



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND OS E022 OF 2025

GRACE **AKINYI**
OMWARE..... **APPLICANT**

VERSUS

SENSUAL **LUXURY** **PROPERTY** **LTD.....**
.....RESPONDENT

RULING

1. This suit is instituted by an originating summons (OS) dated 3rd September 2025 and moved under **Order 37, Rules 1 to 20** of the **Civil Procedure Rules (“CPR”)**. The applicant seeks orders against the respondent as follows: -

a. Spent.

b. THAT pending the hearing and determination of this suit, this Honourable Court be pleased to

issue an interlocutory injunction restraining the respondent, whether by themselves, their agents and/or servants, or any other person and/or authority, from encroaching, trespassing, accessing, alienating, evicting, damaging, wasting, selling, transferring, removing, disposing of, or in any other way interfering with the applicant's possession of the parcel of land known as L.R NO. MAVOKO MUNICIPALITY NUMBER 12715/11776, registered under SENSUAL LUXURY PROPERTY LTD, which the applicant holds as the beneficial owner.

c. An order that the registration of the transfer effected on 30th October 2023 against the suit property at the Lands Registry in Nairobi be vacated.

d. An order that the proprietorship section of the register of the property of Title No. MAVOKO MUNICIPALITY Number 12715/11776 be rectified by reinstating the applicant as the proprietor of the said property in place of the respondent.

2. The OS is supported by an affidavit deposed on the instant date by the applicant. In brief, the applicant, among others, argues that she was the owner of **L.R. No. MAVOKO MUNICIPALITY NUMBER 12715/11776 (“suit property”)** until 30th October 2023. Nonetheless, on 26th October 2023, she entered into a sale agreement with the respondent over the suit property at an agreed price of Kshs 2,500,000/-. In consequence, the respondent paid a deposit of Kshs 50,000/-, with the remaining Kshs 2,450,000/- due upon transfer.
3. Despite reminders, the respondent has not paid the balance, and she is apprehensive that, without injunctive orders, the respondent may attempt to execute, sell, or transfer the suit property to a third party to her detriment. She states that she has rescinded the sale and requests that the title be returned to her. She also informs the court that she is in possession of the suit property. To substantiate these, she tendered copies of several documents, including a bank statement, an agreement for sale dated 23 October 2023, and a certificate of title for the suit property, showing it was registered in her name on 11 April 2022 and later transferred to the respondent’s name on 30 October 2023.
4. When this matter was brought before the court for pretrial directions on 26 November 2025, **Mr. Ochanda**, counsel for the applicant, submitted that the court had been moved

correctly and appropriately. After hearing his submission, the court reserved the matter for a ruling to be delivered today. Accordingly, having considered the applicant's unopposed pleadings and the evidence presented, including the annexures, the singular issue that arises for determination is **whether the manner in which the applicant brought the matter before the court is statute-barred.** This issue will be dealt with shortly.

5. On matters of law, **Order 37** of the **Civil Procedure Rules (CPR)** outlines the types of cases that may be instituted by originating summons (OS). In this instance, the applicant's OS is based on **Order 37, Rules 1 to 20** of the **CPR**. Having considered the pleadings before the court, the applicant and respondent are respectively a vendor and purchaser and are permitted to approach this court under **Order 37, Rule 3** of the **CPR**, which allows them, as a vendor, purchaser, or their representatives, at any time file an originating summons before the judge sitting in chambers. This summons is used to resolve questions regarding requisitions, objections, claims for compensation, or other issues arising from or connected to the sale contract, excluding questions concerning the existence or validity of the contract itself. To this extent, this court finds that the OS is properly before it.

6. However, as concerns the orders sought in the OS, a careful reading thereof reveals that she is contesting the respondent's proprietary interest in the suit property and seeks an order for the cancellation of the registration in the respondent's name and for the registration to be reverted to her name on the grounds of breach by the respondent. In essence, she has invoked **Section 80(1)** of the **Land Registration Act (LRA)** and is seeking rectification of the register for the suit property, either by cancellation or amendment. Despite the omission of an official search to demonstrate such registration, the suit property is probably registered in the respondent's name, which informs the nature of the orders she is pursuing.
7. However, the manner in which she has presented OS to the court for relief is explicitly precluded by the provisions of **Order 37 Rule 8** of the **CPR**, which expressly forbids a party from initiating a case by an OS in cases where the relief sought pertains to cautions, inhibitions, or the rectification of titles, including cancellations and amendments thereof, as stated therein as follows: -

“An application under the Land Registration Act, 2012 other than under Part VII and Part VIII thereof shall be made by originating summons unless there is pending a suit involving the same

lands when the application may be made in that suit.”

8. Further, having closely scrutinised the matter in dispute, the issues are complex and highly contentious, and this court cannot grant the orders sought by the applicant in the OS, as a full hearing must be conducted. In arriving at this conclusion, the court is guided by the decision of **Ngomeni Swimmers Ltd v The Commissioner Of Lands & c18 others [2013] KEHC 584 (KLR)**, which faced similar circumstances, as herein, and held that in claims such as those sought in the OS, the applicant ought to have moved the court by a plaint. The court also reaches a similar conclusion. Additionally, it finds that the suit is barred by **Order 37 Rule 8** of the **CPR**, and therefore, the OS is deemed incompetent and a non-starter. Since it was unopposed, the applicant shall bear her own costs. In the end, the following final disposal orders are hereby issued: -

a. The applicant’s suit is hereby struck out with the applicant bearing her own costs.

b. File is hereby effectively marked as closed.

Orders accordingly.

Delivered and Dated at Machakos this 10th day of March, 2026.

**HON. A. Y. KOROSS
JUDGE
10.03.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Ochanda for Plaintiff/ Applicant.

No appearance for other parties.