

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELC CASE NO. E047 OF 2021

DIPAN MEDIRATTA & 17 OTHERS
PLAINTIFF

VERSUS

KAREN HILLS LIMITED1ST
DEFENDANT

LORDSHIP AFRICA FUND
MANAGEMENT LIMITED 2ND
DEFENDANT

KAREN HILLS MANAGEMENT
COMPANY LIMITED3RD
DEFENDANT

RULING

1. Before this court for determination is the 1st-3rd Defendants’/Applicants’ Notice of Motion application dated 14th November, 2025 brought pursuant to the provisions of **Article 162(2)(b)** of the **Constitution of Kenya** and **Section 13** of the **Environment and Land Court Act, 2011** seeking the following reliefs:

- i. That this Honourable Court be pleased to find that it lacks jurisdiction to hear and determine the Plaintiffs’ suit as filed and consequently,***

strike out the Plaintiffs' Amended Complaint dated 22nd October 2025 in its entirety.

ii. That in the alternative to the above, Paragraphs 10, 11, 12, 15, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 50 and 51 of the Plaintiffs' Amended Complaint dated 22nd October 2025, and the corresponding Prayers (v), (viii), (ix), (x), (xii), (xiii), (xiv), (xviii), (xx) and (xxii) be struck out on the ground that this Honourable Court lacks jurisdiction to hear and determine them.

iii. That the costs of this Application be borne by the Plaintiffs/ Respondents.

2. The Motion is supported by the affidavit of Jonathan Adrian Jackson, a director of the 1st, 2nd, and 3rd Defendants/Applicants, who deposes that he is well acquainted with the facts of the case and is therefore competent to swear the affidavit.
3. Mr Jackson deposed that as advised by Counsel, this court's jurisdiction is specially prescribed under **Article 162(2)(b)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act, 2011**. Pursuant thereto, this court's jurisdiction is limited to disputes relating to the use, occupation of, and title to land, and does not extend to

hearing and determining matters of a purely civil or commercial nature.

4. He noted that the dominant issues and substance of the Plaintiffs' suit are not matters concerning the use, occupation of, or title to land. Rather, the Amended Plaint shows that the suit is a composite commercial dispute, the primary claims of which fall into categories outside this court's jurisdiction, *to wit*, allegations regarding the entitlement to transfer of shares in the 3rd Defendant and the appointment of the Plaintiffs' representatives to its board; claims for the provision of audited financial accounts, allegations of financial discrepancies, disputes over the legality of interest charged on service charge arrears; and claims challenging the validity of payments made to Azile Limited, a third party company under a commercial Management Services Agreement.
5. According to Mr Jackson, as further advised by Counsel, as a direct consequence of these commercial claims, the Plaintiffs seek reliefs that this court has no jurisdiction to grant, including, a declaration binding the parties to an alleged agreement from 12th October 2018; a declaration concerning commercial rates for water; a mandatory injunction compelling the provision of audited financial statements; an order to revoke a third-party commercial agreement between the 3rd Defendant and Azile Limited; and an order for the

refund of Kshs 6,095,803.00/= and other unspecified sums alleged.

6. Also sought, and which this court has no jurisdiction to determine, it was stated, include an order for the taking of the 3rd Defendants' accounts by an independent auditor; and an order for injunction restraining the Defendants from charging and collecting service charge from the Plaintiffs. The aforesaid matters, he asserted, lie with the High Court.
7. In the alternative, he urged, should the court find that any aspect of the suit is properly before it, it should court should strike out the paragraphs and corresponding prayers as sought.
8. In response to the Motion, the Plaintiffs, through Ms Judy Karori, the 5th Plaintiff, swore a Replying Affidavit on 8th December, 2025. She deponed that contrary to the Defendant's averment, this court is vested with the jurisdiction to hear and determine disputes relating to *inter alia* use and occupation of land, management, private land contracts or any other instruments granting enforceable interests in land.
9. She noted that a perusal of the Amended Plaint dated 22nd October 2025 confirms that the cause of action arises from the Lease, Agreements for Leases and Agreements for Sale of Shares in the Management Company that is tasked with managing Karen Hills Estate.

