



**Muteithia Kibira Advocates LLP v Co-operative Bank of Kenya Limited & another
(Environment & Land Case 78B of 2022) [2023] KEELC 16753 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16753 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 78B OF 2022
BM EBOSO, J
MARCH 27, 2023**

BETWEEN

MUTEITHIA KIBIRA ADVOCATES LLP PLAINTIFF

AND

CO-OPERATIVE BANK OF KENYA LIMITED 1ST DEFENDANT

NEW AGE DEVELOPERS AND CONSTRUCTION COMPANY

LIMITED 2ND DEFENDANT

RULING

1. This suit was filed at Thika Environment and Land Court on June 20, 2022 by M/s Muteithia Kibira Advocates LLP. The contextual background against which the law firm brought the suit is that, they were engaged by Co-operative Bank of Kenya Limited to process a discharge of charge over Land Reference Number 11486/10; procure subdivision of the title; and subsequently procure replacement charges against the subdivision titles. The mother title was registered in the name of New Age Developers and Construction Company Limited (the chargor) who had charged the title to the Bank to secure money lent to them by the Bank. The subdivision titles were to be processed in the name of the chargor and charged to secure the subsisting loan advanced to the chargor.
2. The suit was triggered by the Bank's insistence that the law firm should honour its undertaking to hold the mother title to the order of the Bank, cause it to be subdivided and procure replacement charges against the subdivision titles as securities for money lent to the 2nd defendant by the Bank. M/s Muteithia Kibira Advocates LLP hold the view that due to the intervening events, they are no longer bound by their professional undertaking.



3. Indeed, the said law firm seeks the following relief from this court, among other reliefs:
 - “(d) A permanent injunction restraining the 1st defendant, its employees, servants, and/or agents or anyone claiming under it from lodging any complaint and/or taking out any proceedings against the plaintiff, its partners and or associate advocates, with the Advocates Complaints Commission, the Law Society of Kenya, the Advocates Disciplinary Tribunal and/or any other body with respect to non-registration of a replacement charge of plots listed as sold and also those listed as public utility plots in paragraphs 21.1 to 21.5 of the plaint and therein respectively numbered as numbers 1 – 209, and also over all those titles listed in paragraph 21.6 of the plaint as unsold and therein numbered as 210 – 276 respectively, unless and until the defendants have duly executed replacement Charge instrument and other necessary documentation, and have put the plaint in funds to stamp and register the charge and/or any other security in favour of the 1st defendant and have also paid the pro rata Titling charges assigned thereto as also particularized in paragraph 21.6 f the plaint.”
4. While preparing a ruling on two applications that fell for disposal, it downed on this court that the two dominant issues in the suit relate to the questions as to: (i) whether the Bank was entitled to replacement charges over the subdivision titles as securities for money lent to the 2nd defendant; and (ii) whether the law firm of Muteithia Kibira Advocates LLP were in breach of their professional undertaking to the Bank to procure registration of replacement charges over the subdivision titles to secure the loan. Consequently, this court invited parties to this suit to address it on the question of jurisdiction. Parties appeared before me today and made submissions on the question of jurisdiction. This ex-tempore ruling relates to the question.
5. The Bank, through Mr Munyalo, is of the view that the two dominant issues in this dispute relate to the question of enforcement of a professional undertaking by the advocate and the Bank’s entitlement to replacement charges. Counsel for the Bank contends that the two issues fall outside the jurisdiction donated to this court under Article 162 (2) (b) of the *Constitution*. It is the position of counsel for the Bank that the pronouncements by the Court of Appeal on the jurisdiction of this court in relation to disputes relating to charges are binding on this court. Counsel invites the court to transfer this case to the Commercial Division of the High Court of Milimani.
6. M/s Muteithia Kibira Advocates LLP hold a contrary view. Through Ms Nderitu, the law firm argues that the dominant issue in this suit revolves around the question of sale of land whose purchase was financed by the Bank and subsequently subdivided and partially sold and the Bank is now pushing the law firm to procure replacement charges over the subdivision titles yet the said titles have been sold with the knowledge of the Bank. They contend that the dispute falls within the jurisdiction of this court.
7. I have considered the submissions tendered by the parties on the question of jurisdiction of this court over the dominant issues in this suit. I have also considered the relevant legal frameworks and the prevailing jurisprudence on the question of jurisdiction of this court.
8. The broad jurisdiction of this court is donated by Article 162 (2) (b) of the *Constitution* and the jurisdiction is further elaborated in details in Section 13 of the *Environment and Land Court Act*. Suffice it to state that, this court is vested with jurisdiction to adjudicate disputes relating to the environment and the use and occupation of, and title to land.
9. As observed in the opening paragraphs of this ruling, the two dominant issues in this suit are : (i) whether the Bank is entitled to replacement charges over the subdivision titles as securities for money



