

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E053 OF 2025

JOHN NGANGA WANYOIKE

PLAINTIFF

VERSUS

NAOMI GATHONI NGANGA 1ST

DEFENDANT

STEPHEN MBURU PAUL 2ND DEFENDANT

THE LAND REGISTRAR 3RD DEFENDANT

RULING

1. By a Notice of Motion dated 28th March 2025 the Plaintiff approached this court seeking a temporary injunction restraining the Respondents from trespassing, occupying, developing, selling, charging, transferring or in any manner whatsoever, interfering with the land parcel known as RUIRU EAST BLOCK 1/T.657 pending the hearing and determination of the main suit.
2. The application is anchored on the grounds set out on its face and the Applicant's supporting affidavit sworn on 28th March 2025. The main ground is that the suit property was jointly acquired by the Applicant and the 1st Defendant and the same was registered in their joint names. It is the Applicant's contention that the 1st Respondent subsequently transferred the suit property to her sole

name illegally without the Applicant's knowledge or consent after which she sold it to the 2nd Defendant.

3. In response to the application, the 1st Respondent filed a Preliminary Objection dated 12th May 2025 stating that this court lacks the jurisdiction to hear and determine this matter as the dispute relates to matrimonial property and the same is before the High Court in Thika HC F Misc Case No. E022 of 2024.
4. The Court directed that the Preliminary Objection be heard first and granted the parties time to file their submissions. By the time of writing this ruling only the Plaintiff had filed their submissions.

ANALYSIS AND DETERMINATION

5. Having considered the Notice of Motion, the Preliminary Objection and the submissions, the sole issue for determination is whether the Preliminary Objection is merited. It is well settled that a Preliminary Objection must raise a pure point of law, one which, if upheld, disposes of the suit without recourse to evidence or trial of contested facts.
6. This principle was articulated in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696***, where the Court of Appeal emphasized that such a Preliminary Objection is appropriate only when the matters challenged are plainly discernible on the face of the pleadings.
7. The Preliminary Objection effectively asserts that the dispute herein relates to matrimonial property and that the same is pending

before the High Court in Thika HC FMISC E022 of 2024. On the other hand, the Plaintiff states that the dispute is about the unlawful and fraudulent transfer of the suit property to the 1st defendant and subsequently to the 2nd Defendant. A perusal of the Plaintiff at paragraph 13 reveals that the Plaintiff alleges that the 1st Defendant fraudulently transferred the suit property to herself and subsequently to the 2nd defendant. Nowhere in the Plaintiff has the Plaintiff alluded to the to the fact that the suit property is matrimonial property. Among the reliefs sought are a declaration that the plaintiff is one of the rightful owners of the suit property. This court has the jurisdiction to determine disputes relating to use, occupation and ownership of land in accordance with Article 162 (2) (b) of the Constitution of Kenya 2010 and the Environment and Land Court Act.

8. In order to determine the essence of the dispute before the High Court, the court would have to peruse the pleadings in Thika HC FMisc E022 of 2024. This would therefore remove it from the purview of a Preliminary Objection.
9. In view of the foregoing, the Preliminary Objection lacks merit and it is hereby dismissed with costs to the Plaintiff.

Dated, signed and delivered virtually at Thika this 20th day of January 2026

J. M ONYANGO
JUDGE

In the presence of :

Ms Wambui for Mr Mungai for the 2nd Defendant

No appearance for the Plaintiff

Court Assistant: Hinga

ORIGINAL