- 10.** She explained that the Plaintiffs' claim against the Defendants is founded on a breach of the service charge provisions, specifically clause 1.1, which stipulates that the service charge shall comprise one-sixtieth ($1/60^{\text{th}}$) of the operating costs of the Estate incurred by the 3rd Defendant in each financial year in the performance of its obligations as set out in the Third Schedule.
- 11.** Under the said clause, it was deposed, the 3rd Defendant is entitled to recover those costs from the lessee and the lessees of the other units, the service charge being calculated by dividing the total expenditure incurred by the number of units on the land.
- 12.** Also in contention are clauses 3.1 and 3.11 which provide for payment of service charge subject to the issuance of a service charge certificate signed by or on behalf of the 3rd Defendant's auditor and which contains one sixtieth ($1/60^{\text{th}}$) of the costs of providing services referred to in the Third Schedule of the Lease, by the 3rd Defendant. It was noted that Part A of the Third Schedule of the Lease defines service charge as the expenses and outgoings reasonably incurred by the 1st Defendant during a financial period or incidentally to providing all or any of the services and taxes payable.
- 13.** According to Ms Karori, the Plaintiffs assert failure by the 3rd Defendant to comply with its obligations as provided for in

the Lease. In particular, she deposed, the 3rd Defendant failed to provide the service charge certificates from its auditors containing a fair summary of its costs and expenditure together with audited accounts of the service charge payable by each plot owner.

- 14.** Consequently, she deposed, the Plaintiffs have been unable to verify whether the service charge they have been charged and collected by the Defendants since purchasing their properties has been used for the intended purpose as envisaged in the Third Schedule of the Lease.
- 15.** Ms Karori deposed that the next ambit of the dispute concerns the issuance of shares in the Management Company, the 3rd Defendant. She explained that under Clauses G and H of the Lease, the 3rd Defendant was incorporated to manage the Estate, and that one (1) share in the company would be issued upon registration of the leases for all units. She further stated that Clauses I and J of the Agreement for Lease similarly entitle each purchaser to one (1) share in the 3rd Defendant, which is responsible for managing and maintaining the common areas.
- 16.** She deposed that Clause 1.2 of the Agreement for Lease requires the agreement for the sale of shares to be executed simultaneously with the Agreement for Lease, while Clause 3.1 provides that upon payment of the purchase price, the purchaser simultaneously acquires both the unit and one (1)

share in the 3rd Defendant. In addition, Clause 6 stipulates that upon registration of the Assignment of Lease in favour of the purchaser, and after the leases for all other units have been registered, the purchaser shall be issued with one (1) share in the Management Company.

- 17.** On the basis of these provisions, she asserted, the purchase of the units is inextricably linked to the acquisition of shares in the Management Company and that the two cannot be separated.
- 18.** Also in issue is, she stated, is the question of representation on the board of the Management Company; that under Clause 1.14 of the Agreement for Lease, the Management Company is mandated to manage the Estate on behalf of the unit owners; that Clause 7 of the same agreement further provides that the 3rd Defendant is responsible for the management of the Estate and that, at all times, its membership shall comprise owners of units or plots within the land.
- 19.** As a result of the breaches by the Defendants, she deponed, the Plaintiffs filed two applications dated 1st February 2021 and 21st September 2021 seeking *inter alia*, injunctive orders relating to the Defendants' breach of the Lease, Agreement for lease and Agreement for sale of shares including failure to furnish service charge certificates, audited accounts and representation in the board of the 3rd Defendant.

