



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. E153 OF 2025

WANJIKU MAINA

PLAINTIFF/APPLICANT

-VERSUS-

MARY WANJIKU KIBE 1ST

DEFENDANT/RESPONDENT

ROBERT MOSETI ONKWANI 2ND

DEFENDANT/RESPONDENT

PAVILION TRADERS LIMITED 3RD

DEFENDANT/RESPONDENT

MERCUS SOLUTIONS LIMITED..... 4TH

DEFENDANT/RESPONDENT

KCB BANK LIMITED5TH

DEFENDANT/RESPONDENT

DTB BANK KENYA LIMITED.....6TH

DEFENDANT/RESPONDENT

HFC LIMITED7TH

DEFENDANT/RESPONDENT

ABSA BANK KENYA LIMITED 8TH

DEFENDANT/RESPONDENT

THE LAND REGISTRAR KAJIADO NORTH9TH

DEFENDANT/ RESPONDENT.

THE CHIEF LAND REGISTRAR10TH

DEFENDANT/RESPONDENT

THE DIRECTOR OF SURVEY 11TH

DEFENDANT/ RESPONDENT.

THE HON. ATTORNEY GENERAL 12TH

DEFENDANT/ RESPONDENT.

RULING.

1. The Plaintiff has filed this suit in respect of Ngong/Ngong/ 2486 hereinafter referred to as the suit property. She avers that the property was registered in her name in 1975 and has always been in her possession. She alleges that in July 2025, her agent notified her that there were people visiting the suit property saying they are auctioneers who had been sent to auction the property.
2. She carried out a search and discovered that the 1st Defendant with the corroboration of the 9th Defendant fraudulently transferred the suit property to the 2nd Defendant and subdivided it into Ngong/ Ngong /86128, Ngong/ Ngong / 86129 and Ngong/ Ngong /86130. She contends the transfer and the sub divisions were as a result of fraudulent actions on the part of the Defendants as particularized in the plaint.
3. Before the court is the determination of the Plaintiffs application dated 19th November 2025 in which she seeks the following orders;

1. THAT this Application be certified as urgent, service be dispensed with and the same be heard ex-parte and on a priority basis.

2. THAT pending the hearing and determination of the main suit the 9th and 10th Respondents be order to preserve the records relating and not to effect any changes to NGONG/NGONG/2486 and the resultants parcels being NGONG/NGONG/86128, NGONG/NGONG/86129, and NGONG/NGONG/86130.

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3. THAT pending the interpartes hearing of this application, a temporary injunction do issue restraining the Defendants by themselves, their servants, employees, workmen, agents, heirs, personal representatives or otherwise howsoever from selling, leasing, charging, pledging, offering the Title thereof as lien or any form of security, evicting, demolishing, conveyance, transfer, auctioning, advertising for sale, entering into a private treaty, arbitrary registration or in any other manner interfering with the Plaintiff's right as a registered owner of the suit properties

NGONG/NGONG/2486 and the resultants parcels being NGONG/NGONG/86128, NGONG/NGONG/86129, and NGONG/NGONG/86130.

4. THAT pending the hearing and determination of the main suit, a temporary injunction do issue restraining the Defendants by themselves, their servants, employees, workmen, agents, heirs, personal representatives or otherwise howsoever from selling, leasing, charging, pledging, offering the Title thereof as lien or any form of security, evicting, auctioning, demolishing, conveyance, transfer, auctioning, advertising for sale, entering into a private treaty, arbitrary registration or in any other manner interfering with the Plaintiff's right as a registered owner of the suit properties NGONG/NGONG/2486 and the resultants parcels being NGONG/NGONG/86128, NGONG/NGONG/86129, and NGONG/NGONG/86130..

