



**Wakabu v Kiambu Unity Savings and Credit Co-operative Society Limited & another
(Environment & Land Case E090 of 2022) [2023] KEELC 17667 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17667 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E090 OF 2022**

BM EBOSO, J

MAY 25, 2023

BETWEEN

EDWARD WAWERU WAKABU PLAINTIFF

AND

**KIAMBU UNITY SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
LIMITED 1ST DEFENDANT**

LAND REGISTRAR-KIAMBU 2ND DEFENDANT

RULING

1. Edward Waweru Wakabu initiated this suit through a plaint dated 29/7/2022. Together with the plaint, he brought a notice of motion dated 1/8/2022 seeking, among other reliefs, an interlocutory injunctive order restraining the 1st defendant against auctioning land parcel number Kabete/Nyathuna/2006 [the suit property] in exercise of the chargee's statutory power of sale. The said application is one of the two motions that were reserved for ruling on 15/3/2023. The other motion is the 1st defendant's application dated 16/9/2022, through which the 1st defendant sought an order striking out this suit. The two applications were canvassed through written submissions.
2. While preparing to write a ruling on the two applications, it emerged that the dispute in this suit revolves around a legal charge which the plaintiff created over the suit property. It further emerged that at one point, an entry denoting a discharge of charge relating to the charge was entered in the land register relating to the suit property. The courts subsequently declared that the entry relating to the discharge of charge had been procured and entered fraudulently.
3. Upon noticing that this court may not have jurisdiction over the dispute, the court made an order inviting the parties to address it on the question as to whether it had jurisdiction to adjudicate the dispute. The court vacated the order reserving a ruling date and fixed the matter for mention, directing the parties to address it on the question of jurisdiction.



4. The plaintiff did not attend court to make submissions on the question. Mr Njuguna Mbigi, Advocate, attended on behalf of the 1st defendant and submitted that, having reviewed the prevailing jurisprudence, it was his position that this court lacked jurisdiction to adjudicate this dispute.
5. What is the prevailing jurisprudence on the question of jurisdiction of this court in relation to disputes relating to charges/mortgages? Not too long ago, the Court of Appeal made emphatic pronouncements on the jurisdiction of the Environment and Land Court over disputes relating to charges, including questions relating to validity of charges. In *Diamond Trust Bank Kenya Limited v FHH* (Civil Appeal 18 of 2020) [2022] KECA 769 (KLR) (24 June 2022) (Judgment) the Court of Appeal emphatically stated as follows:

“In the present case, although the respondent is not privy to the instrument of legal charge, there is no doubt that what the respondent is seeking before the ELC, is to restrain the Bank from exercising its statutory power of sale. That in our view, following the decision of this Court in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* (above), is a commercial matter for adjudication before the High Court. In our view therefore, the Judge erred in holding that the ELC was the correct forum and that it was properly seized of the matter.”
6. It is clear from the pleadings in this suit that the dominant issue in this dispute relates to a charge and a discharge of the discharge. It is a dispute which the Court of Appeal has adjudged to be outside the jurisdiction of this court.
7. Guided by the principle laid down in *Owners of Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd* [1989]eKLR, this court has no option but to down its tools. In the absence of any other proposal from the plaintiff, this suit is hereby struck out for want of jurisdiction.
8. Owing to the fact that the present situation is partly attributable to the current definition of “court” in the *Land Act*, 2012 there will be no award of costs in this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF MAY 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Kithinji holding brief for Mr Mbigi for the 1st Defendant

Court Assistant: Hinga