- 20.** According to Ms Karori, in a ruling delivered on 3rd March 2022, the court made a finding that the duty to collect service charge is the 3rd Defendant's responsibility in exercising its duty to manage the Estate as required by the Lease and Agreement for Lease; that the court also made a finding that failure to issue service charge certificates to the Plaintiffs constituted a breach of clause 3.11 of the Lease and that as a result, the Plaintiffs stand to suffer irreparable harm as occupants of the Estate.
- 21.** Further, it was deposed, the court made a finding that the Plaintiffs had made a *prima facie case* on the need for accounts and directed the Defendants to furnish them with audited accounts in respect of service charge received from all the property owners within Karen Hills Estate and the expenses incurred from 2011.
- 22.** It was explained that the Amended Plaint, together with the witness statement sworn by Mary Githiaka on the same date, addresses issues arising from the financial statements furnished to the Plaintiffs pursuant to this Court's orders in the ruling of 3rd March 2022 and that the application to amend the Plaint was allowed by consent of the Defendants' advocates, and the Defendants are therefore estopped in law from approbating and reprobating.
- 23.** Ms Karori deposed that the dispute is between the Plaintiffs, as homeowners and purchasers of the respective units, the

1st and 2nd Defendants as the developers, and the 3rd Defendant as the Management Company. She asserted that the suit is neither commercial nor purely civil in nature. As confirmed in the ruling of 3rd March 2022, the dispute centers on the interpretation and application of specific clauses in the Lease, the Agreement for Lease, and the Home Owners' Manual, and whether the parties are in breach thereof.

24. This court, she asserted has jurisdiction and has previously dealt with disputes concerning the issuance of shares to purchasers upon registration of leases, the incorporation of management companies, the election of boards of directors by homeowners, the handing over of management to duly elected boards, the issuance of shares, and matters relating to service charge.
25. Ms Karori explained that the Plaintiffs' case also challenges certain clauses of the Lease on the ground that they violate the Plaintiffs' constitutional right to property under **Article 40** of the **Constitution**, read together with **Section 42** of the **Land Act**. She deponed that, by reason of these violations, the impugned clauses are not binding on the Plaintiffs as purchasers and registered proprietors within the Estate and ought not to be enforced.
26. She noted that the Plaintiffs specifically impugn Clause 3.1 on rent and service charge; Clause 3.2 on payment of

outgoings and VAT; Clause 3.9.2(c) on alienation and assignment, which purports to bind purchasers to perform and observe all lessee covenants and other covenants in the Lease; and Clause 3.11.2 on service charge, particularly sub-clause (f), which reserves the right to terminate the Lease and sell the Plaintiffs' units. Also challenged, she deposed, is Clause 6.3 on dispute resolution, which vests the 3rd Defendant with the power to resolve disputes and appoint an arbitrator.

27. She further deposed that the Plaintiffs also contest Clause 6.4 which grants the 1st and 3rd Defendants the right to alter the layout of the Estate, as well as Clause 6.10, which also concerns dispute resolution. In light of the foregoing, she maintained that this court is properly seized of jurisdiction to hear and determine the suit and to grant the reliefs sought in the Amended Plaint dated 22nd October 2025.
28. Finally, Ms Karori deposed that the Motion was not brought in good faith and was intended solely to delay the hearing and determination of the substantive suit. She urged that the same be dismissed with costs.

Analysis and Determination

29. Having considered the Motion and the response, the issues for determination are:

- i. *Whether the Amended Complaint dated 22nd October, 2025 should be struck out for want of jurisdiction by this court?*
- ii. *Whether in the alternative, paragraphs 10, 11, 12, 15, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 50 and 51 of the Amended Complaint dated 22nd October, 2025 should be struck out?*

30. Vide the present Motion, the Defendants contend that this court lacks jurisdiction to entertain the matter, as set out in the Amended Complaint dated 22nd October, 2025 asserting that the dispute falls within the realm of commercial law and is therefore within the mandate of the High Court.

