



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna & 13 others v Faidisha Pamoja Housing Co-operative Society Limited & 5 others
(Environment & Land Case E049 of 2020) [2025] KEELC 2872 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2872 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E049 OF 2020**

**A NYUKURI, J
MARCH 26, 2025**

BETWEEN

**DANSON MUNGAI NJUGUNA 1ST PLAINTIFF
HEZEKIAH KERENGO NYABERO 2ND PLAINTIFF
CLIVENS OUMA 3RD PLAINTIFF
ERIC ONYANGO GOJA 4TH PLAINTIFF
DEBORAH MUTONGORI TURURI 5TH PLAINTIFF
GRACE WANJIKU 6TH PLAINTIFF
OBED GESAGWA ORORA 7TH PLAINTIFF
ROCKFELLER OKETCHOKOTH 8TH PLAINTIFF
IAN OGOTI 9TH PLAINTIFF
FAITH MUENI PAUL 10TH PLAINTIFF
MICHAEL MUKOLWE NANDWA 11TH PLAINTIFF
DENNIS SIMIYU BARASA 12TH PLAINTIFF
NELION KEBASO ARAKA 13TH PLAINTIFF
LYDIA BOSIBORI NYAKWARA 14TH PLAINTIFF**

AND

**FAIDISHA PAMOJA HOUSING CO-OPERATIVE SOCIETY
LIMITED 1ST DEFENDANT
KENYA UNION OF SAVINGS AND CREDIT CO-OPERATIVES LIMITED
(KUSCO) 2ND DEFENDANT**



JOSEPH WERE JUKA 3RD DEFENDANT
ROSE ALICE NYAWIRA 4TH DEFENDANT
JUDITH BALONGO NYANCHIRI 5TH DEFENDANT
WALTER C KIRUI 6TH DEFENDANT

RULING

1. Before court is a Notice of Motion dated 2nd July, 2024 filed by the plaintiffs herein seeking the following orders;
 - a. Spent
 - b. Spent
 - c. Pending hearing and determination of the main suit, the Honourable court be pleased to issue a temporary injunction restraining the 2nd defendant/respondent whether by itself, its agents, employees, representatives, assigns and or any other person acting on its instruction or under its supervision from entering, selling, auctioning, transferring and in any other way whatsoever dealing with all that property known as Plot No. Mavoko Town Block 3/9299 or any of the sixteen (16) plots owned by the plaintiffs/applicants.
 - d. Any other reliefs that this court may deem fit and expedient to issue.
 - e. Costs of this application.
2. The application is predicated on the affidavit sworn by Lydia Bosibori Nyakwara. The applicants' case is that between 2019 and 2022, they purchased sixteen (16) plots each measuring 50 feet by 100 feet from the 1st respondent which are sub-divisions of the parcel known as Mavoko Town Block 3/9299 (hereinafter referred to as the suit property). That the 1st respondent gave them their respective certificates of ownership and granted them vacant possession of their respective parcels, but failed to give them titles.
3. Their complaint was that they were surprised to learn that the mother title was withheld by the 2nd defendant on account of a loan to the 1st respondent by the 2nd respondent of Kshs. 5,400,000/= secured by a charge over the suit property. They accused the 1st and 3rd through to 6th defendants for fraud and stated that despite proposing to restructure their payment of the loan, the 1st respondent has since 2023 refused to settle the loan and that therefore the plaintiffs' right to property is at risk.
4. The applicants stated that they had reported the fraud to the DCI and investigations were ongoing but that the 2nd respondent had issued Statutory Notice to the 1st respondent dated 20th March, 2024, requiring the latter's payment of Kshs. 8,621,911/=. They argued that they had established a prima facie case with chances of success and argued that if the orders sought are not granted, they stood to suffer loss of their hard-earned proprietary interest in the suit property.
5. They attached a letter of authority; copy of title of the suit property; list of buyers; bundle of letters of confirmation of completion of payment; ownership certificates; complaint to the state department of co-operatives; minutes for the meeting of the 1st respondent dated 11th June, 2023; minutes dated 13th June, 2023 and 23rd November, 2023; letter from the DCI dated 4th March and the response thereto dated 17th April, 2024; Statutory Notice dated 20th March, 2024 and letter to the 2nd Respondent.



