

KENYA / JUDGMENT

Njiiri & another v Wambua & another [2026] KEELC 5477 (KLR)

[2026] KEELC 5477 (KLR)**COURT**

Environment and Land Court

CASE / FILE NUMBER

Land Case E284 of 2026

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF KENYA ENVIRONMENT AND LAND COURT AT MILIMANI ELC LC E284 OF 2026

CARL MURIGU NJIIRI PLAINTIFF RYAN WAMBUA NJIIRI

.....2ND PLAINTIFF VERSUS MONICA KALONDU WAMBUA

1ST DEFENDANT CHIEF LAND REGISTRAR NAIROBI DEFENDANT

RULING

1. What is before the court is an application dated 24.6.2026 and a preliminary objection dated 8.7.2026 by the 1st defendant that the suit brought by a plaintiff dated 24.6.2026 seeks to enforce a decree of the High Court issued in High Court Originating Summons No. 1 of 2018, Monica Kalondu Vs Eric Njiri Murui, now effected, diverting this court of jurisdiction.
2. The 1st defendant urges the court to find that the court that issued the decree pursuant to section 93 of the Land Registration Act is the best suited court to entertain the current suit. Reliance is also placed on Rule 3 of the Matrimonial Property Rules on the proposition that this court should strike out the suit for lack of jurisdiction.
3. The 1st defendant further takes the view that the suit, being on a matrimonial property claim, falls under the jurisdiction of the Family Division of the High Court to enforce the decree, if at all there has been non-compliance by the same on the part of the 1st defendant. ELC 284 OF 2026 1
4. Learned counsel for the 1st defendant, Mr Orina, at the interparties hearing on 9.7.2026 submitted that the current suit has been brought by the children of the 1st defendant since, in the initial suit, it had been ruled that the subject property was held by the 1st defendant in trust after the suit property was registered as such, but now they seek to have the transfer of the same to their own names after reaching adulthood.
5. Learned counsel for the 1st defendant took the view that the matter can very well be handled by the court that had passed the decree. Learned counsel for the plaintiff, Me. Momanyi, on his part, submitted that the children cannot go to the Family Division of the High Court to enforce such a decree in that what is before the court is a cause of action

based on a sale agreement showing breach of the trust, which issue falls under the jurisdiction of this court to entertain. Learned counsel urged the court, lacking merits, to proceed to issue the orders sought in the application dated 24.6.2026.

6. Jurisdiction is everything. What if the court of law has to down its tool, as held in motor vessel “Hollian S” vs Calltex Oil Kenya Ltd. (1989) eKLR. In this suit, the court is being urged by the 1st defendant to find it lacks jurisdiction to entertain the claim since its basis is an alleged non-compliance with a decree issued in HCL Vs No.1 of 2018 between the biological mother of the plaintiff and the 1st defendant, who is their father and the registered owner of LR No. Nairobi Block 72/421, hereinafter the suit property, whose outcome was that the property is held by him in trust and an entry therein to the register following a divorce settlement consent rendered and adopted by the court at the time the plaintiffs were minors.
7. Section 28 of the Land Registration Act provides for overriding interests; to ascertain whether a court has jurisdiction, it has to look at the nature of the claim before it. ELC 284 OF 2026 2
8. A court’s jurisdiction flows from either the Constitution or legislation or both. A court of law, as held in S.K Machari & Another vs KCB Ltd. & Others (2011) KESC 8(KLR), can only exercise jurisdiction conferred to it by law and cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Every court therefore has to confine itself within statutory and constitutional limits as its powers.
9. Under Article 162 2(b) of the constitution and section 13 of the ELC Act, matters relating to the ownership, use and occupation of land fall within the LEC validity and enforcement of a sale agreement falls under jurisdiction of ELC Court and not the family division of the high court as was held in RE Estate of Julius Ndubi Javan (Deceased) (2018) KEHC 8523 (KLR) matters regarding matrimonial property under section 17 of the matrimonial property Act as read together with Rule 6 (1) of the matrimonial Rules 2022 fall under the high court. 10.In Msomeri vs Ngegwa & others ELC case E016 of 2026 (2026) KEELC 3680 (KLR) the court cited with approval Joseph Ombogi Ogentoto vs Martha Bosibori Ogentoto & 2 Others, S.C petition No. 11 of 2020, that under section 17 of the matrimonial property act, that the procedure for a title to land question of ownership between a husband and a wife is by filing an originating summon at the high court. 11.The court further cited with approval BWM vs MWN & Another (2025) KEHC 13641 (KLR) and LCL vs WLR 2025 KEELC 1165 (KLR) that an ELC court has no jurisdiction to determine issues of matrimonial property, marriage validity and the allocation of shares among spouses. 12.Section 93 of the Land Registration Act has been invoked in the preliminary objection as the basis for lack of jurisdiction, as that section provides for spousal interest in land during the subsistence of a marriage and on dealings with such property without spousal consent. ELC 284 OF 2026 3 13.Courts have held in JKN VS JWN (2022) eKLR and Kadza Mkutano vs Mwamboje Kadesh & Others (2016) eKLR that spousal consent is a constitution precedent before the transfer of the matrimonial home. 14.The cause of action refers to an act on the part of the defendant that gives rise to a cause