31. In contrast, the Plaintiffs maintain that the dispute concerns the use and occupation of land as contemplated under **Article 162(2)(b)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act** and is as such properly before this court. It is trite that jurisdiction is everything. This position was succinctly captured by Nyarangi, J.A. in *Owners of Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Limited [1989] KLR 1* thus:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect

of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

32. Elaborating on the same, the Supreme Court in *In the Matter of the Interim Independent Electoral Commission (Applicant) (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR) (20 December 2011) (Ruling)* stated:

“Assumption of jurisdiction by courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.” The Lillian

‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

- 33.** The Environment and Land Court and the High Court of Kenya are courts of equal status albeit with different jurisdictions. **Article 165(3)** of the **Constitution** vests the High Court with unlimited original jurisdiction in both civil and criminal matters, and authority to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened.
- 34.** Additionally, the High Court is empowered to interpret the Constitution, including determining the validity of laws or acts alleged to contravene it, resolving questions on the constitutional powers and relationships between national and county governments, and addressing conflicts of laws under **Article 191**. Further, the court may exercise any other jurisdiction, original or appellate conferred by legislation.

35. Under **Article 165(6)**, the High Court also has supervisory jurisdiction over subordinate courts and any person or body exercising judicial or quasi-judicial authority, except over superior courts.
36. On the other hand, the broad jurisdiction of this court is donated by **Article 162(2)** of the **Constitution of Kenya** 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...”

37. Pursuant to the constitutional mandate above, Parliament enacted the Environment and Land Court Act. At **Section 13(2)**, the Act provides that:

*“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.”

38. This court is also empowered to determine claims alleging the denial, violation, or threat to the constitutional right to a clean and healthy environment under **Articles 42, 69, and 70** of the **Constitution**. In addition, the court has the mandate to exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.

39. In **Republic vs Chengo & 2 others (Petition 5 of 2015) [2017] KESC 15 (KLR) (26 May 2017) (Judgment)**, the court, delving into the jurisdictional limits of the superior courts noted:

“[50] ... Article 162(1) categorizes the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of the Constitution intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts. Concurring with this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of “equal rank and none has the jurisdiction

to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other". Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these Courts is subject to supervision or direction from another.

*[52] In addition to the above, we note that pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of Courts, with *suis generis* jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and*

ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

- 40.** Courts have had occasion to consider how jurisdiction is to be determined where a question arises as to which of the superior courts has jurisdiction in a given matter. Historically, two principal approaches have emerged within the superior courts: one favouring the “predominant purpose test,” and the other advocating for the “predominant issue before the court test.”
- 41.** The proponents of the former include Ngugi, J who rendered himself in ***Suzanne Achieng Butler & 4 Others vs Redhill Heights Investments Limited & Another (2016) eKLR*** as follows:

“23. 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.

24. The Court must first determine whether the pre-dominant 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***

At the same time, however, it is imperative that a Court should not approach jurisdiction in an ultra-technocratic fashion as an essentialist parsing of sticks in a bundle. Jurisdiction is a substantive standard aimed at ensuring only the right court or tribunal clothed with the legitimate mandate deals with a dispute or controversy. It is not a jurisprudential thaumatrope to keep litigants guessing to which (sic) Court their controversy belongs at the pain of having their timeously pleaded case struck out for not pigeon-holing their claim in the correct box. The correct approach to jurisdiction is one which treats the question functionally as opposed to technically; one that looks at the constitutional objectives in creating equal status Courts as opposed to engaging in an essentialist, taxonomical and categorical analysis.”

42. Munyao, J was for the other test. In *Lydia Nyambura Mbugua vs Diamond Trust Bank Kenya Limited & Another [2018] eKLR* the Learned Judge expressed:

“ 25... On my part, I would modify the above test, and hold the position that what is important when determining whether the court has jurisdiction, is not so much the purpose of the transaction, but

the subject matter or issue before court, for I think that the purpose of the transaction, may at times be different from the issue or subject matter before court. Let us take the transaction of a charge as an example. The predominant purpose of creating a charge is for one to be advanced some financial facilities. However, when it comes to litigation, the predominant issue may not necessary be the money, but the manner in which the chargee, is exercising its statutory power of sale. Here, I trust that you will see the distinction between the predominant purpose of the transaction and the predominant issue before court. That is why I hold the view, that in making a choice of which court to appear before, one needs to find out what the predominant issue in his case is, and not necessarily, the predominant purpose of the transaction. If the litigant's predominant issue will touch on the use of land, or occupation of land, or a matter that affects in one or another, title to land, then such issue would fall for determination before the ELC."

