

(b) That the costs of this application and suit be awarded to the 1st & 2nd Defendants.

2. The application is premised on grounds amplified in the supporting affidavit sworn by Faith Ndonga on even date, who cites being a Debt Recovery Officer with the 1st Defendant thus duly authorized to depose.
3. Jayaben Indubhai Patel (hereafter the Plaintiff) opposes the motion by way of grounds of opposition dated 25/10/2025.
4. Ashite Chandarakant & Grishma Ashite Patel g/t Equip Agencies (hereafter the 3rd Defendant) and Bio Corn Products (EPZ) Ltd g/t Equip Agencies (hereafter the 4th Defendant) did not participate in the instant proceedings.
5. Directions were taken on disposal of the 1st and 2nd Defendant's motion by way of written submissions. Only the 1st and 2nd Defendant complied. That said, the Court has considered the rival material and submissions on record upon which it postulates issues for determination thus; -

(a) Whether the suit ought to be struck out for want of jurisdiction?

(b) Who ought to bear costs of the instant motion?

Whether the suit ought to be struck out for want of jurisdiction?

6. In presenting the instant application, the 1st and 2nd Defendants rely on among others Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or

to prevent abuse of the process of the court”, to wit, this Court’s inherent powers was judiciously addressed by the Court of Appeal in **Rose Njoki Kingau & another v Shaba Trustees Limited & another [2010] KECA 87 (KLR)** and requires no restatement.

7. Alongside the above, the 1st and 2nd Defendants have equally relied on **Order 2 Rule 15(1)(b)(c) & (d) of the CPR** which provides that-;

“At any stage of the proceedings the Court may order to be struck out or amended any pleading on the ground that—

(a); or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court”

8. Concerning striking out of pleadings, the **Court of Appeal in Cooperative Merchant Bank Ltd v George Fredrick Wekesa** Civil Appeal No. 54 of 1999 as cited with approval in **Jubilee Insurance Company Limited v Grace Anyona Mbinda [2016] KEHC 4003 (KLR)**, stated that-;

“The power of the court to strike out pleadings under Order 6 Rule 13 (1) (b) (c) & (d) is discretionary Striking out a pleading is a draconian act, which may only be resorted to, in plain cases. Whether or not a case is plain in a matter of fact....”

9. Madan J.A in the of-cited decision of **D.T. Dobie & Company (Kenya) Ltd v Muchina [1982] eKLR** enunciated several principles to be applied in an application brought under then, **Order VI Rule 13 (now Order 2 Rule 15) of the CPR.** Referring to various English decisions, Madan J.A observed that:

“a) The rule is to be acted upon in plain and obvious cases and the jurisdiction exercised sparingly and with care.

b) ...

c)....”

*It is relevant to consider all averments and prayers when assessing under **Order 6 Rule 13** whether a pleading discloses a reasonable cause of action, and the contents of any affidavits that may be filed in support of an application that a pleading is otherwise an abuse of the process of the court... The court ought to act very cautiously and carefully and consider all the facts of the case without embarking on a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court... A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal... No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is*

so weak as to be beyond redemption and incurable by amendment.” [Emphasis Added]

10. In **Kivanga Estates Limited v National Bank of Kenya Limited [2017] KECA 591 (KLR)** for instance, the Court of Appeal echoing the dicta in D.T Dobie (supra) stated -;

“It is not for nothing that the jurisdiction of the court to strike out pleadings has been described variously as draconian, drastic, discretionary, a guillotine process, summary and an order of last resort. It is a powerful jurisdiction capable of bringing a suit to an end before it has even been heard on merit. Yet a party to civil litigation is not to be deprived lightly of his right to have his suit determined in a full trial. The rules of natural justice require that the court must not drive away any litigant from the seat of justice, without a hearing, however weak his or her case may be. The flip side is that it is also unfair to drag a person to the seat of justice when the case against him is clearly a non-starter. The exercise of the power to strike out pleadings must balance these two rival considerations ... Striking out a pleading though draconian, the Court will in its discretion resort to it, where, for instance the court is satisfied that the pleading has been brought in abuse of its process or where, it is found to be scandalous, frivolous and vexatious”.