- lent to the 2nd defendant by the Bank, and (ii) whether the law firm of Muteithia Kibira Advocates LLP is in breach of their professional undertaking to the Bank to procure registration of replacement charges over the subdivision titles as securities for money lent by the Bank to the 2nd defendant.
10. The first issue is a dispute relating to charges as securities for money lent. While many Judges of this court previously held the view that Parliament, through the definition of “court” under Section 2 of the *Land Act*, conferred jurisdiction upon this court to deal with disputes relating to charges and mortgages, the Court of Appeal has been of a different view. Indeed, the Court of Appeal has been categorical that disputes relating to charges and mortgages fall outside the jurisdiction of this court [See (i) *Diamond Trust Bank Kenya Limited v FHH* (Civil Appeal 18 of 2020) [2022] keca 769 (KLR) (24 June 2022) and (ii) *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017]eKLR].
 11. This court is bound by the pronouncements of the Court of Appeal on the question of jurisdiction of the court. It would not augur well for the administration of justice if this court were to purport to exercise jurisdiction over an issue that the Court of Appeal has ruled falls outside its jurisdiction. It is therefore the finding of this court that the question as whether the Bank is entitled to replacement charges falls outside the jurisdiction of this court.
 12. The Second dominant issue relates to the question as to whether the law firm of Muteithia Kibira Advocates LLP are in breach of their professional undertaking to the Bank to procure registration of replacement charges against the subdivision titles as securities for moneys lent to the 2nd defendant by the Bank. This is an issue that falls within the civil jurisdiction of the High Court. It is not an issue that falls within the jurisdiction of this court as defined under Article 162 (2) (b).
 13. The plaintiff argued that the dispute in this suit relates to the ownership interests of some third parties, hence this court has jurisdiction over the dispute. I do not agree with that view. None of the alleged third parties is a party to this suit. Secondly, the fact that the 2nd defendant is the registered proprietor of the titles is not in contest.
 14. For the above reasons, I find that the Environment and Land Court lacks jurisdiction to adjudicate the two dominant issues in this suit.
 15. What disposal order would be appropriate in the circumstances of this case? Prior to the pronouncement of the Supreme Court of Kenya in *Benson Ambuti Adega & 2 others v Kibos Distillers Limited & 5 others* [2020] eKLR, the appropriate disposal order would have been an order striking out the suit in tandem with the then prevailing jurisprudence. The principle that emerged from the pronouncement of the Supreme Court of Kenya in the above case is that, where appropriate, a superior court can properly transfer a suit upon finding that the suit should have been filed in a different court or tribunal.
 16. The result is that, having found that the two dominant issues in this suit fall outside the jurisdiction of the Environment and Land Court, I order that this suit be transferred to the High Court of Kenya at Kiambu for disposal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 27TH DAY OF MARCH 2023

B M EBOSO

JUDGE

In the Presence of: -



Munyalo for the 1st defendant

Mr Nderitu for the plaintiff

Osodo Court Assistant