43. The Court of Appeal had an occasion to, and dealt with the issue. In *Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates vs Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates KECA 504 (KLR)*, the learned Judges noted:

“We reiterate the position taken in Co-operative Bank of Kenya Limited vs Patrick Kangethe Njuguna (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land. The dispute between the appellant and the respondent related to the professional undertaking given by the appellant to facilitate the land transaction between his client and the respondent’s client.”

We could not have put it more clearly. A professional undertaking in a legal transaction is a separate contract between advocates that creates legal obligations anchored on professional relationship and etiquette between the advocates. It creates an independent cause of action separate from the transaction undertaken by the advocates’ clients. Such an independent cause of action is reflected herein in the OS lodged by the respondent (who was the plaintiff) wherein the respondent sought orders against the appellant (who was the defendant) that:

“the defendant do honour the professional undertaking dated 11th March 2016

and.....fully indemnify the clients in respect of all claims of interest to the tune of Kshs 800,000/= suffered by reason of breach of the defendant's professional undertaking....."

[15] The dominant issue in the dispute that was before the learned Judge was the honouring of the professional undertaking, and not the land transaction between the advocates' clients. The undertaking had nothing to do with the environment, or the use and occupation of land, or title to land. The land transaction that the advocates' clients were engaged in was not in issue. The learned Judge therefore properly rejected the application to have the respondent's suit transferred to the ELC."

- 44.** Guided by the exposition by the Court of Appeal in ***Joel Kyatha(supra)***, the court will adopt the pre-dominant issue test.
- 45.** In summary, the Plaintiffs, through the Amended Plaint dated 22nd October 2025, seek a range of declaratory, injunctive, and ancillary reliefs arising from the management and administration of Karen Hills Estate. At the core of the dispute are allegations that the Defendants are in breach of their obligations under Clause 7 of the Agreement for Lease,

particularly in relation to the levying, accounting, and disclosure of service charge.

- 46.** The Plaintiffs seek declarations that the Defendants are obliged to furnish audited financial statements for service charge expenses for each financial year as required under Part C of the Third Schedule to the Leases; that the 3rd Defendant is not a profit-making entity; and that the Plaintiffs are only liable to pay service charge in respect of actual expenses incurred.
- 47.** The Plaintiffs further seek declarations affirming the binding nature of resolutions and agreements reached between the parties on 12th October 2018; their right to query charges imposed by service providers contracted by the 3rd Defendant; and that the 3rd Defendant is not entitled to levy separate commercial water charges for water abstracted from the estate borehole, such services being part of the service charge framework.
- 48.** The Plaintiffs also challenge the validity and enforceability of the Lease between the 1st, 2nd, and 3rd Defendants, contending that it is oppressive and unconscionable to them as purchasers, and seek declarations that specific clauses of the Lease violate **Article 40** of the **Constitution** and rights preserved under **Section 42** of the **Land Act**.
- 49.** In addition, the Plaintiffs seek multiple mandatory injunctive orders compelling the Defendants to restructure the

governance and management of the 3rd Defendant by including representatives of the Plaintiffs and other plot owners on its Board of Management; to regularize their membership and shareholding status; and to provide comprehensive financial and corporate disclosures, including audited accounts, service charge certificates, vendor contracts, statutory compliance documents, annual returns, and property ownership records. They further seek the taking of accounts by an independent firm of auditors in respect of service charge payments from 2011 to date.

50. The Plaintiffs have also sought for mandatory injunctive reliefs compelling the Defendants to undertake specific remedial, maintenance, and safety measures within the estate, including pest control, borehole repair and maintenance, and upkeep of common and undeveloped areas. Finally, they seek restraining orders prohibiting the Defendants from collecting service charge pending full financial disclosure, indemnification against losses arising from the alleged breaches, and orders requiring consultation with and approval by the Plaintiffs and other plot owners in estate management decisions pending reconstitution of the Board.

