

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E533 OF 2025

HUSSEIN ALIBHAI PIRBHAI.....1ST

PLAINTIFF/RESPONDENT

TRANQUILITY HOLDINGS LIMITED2ND

PLAINTIFF/RESPONDENT

-VERSUS-

MIDDLE EAST BANK KENYA

LIMITED.....DEFENDANT/APPLICANT

RULING

1. Before the court for determination is the defendant/applicant's notice of motion dated 25th November 2025 expressed to be brought under **Article 165 (3)(a)** of the **Constitution** seeking that the suit be dismissed or struck out and that the defendant's costs of the application be borne by the plaintiffs.
2. The application is premised on the following grounds: -
 1. ***This honourable court does not have any jurisdiction to hear and determine this suit or any of the alleged causes actions pleaded therein.***
 2. ***The jurisdiction of this honourable court under Article 162(2)(b) of the Constitution is to "hear and determine disputes" relating to "the environment and the use and occupation of, and title to land".***
 3. ***Under Section 13(1) of the Environment and Land Court Act this honourable court has original and appellate jurisdiction to hear and determine all***

disputes in accordance with Article 162(2)(b) of the Constitution.

- 4. Under Article 165(3)(a) of the Constitution it is the High Court of Kenya which has the exclusive and unlimited jurisdiction to consider the alleged causes of actions pleaded in the plaint and or to grant reliefs sought by the plaintiffs in respect thereof;*
- 5. This suit is otherwise an abuse of the process of this honourable court.*

3. The application is not supported by an affidavit.
4. In response to the application, the 1st plaintiff/respondent filed his replying affidavit sworn on 9th December, 2025. He deposed that the application has been brought in bad faith, and in attempt to delay the progress of the main suit. The 1st plaintiff/respondent deposed that the dispute concerns a straightforward transaction, namely the sale and purchase of land of the suit property known as LR. No. 209/8619 at the junction of Nanyuki and Tanga Roads, in industrial area, and that the transaction is governed in its entirety by the **Land Act** and the **Land Registration Act**, which falls under the jurisdiction of this court.
5. The 1st plaintiff/respondent deposed that he bought the suit land through sale and auction done on 21st November, 2023 for the sum of Kshs.195,000,000/-, paid the 10% deposit of Ksh.19,500,000/= and executed a memorandum of sale between himself and the

defendant/applicant on the same date. Further, that on 20th February, 2024, the 2nd plaintiff/respondent, acting on his behalf, and relying upon the defendant's/applicant's representations that the transfer documents were ready for completion, remitted the balance of Kshs.175,750,330/- thereby fully discharging all obligations as the purchaser and completing payment of the purchase price in strict compliance.

6. It was further deposed that unbeknown to them at the material time, the defendant/applicant was at all times aware of subsisting injunctive orders issued in HCCC No. E594 of 2023: which legally prohibited completion of the sale. He deposed that the said suit was dismissed on 31st July, 2025 thereby paving the way for the parties to complete the sale and transfer of the suit property.
7. The 1st plaintiff/respondent deposed that, as advised by his advocate on record, **Article 165(5) (b)** of the **Constitution** expressly divests the high court of jurisdiction in respect of matters falling within the jurisdiction of this court, while **Articles 40** and **60** safeguard proprietary rights, which are directly implicated in this dispute. Further, that **Section 13** of the **Environment and Land Court Act** expressly confers original jurisdiction upon this court to hear and determine all disputes relating to land, including contracts for the sale and transfer of interests in land, instruments affecting title, and ancillary issues.

8. The application was canvassed through written submissions. The defendant/applicant filed its written submissions dated 19th December, 2025. The plaintiffs/respondents filed their written submissions dated 7th January, 2026.
9. I have considered the application, the replying affidavit and the written submissions filed by both parties. The issue for determination is whether this court has jurisdiction to hear and determine the suit.
10. The court notes that the instant application dated 25th November, 2025 has not been filed together with a supporting affidavit.
11. **Order 51 Rule 4** of the **Civil Procedure Rules** provides as follows:-

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”
12. It is clear from the above that it is not all motions that should be supported by an affidavit. Indeed, no affidavit evidence is required where an application has raised points of law. An affidavit is,

however, necessary where the motion is to be supported by evidence. Since the defendant/applicant is raising points of law on the jurisdiction of this court, the application is capable of standing by itself.