See also: - **Crescent Construction Co. Ltd v Delphis Bank Ltd [2007] KECA 500 (KLR)**

11. Here, the 1st and 2nd Defendant have essentially sought to have the suit struck out for want of jurisdiction. Notably, the words of Nyarangi. JA, in the locus classicus decision in Owners of the **Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** require no restatement save for the exhortation, which still endures that *“Jurisdiction is everything. Without it, a court has no power to make one more step.”*
12. Further, it was held in **Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR)**, that a Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. A Court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
13. However, as earlier noted, the Plaintiff filed grounds of opposition in response to the motion whose gist was that;- the application bears an incurable defect and offends the mandatory provisions of **Article 22, 40, 48, 50, 159 & 160 of the Constitution**; the application seeks to defeat the principle of expeditious disposal of cases as provided under the law; the application as drawn lacks merit since the Plaintiff’s claim and dispute revolves around matrimonial property, charges and mortgages which clearly fall under the jurisdiction of this honorable Court; that the application as drawn does not demonstrate what prejudice or loss the 1st & 2nd Defendants are likely to suffer should this Court proceed

to hear the main suit and deliver judgment; the 1st and 2nd Defendant are using the machinery of law to cause an injustice by frustrating and disturbing the Plaintiff's legitimate right to prosecute this suit on her right to matrimonial property in violation of **Section 7 of the Matrimonial Property Act and Article 40 of the Constitution.**

14. Further the Plaintiff posited that the unsubstantiated application is uncalled for since the suit is premised on atrocities/procedural improprieties committed by the 1st and 2nd Defendant and now in collusion with the 3rd and 4th Defendants which scheme were unknown to the Plaintiff; the application raised is a mere technicality which cannot be upheld at the expense of substantive justice, access to justice and the right to fair hearing since the 1st & 2nd Defendant have not tendered any evidence connecting the Plaintiff to the 3rd & 4th Defendant numerous suits with the 1st Defendant; the application offends the immutable rule against the giving of final order in interlocutory proceedings; and the application lacks merit and deserves to be dismissed with costs.
15. On the latter, this Court has repletely observed that **Order 51 Rule 14 (1) of the CPR** recognizes the modus, to wit, a party may oppose an application. The Court of Appeal in **Blue Thaitian SRL (Owners of the Motor Yacht 'Sea Jaguar') v Alpha Logistics Services (EPZ) Limited [2022] KECA 1240 (KLR)** observed that the effect of filing grounds of

opposition in response to an application confines a party to issues of law and legal arguments only.

16. Nevertheless, applying my mind to the totality of the above, in order to contextualize the 1st and 2nd Defendants motion, the Court must revisit the record and material presented by the rival parties. The history leading up to the instant motion is that on or about 23/09/2025, the Plaintiff filed suit accompanied by a motion under urgency both dated 22/09/2025. Among the reliefs sought in the said suit is inter alia is judgment against the Defendants by way of-;

(a) A declaration that the 3rd & 4th Defendant holds the suit lands in trust for the Plaintiff and that the 3rd & 4th Defendant are in breach of trust.

(b) An order of permanent injunction restraining, barring, stopping the intended sale by public auction scheduled on Wednesday 24th September 2025 of Plot No. 209/3477 Dar es Salaam Road/Nairobi measuring 0.0604 Ha or 0.1492484 Acres and LR. No. Eldoret Municipality/Block10/34 measuring 6.151 Ha or 15.199121 Acres located within Export Processing Zone (EPZ) in Eldoret Town.

(c) Costs of the suit.

(d) Any other relief the honorable Court may deem fit and just to grant.

