

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. E265 OF 2022**

**MAPLE MANAGEMENT LIMITED.....PLAINITIFF**

**=VERSUS=**

**JULIANA NJAMBI KIHARA.....1<sup>ST</sup> DEFENDANT**

**SGEBO TUNDURA GAGI T/A**

**GAGI INVESTMENT LIMITED.....2<sup>ND</sup> DEFENDANT**

**SANDIP P. SHAH .....3<sup>RD</sup> DEFENDANT**

**APUL N. SHAH.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants vide a P.O dated 26.6.2025 raise the following objections in limine and urged the Court to strike out the Plaintiffs Suit with costs to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the grounds THAT:
  - a. It offends Section 4(1)(a) of the Limitations of Action Act.
  - b. The jurisdiction properly lies with the Commercial and Tax Division of the High Court.
  - c. By virtue of Section 2 of the Insolvency Act provides in mandatory terms that all disputes relating to liquidation and insolvency are to be determined by the High Court and not the Environment and Land Court.

d. The Plaintiff's Suit is an abuse of the Court process and should be struck out with costs.

1. The court gave directions for prosecution of the P.O by way of written submissions. In their submissions dated 28<sup>th</sup> November, 2025, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants gave a background of the facts in support of the P.O inter alia that Vide a Debenture dated 30 August 2000 and a Supplemental Charge dated 27 April 2006, Maple Investments Limited ("the Chargor") charged L.R. No. 1870NI/85 in favour of I&M Bank Limited.
2. Upon default by the Chargor, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were appointed as joint receivers under the said instruments. In exercise of those powers, the Receiver, acting under statutory authority, sold the Health Club Number LH 004, Ground Floor, on Land Reference Number 1870/VI/85 Nairobi pursuant to the registered transfer dated 24 November 2008.
3. It is on account of these facts that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit The Plaintiff's cause of action straddles both contract and recovery of land. It is our submission that both are caught by express limitation provisions of the Limitation of Actions Act, Cap 22.
4. They rely on the provisions of Section 4(1)(a) which states thus:

"The following actions may not be brought after the end of six years from the date on which the cause of action accrued

(a)actions founded on contract;"

5. The Plaintiff's grievance arises from the sale and transfer of the health club and swimming pool in 2008, yet the present suit was lodged in 2022,14 years after registration of the lease.
6. These Defendants while citing the provisions of section 2 of the Insolvency Act argue that the jurisdiction of the ELC does not extend to matters of corporate insolvency, receivership, or liquidation, which are governed by the Insolvency Act, 2015 and placed exclusively under the High Court. They further relied on the case of In Cytonn High Yields Solutions (In Liquidation) [20241 KEHC 9136 (KLR)] the Court stated:

'Further, section 423(1) of the Insolvency Act vests the High Court with the jurisdiction to supervise the liquidation process of companies registered in Kenya. It is quite instructive that: Only the High Court has jurisdiction to supervise the liquidation of companies registered in Kenya.

7. On the other hand, the Plaintiff opposed the PO relying inter alia on the case of Mukisa Biscuits versus West End Distributors Ltd in which Newbold P stated that

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact

has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”

8. It submits that the 3<sup>rd</sup> and 4<sup>th</sup> Defendant seem to miss the fact that its suit is founded on fraudulent collusion between the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants who colluded to unlawfully deprive members of the Plaintiff of their rights to the use and enjoyment of the swimming pool and health club by having the same surreptitiously sold off to the 1<sup>st</sup> Defendant in a dubious process.
9. The Plaintiff also argues that the jurisdiction of the Environment and Land Court entails disputes related to land use planning and tenure. In looking at the Amended Plaintiff in its entirety it is difficult to contextualize the 3<sup>rd</sup> and 4<sup>th</sup> Defendant's objections more so within the parameters of a P.O. Indeed, from the said Amended Plaintiff and even looking at the prayers sought, the same primarily relates to cancellation of fraudulently, unlawfully and un-procedurally acquired Title.
10. Moreover, even if the 3<sup>rd</sup> and 4<sup>th</sup> Defendant were indeed receivers which the Plaintiff hasn't pleaded, the predominant test as pertains the suit shows that the suit's subject matter is cancellation of a Title which is the preserve of this Honourable Court under Section 26 of the Land Registration Act.

**Analysis and determination:**

11. It is settled in our jurisdiction by precedent that for a preliminary objection to be upheld, it must be a pure point of law visible on the face of the pleadings. It must not rely on evidence to prove its existence (see the decision of Mukisa Biscuits supra).
12. In this instance, the Plaintiff does not talk of any timelines of when the alleged sale of the suit property took place. It is the statement of defence that mentions a transfer registered on 24<sup>th</sup> November, 2008. The Plaintiff has argued on the question of time starting to run when they discovered the fraud thus contesting the time of 2008. Therefore, it becomes a disputed fact when time began to run and such contestation cannot be determined by way of a preliminary objection.
13. On the question of jurisdiction, again the Plaintiff does not make any reference to a charge or debenture. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants make reference to a supplemental charge dated 27<sup>th</sup> April 2006 as forming the basis of sale of the suit property. This court has not had the opportunity to review the contents of the stated supplemental charge to be able to ascertain the question of jurisdiction. I cannot do so in the manner the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have approached the court (via P.O) and a copy was not attached. In any event, to do so, would amount to looking at evidence to support the preliminary objection.
14. Further, I have perused both the plaintiff and the statement of defence and found no mention of which of the parties in these proceedings was declared

insolvent. There is no counter-claim raised that speaks to the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as receivers of Marple Investments Limited which according to them was insolvent. Thus, invoking the provisions of section 2 of the Insolvency Act as a ground to strike out this suit is premature and or misplaced.

15. In conclusion, I hold that all the grounds of the preliminary objection raised are baseless and without merit. The preliminary objection is dismissed with costs to the Plaintiff.

**Dated, signed and delivered at Kisii virtually on 12<sup>th</sup> day of February, 2026**

**A. OMOLLO**  
**JUDGE**