obligations stemming from an intended sublease. He maintains that the dispute does not fall within Section 13 of the ELC Act and that the Plaintiffs have properly laid a basis for leave to continue the derivative suit under the Companies Act.
6. In submissions, the Defendant reiterates that the main issue is the conflicting lease agreements over L.R. No. 9039/3 Portion C2, involving land use and leasehold interests, matters within ELC jurisdiction under Section 13 of the ELC Act. The Defendant contends that the derivative claim is without basis because the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are majority shareholders and cannot allege oppression. Further, the Plaintiffs have not demonstrated any proof of expenditure alleged to have been incurred by the Defendant or any commercial element in the dispute.
7. The Plaintiffs, on the other hand, submit that the Applicant's jurisdictional challenge is misguided. They argue that the dominant issue is corporate governance and breach of fiduciary duties, not land use. They assert that their derivative

action is properly brought under Sections 238, 239, and 241 of the Companies Act and that the land-related elements are merely incidental. They therefore urge the Court to dismiss the application with costs.

### **Analysis and determination**

8. The issue falling for determination is whether this Court has jurisdiction to entertain the suit. The Defendant maintains that the dispute concerns leasehold interests and therefore lies with the ELC, while the Plaintiff argues that this Court has jurisdiction because the nature of the dispute is commercial and concerns corporate governance and breach of contract.
9. It is trite that jurisdiction is everything, and without it, the Court must down its tools. This principle is long settled in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where Nyarangi, JA held:

***"Jurisdiction is everything. Without it, a court has no power to make one more step."***

Jurisdiction must therefore be addressed at the earliest opportunity.

10. The jurisdiction of the Environment and Land Court is constitutionally anchored in **Article 162 (2)(b)** and **(3)** of the Constitution, which provide that:

***"(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-***

***a) ...***

**b) The environment and the use and occupation of, and title to, land.**

**(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)."**

11. **Article 162(3)** mandates Parliament to define that jurisdiction. Parliament did so via the Environment and Land Court Act, and the Land Act, whose Section 150 states that the ELC:

**"...shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act."**

12. The High Court, in contrast, enjoys broad jurisdiction under **Article 165(3)** which includes:

**(a) Unlimited original jurisdiction in criminal and civil matters.**

13. Thus, the High Court can hear all matters except those expressly reserved for specialized courts.

14. The Defendant relies heavily on Section 13(2)(d) of the ELC Act, which provides that the ELC has jurisdiction to determine disputes: *"relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land."*

15. He argues that the lease in question constitutes an instrument granting enforceable interests in land and therefore the ELC is the proper forum.

16. The Plaintiffs counter that the essence of the dispute is not land use but breach of contract and corporate governance, and internal company control. They rely on a dispute settlement agreement dated 16<sup>th</sup> June 2025, which sets out their shareholding structure, 49% for the Defendant, 34% for the 2<sup>nd</sup> Plaintiff, and 17% for the 3<sup>rd</sup> Plaintiff. They further argue that the Defendant's lease with the lessor was never registered, and therefore could not confer any legal or equitable right capable of being transferred to the 1<sup>st</sup> Plaintiff. They assert that it is the 1<sup>st</sup> Plaintiff that eventually entered into a registered lease dated 12<sup>th</sup> August 2025, registered as I.R. 268115/2, thereby crystallizing the enforceable interest in land..
17. Accordingly, the Plaintiffs submit that the dispute is properly corporate and commercial in nature, and that the land component is merely incidental to the broader issues of governance, fiduciary duties, and the operation of the company.
18. Having carefully considered the pleadings, affidavits, and submissions of both parties, it is evident that the dispute presents mixed elements touching on corporate governance and conflicting lease arrangements. The validity, enforceability, and effect of the two lease agreements, although raised, cannot be considered in isolation from the allegations of breach of fiduciary duty, interference with corporate control, a derivative claim, and internal company dealings.

19. In **Co-operative Bank of Kenya Ltd v Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR**, the Court of Appeal held that the jurisdiction of the ELC is not triggered merely because land is involved, the nature of the dispute must be examined.
20. Similarly, in **Phoenix of EA Assurance Co. Ltd v S.M. Thiga t/a Newspaper Service [2019] eKLR**, the Court of Appeal reaffirmed that the mere presence of a land component does not oust the commercial jurisdiction of the High Court when the gravamen of the dispute is contractual, corporate, or otherwise commercial.
21. In the present matter, the Plaintiffs' claim is anchored on allegations of corporate mismanagement, breach of fiduciary obligations, and breaches arising from a negotiated settlement agreement. These are matters central to company law and commercial jurisprudence.
22. Although the Defendant maintains that the lease agreements are central, the Plaintiffs' cause of action is not one seeking declarations on land ownership, land use, or title determination. The dispute fundamentally concerns corporate rights and internal governance. The lease component emerges only incidentally to the broader commercial context. Courts have consistently held that where a dispute exhibits mixed elements, the Court must determine the dominant issue.
23. Applying the dominant-predominant issue test, the Court finds that the dominant issue herein is the alleged breach of fiduciary duties by the Defendant, interference with the

operations, management and shareholding of the 1<sup>st</sup> Plaintiff, alleged oppression, and the continuation of a derivative claim under Sections 238, 239 and 241 of the Companies Act, 2015.

24. These are matters squarely within the jurisdiction of the High Court's Commercial and Tax Division. The reliefs sought in the Plaint are commercial and corporate in nature and do not fall within the exclusive mandate of the Environment and Land Court.

25. While the ELC indeed has jurisdiction over instruments creating or granting interests in land, it does not have jurisdiction over corporate governance disputes, enforcement of contracts between shareholders, fiduciary obligations, derivative suits, or internal company arrangements. In this matter, the land aspects are ancillary, not central.

26. In the circumstances, the Court is satisfied that it is properly vested with jurisdiction to entertain the instant suit.

27. On the question of *locus standi*, the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs, though majority shareholders, have moved the Court for leave to continue a derivative action. Sections 238, 239 and 241 of the Companies Act expressly empower members to seek redress for breaches of fiduciary duty or wrongdoing when the company itself is unwilling or unable to act. Based on the material placed before the Court, the Plaintiffs have disclosed a *prima facie* basis warranting consideration of the derivative claim. The objections raised by the Defendant go to the merits, not to standing.

28. In the premises, the Court finds that the Defendant's Notice of Motion dated 3<sup>rd</sup> September 2025 is devoid of merit. It is accordingly dismissed with costs to the Plaintiffs.

Orders accordingly.

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

This **11<sup>th</sup>** day of **December** 2025.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Mr. Miller* for Plaintiffs

*Mr. Munoko* for Defendant

Court Assistant: *Carlos*