of complaint on the part of the plaintiff. The cause of action before this court is captured in paragraphs 4-10 of the plaint dated 24.6.2026. It is alleged by the plaintiffs, who are the children of the 1st defendant, that following a divorce settlement by consent on 29.4.2019 in HCCC (O.S) No. 1 OF 2018 between their parents, the suit property was declared trust property to be held as such trust on their behalf by the 1st defendant, as a trustee, while the trust interest was duly registered against the title. 15.The plaintiff avers that the 1st defendant has refused, neglected and/or failed to surrender or avail the title document, thereby frustrating the plaintiff's ability to protect and enforce their beneficial interest in the suit property. 16.The plaintiff further alleges that the 1st defendant continues to act in a manner inconsistent with his duties as a trustee, including embarking on the process of alienating and/or disposing of the suit property without their knowledge, consent, approval or participation. 17.Further, it is alleged that the 1st defendant has subjected the plaintiff to harassment, threat, intimidation and coercion in an attempt to compel them to acquiesce to an intended sale, whereby he has entered into a sale agreement with a third party contrary to their best interest; hence the relief sought in the plaint. 18.In *Dias Property Ltd & Another vs Jack Kaguu Githae & 8 others* petition vs GOK of 2024, the court said that to ascertain whether or not ELC 284 OF 2026 4 the jurisdiction of the court exists, a court will consider inter alia, the nature of pleadings and the remedies sought. 19.The suit brought by the plaintiff is based on a cause of action which arose post judgment by consent of their parents conferring overriding interest to them. There is no pending proceeding before the High Court requesting non-compliance with the decree. 20.The suit before this court is about a breach of an accrued right after the entry in the register that the suit property is held in trust by the 1st defendant in favour of the plaintiff. 21.The former spouse of the 1st defendant is not a party to this suit. Trust is defined under Black Law Dictionary, 9th Edition, as a right enforceable solely in equity to the beneficial enjoyment of property to which another holds legal title of the request of another for the benefit of a beneficiary. Trusts, as per Kevin Grey & Susan Francis Grey, *Elements of Trusts*, 5th Edition, relate to land and can be classified as either express or implied, the latter including resulting and constructive trusts. As held in *Twalil Hatayan & Another vs SAID Saggas Ahmed Al Heidy & Others* (2015) eKLR, in this suit there is a definite property where the beneficiaries are named as the plaintiffs. 22.The consent judgment expressed the purpose/intent or which the purpose/intent for which the property was to be registered, which is not disputed to have occurred, as the entry in the register expressly provides. In *Archer & Another vs Archer & Others*, Civil Appeal 39 of 2020