6. The application was opposed. The 2nd respondent filed grounds of opposition dated 29th August 2024, whereof it contended that this court lacks jurisdiction to handle this matter which is commercial in nature as the 2nd respondent is only exercising its statutory power of sale following default on the part of the 1st respondent regarding a loan secured by title of the suit property.
7. It also argued that the prayers sought against the 2nd defendant were misplaced and ill-advised as the 1st defendant remains in default of the loan and therefore the plaintiffs cannot seek to restrain the 2nd defendant from exercising its statutory power of sale against the 1st defendant. Further that the application was ill-advised and misplaced as the plaintiffs are not party to the loan agreement between the 1st and 2nd defendants hence they have no direct claim against the 2nd defendant.
8. The 2nd defendant also filed a replying affidavit sworn on 11th September, 2024 by its Manager Tabitha Njeri Muiruri. It was the 2nd defendant's case that the 2nd defendant should not be dragged into the internal woes of the 1st defendant as the 1st defendant is the registered proprietor of the suit property a fact acknowledged by the plaintiffs and that the plaintiffs are not privy to the agreement between the 1st and 2nd defendants. The deponent further stated that the 2nd defendant granted a loan of Kshs. 5,400,000/= to the 1st defendant on 3rd July, 2019 secured by the title of the suit property and that the 1st defendant was to pay monthly instalments of Kshs. 146,212/= for a period of four years. She also averred that as early as August 2019, the 1st defendant began defaulting in loan repayment and continues in the default to date.
9. She deponed that the 1st defendant was duly served with the 90 days Statutory Notice dated 20th March, 2024 and that therefore the plaintiffs' recourse if any against the 1st defendant lies in damages as they have not made any case as against the 2nd defendant. She argued that the plaintiffs do not deny the existence of a loan agreement and charge between the 1st and 2nd defendants and that they also do not deny that the loan has run into arrears and that therefore the complaint to the DCI concerning the conduct of the 1st defendant's officials has nothing to do with the 2nd defendant's right to exercise its Statutory Power of sale. She stated that the 2nd defendant had accommodated the 1st defendant long enough.
10. She attached the loan application; the registered charge; statement of the 1st defendant savings account; and copy of the Statutory Notice.
11. Both parties filed submissions in support of their respective cases, which this court has duly considered.

Analysis and Determination

12. The court has carefully considered the application, response thereto and submissions. Two issues arise for this court's determination.
 - a. Whether or not this court has jurisdiction to hear and determine the instant application; and
 - b. Whether or not the plaintiffs/applicants have met the threshold for grant of temporary injunction.
13. Jurisdiction is everything. Before a court embarks on determining a dispute, it must first be satisfied that it has the requisite jurisdiction to hear and determine the same. In the case of Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1, the court stated as follows;
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.



14. Jurisdiction flows from Constitution or statute or both and a court cannot arrogate itself jurisdiction it does not have.
15. In the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others (2012) e KLR the Supreme Court of Kenya stated as follows;

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.
16. Concerning disputes relating to charges, the Court of Appeal in the case of Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017]e KLR stated that the creation of a charge which is a disposition of an interest in land, has nothing to do with land use and therefore disputes arising in respect thereof are not within the jurisdiction of the ELC. The court further held that the ELC's jurisdiction was limited to matters incidental to land use which do not include mortgages, charges, and collection of dues and rents, which matters fall within the jurisdiction of the High Court.
17. In the instant case, the undisputed facts are that the 1st defendant obtained a loan facility of Kshs. 5,400,000/= from the 2nd defendant on security of the suit property which is registered in the name of the 1st defendant. Upon obtaining the loan from the 2nd defendant, the 1st defendant embarked on selling the sit property to the plaintiffs in the period between 2019 and 2022. It is further not disputed that the 1st defendant has defaulted in the loan repayment. From the plaint and the instant application, the plaintiffs have not contested the legality of the exercise of power of sale by the 2nd defendant as against the 1st defendant. What they complain about is the conduct of the officials of the 1st defendant whom they accused of fraud.
18. In my view, the issue therefore before court is whether the 2nd defendant can lawfully exercise its statutory power of sale in circumstances where the plaintiffs accuse the 1st defendant's officers of fraud. The plaintiffs having no apparent claim against the 2nd defendant over the suit property, it is clear that this is a commercial matter, and out of the jurisdiction of this court.
19. For the above reasons, I find and hold that this court lacks jurisdiction to hear and determine the application herein. Therefore, I hereby strike out the plaintiffs' application dated 2nd July 2024 with costs to the 2nd defendant, for want of jurisdiction.
20. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 26TH DAY OF MARCH, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Glen holding brief for Ms Otto for the plaintiffs/Applicants

Ms Wanyonyi for the 2nd defendant

No appearance for the 1st defendant

Court assistant – M.Nguyai

