



**Mbuki v Waweru & 3 others (Environment & Land Case  
E030 of 2025) [2025] KEELC 2932 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2932 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E030 OF 2025**

**JM ONYANGO, J  
MARCH 25, 2025**

**BETWEEN**

**JOHN MBUKI ..... PLAINTIFF**

**AND**

**JENNIFFER NG'ENDO WAWERU ..... 1<sup>ST</sup> DEFENDANT**

**FAMILY BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**NOREN AUTIONEERS ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Applicant has moved this Honourable Court vide a Notice of Motion dated 10<sup>th</sup> February 2025, seeking, inter alia, an injunctive relief against the Respondents. The gravamen of the Applicant's case is that the 1<sup>st</sup> Respondent, through acts tainted with fraud and manifest illegality, procured the registration of a parcel of land known as Ruiru Kiu/ Block 4/1817 (the suit property) in their name and thereafter encumbered the same by way of a charge in favour of the 2<sup>nd</sup> Respondent.
2. The Applicant, asserting ownership over the suit property, has instituted a substantive suit alongside this Application, spurred by the ominous specter of an impending auction scheduled for 26<sup>th</sup> March 2025. This looming disposition is premised on a Notification of Sale issued on 20<sup>th</sup> January 2025 by the 3<sup>rd</sup> Respondent, who now brandishes the auctioneer's gavel with the apparent intent of removing the property from the Applicant's alleged physical possession.
3. The Applicant, in a bid to forestall what he contends to be an egregious violation of his proprietary rights, beseeches this Court to intervene with the full force of its injunctive powers. To permit the impugned sale to proceed, he contends, would be to sanction a travesty of justice, reducing their legal entitlements to mere whispers against the clamor of commercial expedience.



4. The Court is thus invited to weigh, with judicious circumspection, the competing interests at play and, in so doing, ensure that justice is done.
5. However, before the application could be determined, the court suo moto, directed the parties to address, by way of written submissions, the pivotal question of whether this court has the jurisdiction to hear and determine this matter given that it seemingly pertains to a charge over the suit property.
6. The Applicant together with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent duly complied with the directions of the court and filed their respective submissions on 14<sup>th</sup> March 2025. I have considered the said submissions in arriving at my decision.

### **Issue for Determination**

7. The singular issue for determination is to establish whether this Court has the jurisdiction to hear and determine this matter.

### **Analysis and Determination**

8. The question of jurisdiction is not a trifling matter to be glossed over in the rush toward substantive adjudication; rather, it is the very foundation upon which all judicial proceedings must firmly stand. Jurisdiction is not assumed by convenience nor conferred by acquiescence; it must exist as a matter of law, clearly and unequivocally. If absent, the court is duty-bound to lay down its tools.
9. The *Constitution* of Kenya sets out the Environment and Land Court’s jurisdiction under Article 162(2) and (3) in the following terms:
  - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
    - (a) employment and labour relations; and
    - (b) the environment and the use and occupation of, and title to, land.
  - (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
10. To this end, Parliament, in its wisdom, enacted the *Environment and Land Court Act*, which establishes the Environment and Land Court (ELC) as the specialized forum for the adjudication of land-related disputes. Complementing this statutory framework is the *Land Act*, whose Section 150 unequivocally stipulates that the ELC:

“....shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”
11. Additionally, section 13 of the *Environment and Land Court Act* outlines the ELC’s jurisdiction as follows:
  - “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) In exercise of its jurisdiction under article 162(2) (b) of *the Constitution*, the Court [the ELC] shall have power to hear and determine disputes—



- (a) relating to environmental planning and protection, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.”

12. This statutory provision, in its breadth and clarity, leaves no room for conjecture. It vests the ELC with an expansive jurisdiction over all matters touching on land and the environment. The legislative intent is unmistakable: to create a judicial forum with the singular mandate and expertise to resolve disputes within this specialized domain.
13. Learned counsel for the Applicant argues that a harmonious interpretation of Section 13(2)(d) of the ELC Act encompasses not only formal titles but also claims arising from fraud, misrepresentation, or illegality in transactions affecting land title and tenure as provided under Section 13(2)(a) of the ELC Act. They further argue that this is not a dispute about debt recovery but rather, it is a dispute about whether a fraudulent instrument can lawfully affect title to land.
14. Counsel for the Applicant argues that the jurisdiction of the ELC has been examined and urged the Court to be guided by various authorities. See: *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR), *Bank of Africa Kenya Limited & Another v TSS Investment Limited & 2 Others* [2024] KECA 410, *Joel Kyatha Mbaluka & Associates Advocates v Daniel Ochieng Ogola* [2019] eKLR
15. It is the Applicants contention that this case is a quintessential “title dispute” which challenges the validity of the 1<sup>st</sup> Respondent’s purported interest in the land which created the fraudulent instrument over his land. Learned counsel for the Applicant further argues that the dominant issue in this case is not the enforcement of a charge but to invalidate the foundational instrument that purports to affect the Applicant’s title.
16. On the other hand, learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent advance a contrary position and argue that the present suit challenges that Bank’s statutory power of sale and thus contends that this court lacks jurisdiction to determine the dispute. Learned counsel for the Respondents urges this court to be guided by the decisions in: *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR) and *Karisa Chengo & 2 others v Republic* [2015] KECA 756 (KLR).
17. It is important to determine the cause of action in this suit to determine whether the Court has the requisite jurisdiction.



18. In *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* (supra) the Court of Appeal spoke in unmistakable terms that the ELC is not vested with the jurisdiction to entertain disputes relating to charges, mortgages, or the statutory power of sale.
19. The law is not an amorphous entity that bends to the convenience of the litigant; it is an unyielding structure that must be adhered to with precision. Section 13 of the *Environment and Land Court Act*, exhaustive as it is in defining the ELC's jurisdiction, makes no explicit provision for matters touching on the enforcement of a charge, and Section 150 of the *Land Act* does not extend such jurisdiction to the ELC either.
20. I have carefully and anxiously considered the parties' submissions, the relevant legal framework as well as the authorities cited to me. Although the plaintiff seeks to challenge the validity of the 1<sup>st</sup> Defendant's title which was charged to the 2<sup>nd</sup> defendant, the court cannot do so without delving into the question as to why the property was charged and the rights of the 2<sup>nd</sup> Defendant to exercise its statutory power of sale. By so doing, the court will be overstepping its mandate.
21. Consequently, it is my finding that the court lacks jurisdiction to hear and determine this matter and the suit is hereby struck out with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 25TH DAY OF MARCH 2025.**

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**J. M. ONYANGO**

**JUDGE**

In the presence of:

Mr Jambo for the Plaintiff/Applicant

Miss Mumbi for the 2nd and 3rd Defendants/Respondents

Mr Muhita for the 1st Defendant/ Respondent

Court Assistant: Hinga