17. Particularly, in the body of the suit, the Plaintiff avers that Plot No. 209/3477 Dar es Salaam Road/Nairobi measuring 0.0604 Ha or 0.1492484 Acres and LR. No. Eldoret

Municipality/Block10/34 measuring 6.151 Ha or 15.199121 Acres located within Export Processing Zone (EPZ) in Eldoret Town (hereafter suit lands) are held in the 3rd Defendant's names who are family members whereas the Plaintiff's late husband was a director and founding chairman of the 4th Defendant until his demise in year 2011. That the 3rd and 4th Defendant hold the suit lands in trust for their own benefit and the Plaintiff's benefit who is yet to collect her late husband's benefit or shares from the 4th Defendant.

18. It is on the premise of the above set of averments that the 1st and 2nd Defendant presented the instant motion that is presently for consideration. By her deposition Faith Ndonga contends that the Plaintiff's suit which is a claim premised on a trust over Plot No. 209/3477 Dar es Salaam Road/Nairobi and LR. No. Eldoret Municipality/Block10/34 relates to disposition of land as it confers beneficial ownership. That any dispute that touches on questions of title, interest in property, ownership, the validity of trust and the breaches of such, all fall within the exclusive jurisdiction of the Environment and Land Court. That the suit lands are duly charged to the 1st Defendant, to wit, it has been exercising its statutory power of sale, which power has been the subject of other cases before the High Court and Court of Appeal.

19. That in all the matters filed in respect of the suit lands, the superior Courts declined to stop the 1st Defendant from exercising its statutory power of sale whereas there was no claim of an alleged trust in favour of the Plaintiff over the

said properties. She goes on to depose that the Plaintiff's cause on trust, is a claim over disposition in land or property, as it confers beneficial ownership, to wit, such a dispute squarely falls within the exclusive jurisdiction of the Environment and Land Court as such this Court lacks the requisite jurisdiction to entertain the suit as presented. In summation she states that the suit and motion are incompetent, defective and an abuse of the process of the Court.

20. Decisions pertaining to striking out of pleadings on the premise of either **Order 2 Rule 15 (1)(b), (c) & (d) of the CPR** are replete. Concerning striking out of pleadings on the premise of **Rule 15 (1)(b) & (c)**, defining the purport of the said provisions, the Court of Appeal Kivanga Estates Limited (supra) cited with approval the decision in **Trust Bank Limited v Amin Company Ltd & Another (2000) KLR 164** wherein it was observed that-;

"A pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expenses. A pleading which tends to embarrass or delay fair trial is a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve

expenses which will prejudice the fair trial of the action?"

21. Meanwhile, on abuse of the Court Process as provided in **Rule 15 (1)(d) of the CPR**, it was rightfully observed in **Evanson Jidraph Kamau Waitiki v Kenya Power & Lighting Company Ltd [2017] KECA 526 (KLR)** "*provision has been the subject of interpretation in numerous decisions*". Meanwhile, I do not intend to re-invent the wheel. That said, as to the definition and application of the term abuse of the Court Process as provided in **Rule 15 (1)(d) of the CPR**, this Court finds reverence in the decision in **Energy Regulatory Commission v John Sigura Otido [2021] KECA 1060 (KLR)** where the Court stated that: -

"24. We start with the issue of alleged abuse of the court process. What is the meaning of "abuse of the court process"" That term has been the subject of consideration in a number of decisions by this Court and other Courts. In **Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others (supra)** this Court observed that it is difficult to comprehensively list all possible forms of conduct that constitute abuse of judicial process. The Court cited the **Nigerian case of Sarak v Kotoye [1992] 9 NWLR 9Pt 264** where abuse of judicial process was defined as follows:-

"The concept of abuse of judicial process is imprecise; it implies circumstances and situations of infinite variety and conditions. It's one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice..."

The same Court went on to cite examples of abuse of judicial process which include: -

“(a) Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

(c) Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent’s notice.”

22. The Court proposes to contemporaneously address the question of **Order 2 Rule 15 (1)(b), (c) & (d) of the CPR** alongside that on jurisdiction to entertain the suit.

A cursory perusal of the material relied on in support of the motion presently for cursory review of “Annexure FN-1 & FN-2”, it is not in dispute that the question of trust in the suit lands has yet to be litigated upon and or formulated the subject of the Deed of Settlement attached thereto.