(2023) KECA 298 (KLR), the court said that where a constructive trustee misappropriates or confers trust property for their own house, then an action by a beneficiary for the recovery of trust property will be a cause of action within the meaning of section 21(1) (b) of the law of limitation of Acher Act. The court said that the section creates a permanent liability ELC 284 OF 2026 5 for trustees with respect to trust property. In *Arvind Shah & others vs Mombasa Bricks Tiles Ltd.*, Petition No. 18 of E020 of 2022, the SCOK reaffirmed the principle that a trust is created either expressly, where its purpose and the beneficiaries are clearly stated, or established by the operation of law. 23.The court cited

Kebia Vs M'hiutari & Another (2018) eKLR, holding that the impact of the doctrine of implied, resulting and constructive trusts falls under section 28 of the Land Registration Act and that under Article 40 of the Constitution every person, either individually or in association with others, has the right to acquire and own property of any description in Kenya and that a title holder's right under section 25 of the Land Registration Act may be subject to an overriding interest if he holds the property as a trustee. 24.The 1st defendant, other than the preliminary objection, has not pleaded to the suit by way of a statement of defence or a replying affidavit to the motion, to deny the existence of the entry expressly limiting his rights as a proprietor of the land in favour of the rights or interest of the plaintiffs as beneficiaries. 25.In Mae Properties Ltd vs Muigai (Civil Appeal) 147 of (2018) 2024) KECA 29 (KLR), and in Roche vs Roche & Another Civil Appeal 177 of 2019 (2025) KECA 1637 KLR the court held that customary trust and other trusts are overriding interests and need not be noted in the register. 26.The court said that under section 25 of the Land Registration Act, once noted, they bind the registered proprietor in terms noted in the register. The court said that Article 27 of the Constitution guaranteed every person equality before the law and the right to equal protection and benefit without discrimination. ELC 284 OF 2026 6 27.The plaintiff is seeking to enforce their accrued right or interest after the divorce settlement consent, which was noted in the register of title for the suit property. The plaintiff was not a party to the divorce cause. The court cannot act in vain by driving them out of this court to a court which lacks jurisdiction to handle matters relating to trust. 28.The alleged preliminary objection is not a pure point of law. It is dismissed with costs. As regards the notice of motion, the plaintiffs have established a right or interest in the suit property now threatened with breach. The 1st defendant does not deny the accrued and noted right or interest as per the register of this title. 29.The 1st defendant does not deny that he intends to dispose of trust property without involving the trustees. The intended state and disposal would be irreversible if the land were to change hands and be occupied by a third party before the suit is heard and determined. 30.The 1st defendant would be less inconvenienced than the plaintiff with the issuance of interim orders. The plaintiff notice of motion fits the ingredients set out in Giella vs Cassman Brown (1973) EA 358, Mrao Ltd vs First American Bank Ltd (2003) KLR 125 (CA) Nguruman Ltd vs Jan Bonde Nielsen & Others (2014) KECA 606 (KLR); Civil Appeal No.77 of 2012, judgment on 4th April, 2014, and Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) KELC 2424 (KLR); E & L case No. 221 of 2017 ELC Eldoret, ruling delivered on 29th June,2018. 31.It is allowed to last for one year. 32.Orders accordingly 33.Pre-trial conference on 2.11.2026 ELC 284 OF 2026 7 DATED, SIGNED AND DELIVERED THIS 16TH SEPTEMBER 2026. HON C.K NZILI JUDGE 16.9.2026 Delivered in the presence of; Mr Momanyi for the plaintiff Orina for the 1st defendant Court Assistant: Julius ELC 284 OF 2026 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/keelc/2026/5477>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/njiiri-and-another-v-wambua-and-another-2026>

Prepared on 26 October 2026 · Esheria