5. THAT this Honourable Court does make any other appropriate orders convenient for justice to prevail.

6. THAT Costs of this application be provided for.

4. The 7th Defendant filed a Preliminary Objection and a Replying Affidavit. The Preliminary Objection urges the court to strike out the suit for being statute barred under the Limitations of Actions Act as the title changed hands in 2001 hence the Plaintiff has no registrable interest. The 7th Defendant further argues that this court has no jurisdiction as the issue of the charge is not a matter for this court.
5. Lastly it is the Defendants contention that the Plaintiff has not met the standards for grant of an injunction as laid out in the case of Giella versus Cassman Brown.
6. The Plaintiff states that she has remained in continuous possession and occupation of the suit property. He avers that auctioneers recently appeared on the property asserting that the property had been charged to the 7th Defendant and that the loan facility secured by the charge had gone into default.
7. Upon conducting a search at the land registry, the Plaintiff discovered that the suit property had allegedly been transferred in 2001 and subsequently charged to the Bank.
The Plaintiff maintains that she never executed any transfer

instrument, nor did she consent to the transfer of the property which was registered in her name way back in 1975. She therefore contends that the transfer, subdivisions and subsequent transactions on the suit property are fraudulent and illegal.

8. Arising from the pleadings and oral arguments by counsels the court distills the following issues for determination;

- **Whether this Court lacks jurisdiction.**
- **Whether the suit is statute barred.**
- **Whether the Court should issue status quo orders preserving the suit property pending hearing of the suit.**

9. The Bank contends that the dispute arises from a charge and the exercise of statutory power of sale which it is now settled falls within the jurisdiction of the Commercial Division of the High Court.

10. **“Owners of Motor Vessel “Lilian S” - Versus - Caltex Oil (Kenya) Limited (1989) IKLR** in which the court stated:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a

court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion 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 Judgement is given”.

11. The Environment and Land Court is a creation of Article 162 (b) of the Constitution which donates to parliament the power to establish courts with the status of the High Court to hear and determine disputes relating to the Environment and the use and occupation of and title, to land.

12. The Environment and Land **Court Act at section 13** defines the jurisdiction of the court thus;

- (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.

Ever since the establishment of the Court, the courts have grappled with this question. Joel Ngugi J (as he then was)

weighed in on the use of the predominant purpose test thus
“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

13. Applying this test to the present case it is evident that the
predominant issue is not the charge itself but rather the
process of transfer of the title. A dispute alleging fraudulent

transfer of land and unlawful charging of title falls within the jurisdiction of this Court.

14. Regarding the second issue the 7th Defendants pleads Limitation of Action. However, the Plaintiff alleges that the transfer was fraudulent and that she only discovered the alleged fraud when auctioneers appeared on the property.

15. Under Section 26 of the Limitation of Actions Act, Limitation does not begin to run where the action is based on fraud until the plaintiff discovers the fraud or could with reasonable diligence have discovered it. In the instant case the Plaintiff insists that she is and has always been in possession and has pleaded fraud. The question of when the fraud was discovered and whether the Plaintiff is in possession and whether she executed the transfer documents are triable issues in respect of which this court cannot make findings in an interlocutory application.

16. For the court to proceed to make final determinations of facts in this Preliminary Objection and refuse the Plaintiff the chance to be heard on these serious claims would open the door for use of Limitation to occasion injustice which the

courts must be careful to guard against. This is in line with the Court of Appeal decision in Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd in which the court held that a preliminary objection must raise a pure point of law and cannot be sustained where facts require ascertainment.

17. In view of the foregoing, the Court must also consider whether the suit property should be preserved pending determination of the suit.

18. If the 7th Defendant were allowed to proceed with the exercise of statutory power of sale before the dispute on title is resolved, the property could pass to third parties thereby rendering the suit nugatory.

19. The Court therefore finds it necessary to preserve the status quo obtaining on the suit property.

20. The Court therefore makes the following orders:

- a. The Preliminary Objection is dismissed on jurisdiction. Limitation shall abide the final determination**
- b. The status quo obtaining on the suit property shall be maintained pending hearing and**

determination of the suit. There shall be no sale or change of title or possession

c. Costs of the preliminary objection shall abide the outcome of the suit.

Dated, Signed and Delivered virtually at Kajiado this 12th day of March 2026.

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

Mr. Kinoti for the Plaintiff/Applicant.

Mr. Rotich for the Defendant/Respondent.

Court Assistant - Peter.

ORIGINAL