23. It is further notable from “Annexure FN-1 & FN-2” that the issues therein concerned the charge over the suit lands and the 1st Defendant exercising its statutory power of sale, to wit, the forestated appear to have been settled by way of a Deed of Settlement. Consequently, given the crux of the present suit, as earlier set out in this ruling, the 1st and 2nd

Defendant cannot sustain the argument that the present matter consists of an abuse of the Court process and or fails to disclose a reasonable cause of action.

24. As to whether this Court has jurisdiction to entertain the suit, this Court's jurisdiction is anchored and delineated by dint of **Article 165(3) & (5)** of the Constitution. By benefit of sub-clause **(5) of Article 165**, this Court lacks jurisdiction to hear and determine matters falling within the jurisdiction of Courts contemplated in **Article 162(2) of the Constitution**.
25. **Article 162(2)(b) of the Constitution** provides for the establishment of a High Court to hear and determine disputes relating to – the environment and the use and occupation of, and title to, land. It is on the premise of the latter, that the Environment and Land Court (ELC) is established by dint of the Environment and **Land Court Act** with the Court's jurisdiction being provided for in Section 13 therein, to include among others 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.
26. **Section 38(2)(b) of the Land Act** recognizes suits for the disposition of an interest in land with respect to the creation or operation of a resulting, implied or construct trust whereas Section 128 of the same Act provides that any dispute arising out of any matter provided for under Land Act may be

referred to the Land and Environment Court for determination meanwhile **Section 150 of the Act** provides that the Environment and Land Court as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under Land Act. Correspondingly, **Section 28 of the Land Registration Act** recognizes overriding interests in registered land to include among other trusts including customary trusts whereas **Section 101 of the same Act** provides that the Environment and Land Court has jurisdiction to hear and determine disputes, actions and proceedings concerning land under the said Act.

27. Here, it can be garnered from the Plaintiff's pleadings, as she asserts that the suit lands were held in trust for 3rd Defendant's benefit and the Plaintiff's benefit who is yet to collect her late husband's benefit/shares from the 4th Defendant.
28. The Supreme Court in **Kiebia v M'lintari & another [2018] KESC 22 (KLR)** while addressing itself to what constitutes a customary trust stated that-;

"Flowing from this analysis, we now declare that a customary trust, as long as the same can be proved to subsist, upon a first registration, is one of the trusts to which a registered proprietor, is subject under the proviso to Section 28 of the Registered Land Act. Under this legal regime, (now repealed), the content of such a trust can take several forms. For example, it may

emerge through evidence, that part of the land, now registered, was always reserved for family or clan uses, such as burials, and other traditional rites. It could also be that other parts of the land, depending on the specific group or family setting, were reserved for various future uses, such as construction of houses and other amenities by youths graduating into manhood. The categories of a customary trust are therefore not closed. It is for the court to make a determination, on the basis of evidence, as to which category of such a trust subsists as to bind the registered proprietor.”

29. Therefore, applying my mind to the facts, relevant provisions and authorities cited herein, it is the Court’s reasoned finding that the Plaintiff’s dispute, on whether the suit lands were held in trust, is one which falls within the purview of the Environment and Land Court (ELC). That said, this Court lacks the requisite jurisdiction to entertain the suit as presented.
30. To the latter end, this Court concurs with the rendition of **Odero, J. in Maina v Njoki (Civil Appeal E021 of 2021) [2024] KEHC 3747 (KLR)** wherein the Court arrived at the determination that the question of whether or not a trust exists ought to be decided by the Environment and Land Court.
31. **Consequently, it is this Court’s unreserved determination that the 1st and 2nd Defendant’s motion**

is merited to the extent that the Plaintiff suit ought to be struck out for want of jurisdiction.

Who ought to bear the costs of instant motion?

32. In light of the above finding, while applying my mind to the provisions of Section 27 of the Civil Procedure Act (CPA), I award costs to the motion to the 1st and 2nd Defendants as against the Plaintiff.

Orders Accordingly

Delivered Dated and Signed at Nairobi this 16th day of April 2026.

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JANET MULWA.
JUDGE