



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL SUIT NO. E384 OF 2025**

**PROF EDWARD NGÁNGÁ KAIRU.....**  
**PLAINTIFF**

**=VERSUS=**

**DR MARY NJIKO NDIBA NGÁNGÁ.....**  
**....DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Preliminary Objection dated 9<sup>th</sup> September 2025 raised by the Defendant on the grounds that the court lacks jurisdiction to hear and determine the suit as the dispute between the parties falls within the jurisdiction of the High Court. The Defendant argued that the suit seeks to enforce the decision in High Court Civil Case No 31 of 2014 and subsequent Civil Application No 559 of 2019. It was further contended that this Court lacks jurisdiction to enforce decrees issued by the High Court. Based on the foregoing, the Defendant urged the Court to strike out the suit with costs.

2. The Plaintiff filed grounds of opposition dated 7<sup>th</sup> October 2025, arguing that the order issued on 3<sup>rd</sup> December 2021 by the Court of Appeal in Nairobi Civil Appeal No 559 of 2019 cannot be enforced by the High Court as it relates to the use and occupation of land and title, specifically Town House No 4 erected on L.R. 209/7309. He argued that the jurisdiction to enforce the Court of Appeal's orders issued on 3<sup>rd</sup> December 2021, insofar as it involves the recovery of possession of land, particularly the townhouse, can only be exercised by this Court.
3. It was argued that Order 22 of the Civil Procedure Rules, which governs execution, has no provisions for the recovery and possession of land through the issuance of eviction orders. In conclusion, the Defendant urged the Court to dismiss the suit with costs.
4. The preliminary objection was canvassed by way of written submissions.

### **THE DEFENDANT'S SUBMISSIONS**

5. The Defendant filed her submissions dated 16<sup>th</sup> October 2026.
6. On behalf of the Defendant, Counsel emphasized the jurisdiction of the Environment and Land Court and the High Court as outlined in Articles 162(2)(b) and 162(3) of the Constitution. Counsel submitted that the Plaintiff's suit is based on the judgment of the Court of Appeal in Nbi Civil Appeal No 559 of 2019 and the decree of the High Court (Nbi) in HCCC No 31 of 2014 (OS). Counsel argued that the

purpose of this suit is to enforce the judgment and decree issued by the High Court and the Court of Appeal and does not relate to the use, occupation, or title to land. Counsel addressed the issue of jurisdiction as outlined in the Constitution.

7. Counsel argued that, under Section 4 of the Appellate Jurisdiction Act, only the High Court, and not the ELC, has the authority to enforce a judgment of the Court of Appeal.
8. Counsel argued that there is no dispute regarding the title or occupation of the land, as it has already been determined.
9. Counsel contended that this Court lacks jurisdiction to hear this matter and that the suit is an abuse of the Court process.

### **THE PLAINTIFF'S SUBMISSIONS**

10. The Plaintiff filed his submissions dated 22<sup>nd</sup> October 2025.
11. On behalf of the Plaintiff, Counsel submitted that the sole issue for determination is whether the Court has jurisdiction to hear and determine this suit.
12. Counsel submitted that the orders and decree issued on 3<sup>rd</sup> December 2021 can only be enforced by this Court, as the enforcement sought solely relates to eviction, as provided under Section 152 E of the Land Act.
13. Counsel submitted that the Plaintiff is relying on the decree as supporting documentary evidence in the present suit, where he seeks eviction orders, exclusive ownership, and mesne profits, all of which fall within the jurisdiction of this Court.

14. Counsel further contended that the High Court lacks jurisdiction to enforce the orders of the Court of Appeal, as Order 22 does not contain provisions for the recovery and possession of land through eviction orders, as outlined in Section 152E of the Land Act.
15. Counsel argued that, to the extent that the order issued by the Court of Appeal is to be incorporated into the decree issued or to be issued by the High Court in Civil Suit No. 31 of 2014 OS, the High Court lacks jurisdiction to enforce such a decree regarding the possession and recovery of land, specifically Town House No. 4 constructed on LR 209/7309.
16. Counsel further submitted that while the Plaintiff seeks to be declared the exclusive owner of the suit property on the grounds that the Defendant has exhausted her ownership, the Defendant maintains that she remains a co-owner of the suit property.

### **ANALYSIS AND DETERMINATION**

17. Having considered the preliminary objection, the grounds of opposition and the rival submissions, the only issue for determination is whether this Court has jurisdiction to hear and determine this suit.
18. The law on preliminary objections is well settled. It must be based on a point of law.

In **Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd (1969) EA 696**, Law JA stated, ***“So far as I’m aware, a preliminary***

***objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

19. In **Oraro Vs Mbaja 2005 eKLR Ojwang J** (as he then was) described it as follows:

***“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”***

20. In **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR**, the Supreme Court observed as follows:

***“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection against profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for***

21. It is trite law that jurisdiction is everything, and without it, the Court cannot take one more step in the case. In the celebrated case of **Owners of Motor Vessel ‘Lillian S’ vs Caltex Oil (Kenya) Limited (1989) eKLR**, the Court held that:

***“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”***

22. Similarly, the Supreme Court in **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR** pronounced itself thus;

***“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. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. .... Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”***

23. A court derives its jurisdiction from the Constitution, legislation, or both. The jurisdiction of this court is derived from Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act.
24. In the matter at hand, the Defendant contends that this Court lacks jurisdiction to enforce a judgment and decree of the High Court and Court of Appeal. It was argued that the matter falls within the jurisdiction of the High Court.
25. In determining whether this Court has jurisdiction to hear and decide this matter, it must consider not only the pleadings but also the substance of the dispute. By a Plaint dated 30th July 2025, the Plaintiff sought a declaration of ownership of the suit property, an eviction order against the Defendant, mesne profits, and a permanent injunction

restraining the Defendant from interfering with the suit property. An eviction order by its very nature involves removing a party from land and is therefore a dispute relating to occupation. Similarly, a declaration of ownership clearly falls within the scope of disputes relating to land title. Although the Plaintiff has referred to prior decisions of the High Court and the Court of Appeal, it is clear that the present suit is not merely about the mechanical enforcement of those decisions. The reliefs sought clearly fall within disputes relating to the use, occupation, and title to land. Accordingly, this Court finds that it has jurisdiction to hear and determine this suit.

26. The upshot of the foregoing is that the preliminary objection dated 9<sup>th</sup> September 2025 is without merit and is hereby dismissed with costs.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF APRIL, 2026.**

.....

**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Kipkoech holding brief for Ms Maina for the Plaintiff

Keyenzo for the Defendant

ORIGINAL