51. The Plaintiffs case as per the Amended Plaint is that the 1st Defendant is the registered proprietor and head lessee of Karen Hills Estate, a 25.80-hectare parcel held under a 99-year lease from the Government of Kenya, which was sub-

leased to the 2nd Defendant under a Lease dated 31st August 2012, with the 3rd Defendant incorporated as the management company.

- 52.** The Plaintiffs purchased subdivided plots from the 2nd Defendant through assignments of lease, each purchase being tied to one share in the 3rd Defendant. Nonetheless, it is alleged that the Defendants failed to issue the shares or include owner representatives on the Board, thereby retaining exclusive control of the management company in breach of the Agreements for Lease.
- 53.** They further allege the imposition of oppressive covenants, failure to provide agreed amenities, lack of transparency in service charge administration, denial of audited accounts and vendor information despite payment, and financial irregularities including diversion of interest and penalties to a related company and inflated water charges for borehole-supplied water.
- 54.** The Plaintiffs also contend that the Defendants failed to honour resolutions reached on 12th October, 2018 regarding governance, financial disclosure, and fair billing.
- 55.** The court has carefully considered the pleadings, the applicable statutory framework, and the jurisprudence reviewed in the preceding part of this ruling. As earlier noted, in determining whether it has jurisdiction, the court is guided by the predominant issue test, as settled by the Court

of Appeal in *Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates vs Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates(supra)*.

- 56.** At the core of the dispute before this court are alleged breaches of Agreements for Lease, Leases, and Assignments of Lease pursuant to which the Plaintiffs acquired rights over subdivided plots within Karen Hills Estate. Under **Section 2** of the **Land Act, 2012**, a lease is defined as the grant of the right to exclusive possession of land for a specified period.
- 57.** Both the **Land Act, 2012** and the **Land Registration Act, 2012** recognize leases as registrable interests in land, capable of assignment, transfer, enforcement, and protection. These statutes govern the creation, validity, enforceability, and termination of leasehold interests, as well as the remedies available for breach of lease covenants.
- 58.** The Plaintiffs' claims are grounded in these leasehold relationships and concern the Defendants' exercise of rights and obligations thereunder. The issues raised include occupation and enjoyment of the leased land, access to and use of estate amenities, service charge obligations, estate management, shareholder rights within the 3rd Defendant, and the scope and enforceability of covenants that run with the land. The reliefs sought, declaratory, injunctive, and mandatory orders flow from and are incidental to these leasehold arrangements.

59. In *Pumwani Riyadhha Mosque Committee & another vs Gikomba Business Centre Limited (Civil Appeal No. E965 of 2024) [2025] KECA 1257 (KLR)*, the Court of Appeal, addressing the question whether a dispute arising from a lease agreement constituted a matter relating to the “use of land” within the meaning of **Article 162(2)(b)** of the **Constitution** stated:

*“There is no doubt that the jurisdiction of the Environment and Land Court entails disputes related to land use planning and tenure. In the present case, the contention between the parties is whether the lease agreement between them amounted to the “use of land” or was a breach of contract falling within what was described by the Court in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra)* as “the tabulation of the sums owing”.*

32. According to the Sessional Paper No. 1 of 2017 on National Land Use Policy, land use is defined as follows:

“Land use refers to the activities to which land is subjected to and is often determined by; economic returns, socio-cultural practices, ecological zones and public policies. In the context of this policy, land use is defined as the

economic and cultural activities practiced on the land...

Key land uses in Kenya include; agriculture, industrial/ commercial use, infrastructure, human settlements, recreational areas, rangelands, fishing, mining, wildlife, forests, national reserves and cultural sites; among others spread across the high, medium and low rainfall areas.”
(Emphasis ours)

33. According to the United Nations Department of Economic and Social Affairs (<https://tinyurl.com/43sdev5b>), land use is defined as:

“Land use defined in this way establishes a direct link between land cover and the actions of people in their environment. Thus, a land use can be defined as a series of activities undertaken to produce one or more goods or services.”
(Emphasis ours)

34. The definition of land use was given judicial footing in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra) thus:

