



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kariuki v Cyka Fresh Limited & 3 others (Land Case E066 of 2024)
[2026] KEELC 1266 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E066 OF 2024**

**JO OLOLA, J
MARCH 5, 2026**

BETWEEN

CECILY WANGARI KARIUKI PLAINTIFF

AND

CYKA FRESH LIMITED 1ST DEFENDANT

LAND REGISTRAR 2ND DEFENDANT

OH MOMANYI ADVOCATE 3RD DEFENDANT

STANDARD CHARTERED BANK OF KENYA LIMITED 4TH DEFENDANT

RULING

1. By a Complaint dated 24th July 2024, Cecily Wangari Kariuki (the Plaintiff) prays for judgment against the Defendant jointly and severally for:
 - a. A declaration that all the entries made on the register of the suit property being CR No. 16686 Land Reference No. MN/4183/1 (Original Number 3623/2) and registered as entries No. 12 & 13 were irregular, fraudulent and therefore null and void ab initio;
 - b. A declaration that all entries made on the register of the suit property being CR No. 16686 Land Reference No. MN/4183/1 (Original Number 3623/2) and registered as entries No. 14 & 15 were irregular, fraudulent and therefore null and void ab initio;
 - c. An order directing the 2nd Defendant to cancel entries No. 12, 13, 14 and 15 made on the register of the suit property being CR No. 16686, Land Reference No. MN/4183/1 (Original Number 3623/2);



- d. An order directed to the 4th Defendant to release the Original Certificate of Grant of the suit property being CR No. 16686, LR No. MN/4183/1 (Original Number 3623/2) to the Plaintiff and the beneficiaries of the Estate of Cyrus Kariuki Waithaka (deceased);
 - e. General Damages against the Defendants for fraudulently and illegally dispossessing the beneficiaries of the Estate of Cyrus Kariuki Waithaka (deceased);
 - f. Loss of income by the beneficial owners of the suit property from 2014 till date of Judgment;
 - g. Costs and interest of the suit; and
 - h. Any other relief this Court deems fit.
2. Those prayers arise from the Plaintiff's contention that she is a joint owner of the suit property together with the directors/shareholders of the 1st Defendant company. The Plaintiff avers that the 1st Defendant forged her signature on the Deed of Assent dated 6th December 2016 and transferred the instrument on 31st March 2017. It is further the Plaintiff's position that the 3rd Defendant had in collusion with the 1st Defendant purported to witness the Plaintiff's forged signature and thereafter charged the property with the 4th Defendant Bank.
 3. Cyka Fresh Limited (the 1st Defendant) is opposed to the claim. In its Statement of Defence and Counterclaim dated 7th May 2025, the 1st Defendant asserts that the alleged claims of forgery were dealt with and were dismissed in Nairobi High Court Succession Cause No. 1795 of 2011. The 1st Defendant avers that the dispute herein is a commercial matter regarding advancement of credit/loan facilities by the 4th Defendant to the 1st Defendant and that such dispute regarding shareholding or directorship it is not within the jurisdiction of this Honourable Court.
 4. The 1st Defendant further avers that this suit is an abuse of the court process as boardroom disputes regarding alleged exclusion of a director from decision making or forgery of documents should be resolved internally or referred to the commercial and/or criminal Court.
 5. By way of the Counterclaim, the 1st Defendant asserts that it followed all the requisite legal procedures in acquiring loan facilities and the 4th Defendant granted the facilities after being satisfied that the 1st Defendant was compliant with all the requisite conditions. As a result, the 1st Defendant prays for judgment against the Plaintiff for the following:
 - a. The Plaintiff's suit be dismissed with costs;
 - b. A declaratory order (be issued) that the charge(s) created over LR No. MN/4183/1 were legal and valid;
 - c. A permanent injunction restraining the Plaintiff by herself, her agents, servants, employees, advocates or anyone claiming under her from dealing with or interfering in any manner with the suit property LR No. MN/4183/1 or the charges and other securities created over the same; and
 - d. Costs of this suit and of the Counterclaim together with interest thereon until payment in full.
 6. By a Notice of Preliminary Objection similarly dated 7th May 2025, the 1st Defendant objects to this suit on some three (3) grounds stated as follows:
 1. That this Court has no jurisdiction to hear and determine commercial matters;
 2. That this Court has no jurisdiction to hear and determine succession related matters;