13. The defendant/applicant has challenged the jurisdiction of this court to hear and determine the dispute herein. The **Environment and Land Court** is established under **Article 162(2)(b)** of the **Constitution** which provides that:-

“Parliament shall establish courts with the status of the high court to hear and determine disputes relating to—

(b) the environment and the use and occupation of, and title to, land.”

14. The jurisdiction of this court is outlined in **Section 13(1) and (2)** of the **Environment and Land Court Act** which provides that:-

“(1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2) (b) of the constitution, the court shall have power to hear and determine disputes—

- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*
- b. relating to compulsory acquisition of land;*
- c. relating to land administration and management;*
- d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*
- e. any other dispute relating to environment and land.”*

15. **Article 165 (5)** of the **constitution** expressly provides that the high court shall not have jurisdiction over matters falling within the jurisdiction of the **Environment and Land Court**.

16. From the plaint dated 21st October, 2025 the plaintiffs/respondents aver that the defendant/applicant exercised its statutory power of sale over the suit property on 21st November, 2023 by public auction, where the 1st plaintiff/respondent emerged as the highest successful bidder. The 1st plaintiff/respondent deposited the required 10% deposit of Kshs.19,500,000/= and executed a memorandum of sale between himself and the defendant/applicant on the same date, and thereafter paid the balance. The plaintiffs/respondent were however not made aware that there was a pending suit at the high court over the same matter which had

prohibited completion of the sale. The said suit was dismissed on 31st July, 2025 thereby allowing parties to complete the transaction, but the defendant/applicant is yet to complete the sale and transfer the suit property to the 1st plaintiff/respondent.

17. The Court of Appeal in the case of **Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] eKLR**, cited and relied upon by both parties herein found that:-

“As for land use, the Black’s Law Dictionary, 9th Edn; gives the basic definition of the word ‘use’ as being: - ‘the application or employment of something; esp. a long continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession or employment that is merely temporary or occasional.’ Emphasis added..... 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.”

18. In **Peter Mukhunya Maloba v Dennis Kusinyo [2020] eKLR** the court was of the view that:-

“The dispute that was before the trial court related to sale of land, which is regulated by the Land Registration Act and the Land Act. Contracts relating to sale of land are about title, for the agreement concerns conveyance of the

title in the land from the vendor to the purchaser. After sale, transfer should follow. All these processes are regulated and governed by the Land Act and the Land Registration Act, and any dispute arising from the same ought to be a matter for resolution by the Environment and Land Court, as envisaged by the Land Act and the Land Registration Act.”

- 19.** Thus, the suit herein arising out of a contract regarding the sale, ownership and title to and use of the suit land falls squarely within the jurisdiction of this court, contrary to the defendant/ applicant’s contention.
- 20.** In the case of **Suzanne Achieng’ Butler & 4 others v Redhill Heights Investments Limited & another (Commercial Civil Case 2 of 2016) [2016] KEHC 1313 (KLR)** cited and relied upon by the plaintiffs/respondents, J.M Ngugi, J (as he then was) observed as follows in applying the predominant purpose test:-

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at the ELC) or not, the courts utilize the pre-dominant purpose test: In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land, but the high court has jurisdiction if the transaction is predominantly for the provision of goods, construction, or works.

The court must first determine whether the predominant purpose of the transaction is the sale of land or construction. Whether the high court or the ELC has jurisdiction hinges on the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale of land or, in this case, the construction of a townhouse.

Ordinarily, the pleadings give the court sufficient glimpse to examine the transaction to determine whether sale of land or other services was the predominant purpose of the contract. This test accords with what other courts have done and therefore lends predictability to the issue.

In my view, the following factors are significant in determining the nature of the contract:

- a) The language of the contract;***
- b) The nature of the business of the vendor;***
- c) If the contract is mixed, the intrinsic worth of the two parts - land acquisition and other services or provision of materials;***
- d) The gravamen of the dispute - whether rooted in contests about ownership, deficiency in title, occupation or use of the land or whether the genesis of the dispute is something else like the quality of services offered, construction, works and so forth; and***

e) The remedies sought by the plaintiff.”

21. In applying the predominant purpose test, it is clear that the intention of the contract in the present case was the sale and purchase of land, which will govern the ownership, occupation and title to the suit land, exactly what this court was designed to hear and determine.
22. From the above, I find the notice of motion dated 25th November, 2025 misplaced and misconceived. The same lacks merit and it is thus dismissed with costs to the plaintiffs/respondents.
- It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 5TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
05/02/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

Ms. Khauser for the Plaintiffs/Respondents

No appearance for the Defendant /Applicant