“35. Accordingly, for land use to occur, the land must be utilized for the purpose for which the surface of the land, air above it or ground below it is adapted. To the law therefore, land use

*entails the application or employment of the surface of the land and/or the air above it and/ or ground below it according to the purpose for which that land is adapted. Neither the *cujus doctrine* nor Article 260 whether expressly or by implication recognizes charging land as connoting land use.*

37. Further, Section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land. As seen before, land use connotes the alteration of the environmental conditions prevailing on the land and has nothing to do with dispositions of land. Saying that creation of an interest or disposition amounts to use of the land, is akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use. The mere acquisition or conferment of an interest in land does not amount to use of that land. Else we would neither speak of absentee landlords nor would principles like adverse possession ever arise. If a disposition were held to constitute land use, an absentee landlord with a subsisting legal

charge over his land would never have to contend with the consequences of adverse possession, for he would always be said to be ‘using’ his land simply by virtue of having a floating charge/disposition over the property.”

35. In essence, land use can simply be defined as activities practiced on land to yield economic or social benefits. Additionally, it is important to appreciate that among the powers donated by section 13(2)(a) of the Environment and Land Court Act to the Environment and Land Court is the authority to hear and determine disputes relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.”

60. On the facts before it, the Court of Appeal concluded:

“Through the agreement in question, the respondent leased the suit property from the appellants for economic activities and agreed to pay the appellants a monthly rent in consideration of occupation and use of the suit premises. From the plaint, some of the alleged particulars of breach are “interfering with the business operations of the respondent and

violation of the terms of the lease agreement.” Additionally, one need not look further than Part 1 of the lease agreement and paragraphs 6-11 of the plaint to conclude that the lease agreement concerned the use of the suit property and the respondent’s tenure thereon. Unlike in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra), where the land was being used like a chattel to secure a loan from a bank, in the instant matter, the respondent had leased the land and put up structures thereon for leasing out. The land was therefore being used in the terms contemplated by Article 162(2)(b) of the Constitution, and the dispute arising from the lease agreement between the parties squarely fell in the province of the Environment and Land Court. That being the case, we must respectfully disagree with the learned Judge’s finding on jurisdiction. In our view, the dispute herein is one which fell within the jurisdiction of the Environment and Land Court pursuant to the provisions of Article 162(2)(b) of the Constitution and section 13(2)(a) of the Environment and Land Court Act.”

61. Ultimately, the court finds that the dominant issue in this dispute concerns the Plaintiffs’ possession, occupation, and

enjoyment of land within Karen Hills Estate. Issues relating to the provision and management of shared amenities, the governance of the Estate through the Management Company, and the enforcement of covenants incidental to leasehold tenure flow directly from that occupation and use of land and are not merely incidental to a commercial or accounting contest.

- 62.** The contention that this court lacks jurisdiction to hear and determine the Plaintiffs' suit as filed and ought, in consequence, to strike out the Plaintiffs' Amended Plaint dated 22nd October 2025 in its entirety is without merit and is accordingly rejected.
- 63.** Having found that this court has jurisdiction to hear and determine the dispute, and having further found that the Plaintiffs' claims arise from and are inextricably linked to the Agreements for Lease, Leases, and Assignments of Lease governing the Plaintiffs' rights and obligations within Karen Hills Estate, the alternative prayer seeking to strike out paragraphs **10, 11, 12, 15, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 50 and 51** of the Amended Plaint dated 22nd October 2025 is without merit.
- 64.** The impugned paragraphs are directed at matters touching on leasehold tenure, occupation, estate management, service charge obligations, and enforcement of covenants incidental

to land use, all of which fall squarely within the jurisdiction of this Court. The said prayer also fails.

65. In the end, the Notice of Motion dated the 14th November, 2025 is found to be unmerited and is dismissed with costs.

Dated, signed and delivered in Nairobi virtually this 12th day of February, 2026.

O. A. Angote
Judge

In the presence of:

Mr. Issa for the Plaintiffs

Ms Kithinzi for the Defendant

Court Assistant: Tracy