3. That this suit is incompetent, bad in law, an abuse of the Court process and ought to be struck out with costs.
7. Following directions issued by the Court in regard to the 1st Defendant's Preliminary Objection, both the 1st Defendant and the Plaintiff filed submissions thereon. I have perused and considered the submissions as filed by the Learned Advocates representing the parties.
8. By the first limb of their Preliminary Objection, the 1st Defendant asserts that this Court has no jurisdiction to hear and determine commercial matters. In that respect the 1st Defendant submits that the matter before the Court relates to a charge obtained by the 1st Defendant and that it has nothing to do with the use of the suit property. In support of that position, the 1st Defendant has placed reliance on the Court of Appeal decision in the case of *Co-operative Bank of Kenya Limited –vs- Partrick Kang'ethe Njuguna & 5 Others (2017) eKLR*, where the Court held as follows:

“Furthermore, 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; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.”
9. I was however not persuaded by the argument that the cause of action herein relates solely to the charge obtained by the 1st Defendant from the 4th Defendant and that this Court has no jurisdiction to hear and determine what the 1st Defendant describes as “commercial matters.”
10. From the material placed before the Court, it was apparent that the Plaintiff's claim is that she was at all times material a joint registered owner together with her siblings of the parcel of land known as LR. No. MN/4183/1 (CR. No. 16686). According to the Plaintiff, her siblings had since incorporated the 1st Defendant company and proceeded to fraudulently transfer the said property to the 1st Defendant before charging the same to the 4th Defendant Bank. It was accordingly the Plaintiff's case that the 1st Defendant never acquired a good title to the suit property and therefore they could not legally and procedurally charge the same to the 4th Defendant.
11. Arising from the foregoing, I was persuaded that this case was distinguishable from the *Kang'ethe* case and that this court had jurisdiction to intervene where the property was transferred without the knowledge and/or consent of one of the proprietors.
12. At any rate, it was clear to me that the dispute herein fell within the provisions of the *Land Act, 2012*. Section 2 of the said Act lays down the meaning of the word “charge” and goes ahead to define the word “Court” under the Act as follows:

“Court” means the Environment and Land Court established under the *Environment and Land Court Act, 2011* (No. 19 of 2011).”
13. In regard to the question of jurisdiction Section 150 of the *Land Act* provides as follows:

“The Environment and Land Court and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”



14. Arising from the foregoing, I was not persuaded that this Court had no jurisdiction under Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act* to hear the dispute herein.
15. The other issue raised by the 1st Defendant was the fact that this Court has no jurisdiction to hear and determine succession related matters. According to the 1st Defendant, the Plaintiff had herein sought to challenge the transmission of the suit property which was carried out in light of the confirmed grant issued in Nairobi High Court Succession Cause No. 1795 of 2011.
16. While I am in agreement that this Court has no jurisdiction to hear such matters, I was unable to find any succession matters raised in the present suit. The fact that the suit property was acquired by the Plaintiff and the other beneficiaries by way of those succession proceedings is not the subject of the dispute herein. As I understand it, what was in dispute was how the subject property came to be transferred from the name of the Plaintiff and the other beneficiaries, to the name of the 1st Defendant Company as the registered proprietor thereof. That is a matter which in my view cannot be resolved by the Family Division of the High Court.
17. In the premises, it was clear to me that 1st Defendant's Preliminary Objection dated 7th May 2025 was misconceived and without basis. It is hereby dismissed with costs to the Plaintiff.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 5TH DAY OF MARCH, 2026.

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Mungai Advocate for the Plaintiff
- c. Mr. Karwanda Advocate for the 1st Defendants
- d. Mr. Kemei Advocate for the 2nd Defendant
- e. Ms. Atsanga Advocate for the 4th Defendant

