



Meru Greens Horticulture EPZ Limited v Equity Bank (Kenya) Limited (Environment & Land Case E009 of 2023) [2023] KEELC 19241 (KLR) (24 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19241 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E009 OF 2023**

**A NYUKURI, J
JULY 24, 2023**

BETWEEN

MERU GREENS HORTICULTURE EPZ LIMITED PLAINTIFF

AND

EQUITY BANK (KENYA) LIMITED DEFENDANT

RULING

1. Before court is the defendant's notice of preliminary objection dated May 5, 2023. The objection challenges the jurisdiction of this court to hear and determine this suit, on grounds that the dispute as set out in the plaint is not a dispute relating to the environment or the use and occupation of, and title to, land. The Defendant maintains that this suit seeks to restrain the defendant from exercising its statutory power of sale, to compel the defendant to restructure the plaintiff's loan repayment and an order to have the plaintiff's name removed from the credit reference bureau. That these are commercial matters for adjudication before the High court.
2. The preliminary objection was canvassed by way of written submissions. On record are the Defendant's submissions dated May 11, 2023 and the Plaintiff's submissions dated May 17, 2023.

Submissions by the Defendant

3. Counsel for the Defendant cited the decision in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR and submitted that jurisdiction of a court stems from the *Constitution* or legislation or both and that a court cannot arrogate to itself jurisdiction that exceeds the jurisdiction conferred on it by law. In that regard, counsel submitted that the jurisdiction of the Environment and Land Court is provided for under article 162(2) of the *Constitution*, being 'to hear and determine disputes relating to the environment and the use and occupation of, and title to land.' Counsel argued that section 13 (2) of the *Environment and Land Court Act* specified this court's jurisdiction.



4. Reliance was placed on the case of *Republic v Karisa Chengo & 2 others* [2017] eKLR for the proposition that this court's jurisdiction is limited to the matters provided for in the statutes. Counsel took the position that the Plaintiff's claim as set out in the plaint dated April 24, 2023 does not relate to the use and occupation of, and title to land. Counsel pointed out that the Plaintiff's complaints are that the defendant is exercising its power of sale maliciously as the Plaintiff has a financier who is ready and willing to finance their business to enable them pay loan; that the defendant has failed to follow the advice of a consultant on the business viability of the plaintiff; that the defendant has allowed a shareholder to frustrate the plaintiff's business and that the financiers were unable to help restructure the plaintiff's debt due to the defendant's conduct. Counsel argued that the entire claim by the Plaintiff has nothing to do with the use and occupation of, or title to land, but that as seen in the prayers sought, the claim herein is solely a commercial dispute over the amounts owed by the plaintiff and how the amounts ought to be repaid.
5. The court was referred to the case of *Co-operative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 others* [2017] eKLR to argue that it is settled by the Court of Appeal that the Environment and Land Court does not have jurisdiction to hear and determine disputes where the Plaintiffs seek to restrain the defendant from exercising their power of sale. Counsel pointed out the findings by the Court of Appeal in that case to the effect that a charge is a disposition in land and that this court's jurisdiction is limited to disposition in land only in relation to its utilization of the natural resource found on, above and below land, and therefore this court lacks jurisdiction to deal with mortgages, charges, collection of dues and rents as that fell within the jurisdiction of the High Court. To buttress their argument counsel cited a similar holding in Civil Appeal Number 18 of 2020; *Diamond Trust Bank Kenya Limited v Fatma Hassan Hadi*.
6. Counsel also addressed the court on the import of sections 128 and 150 of the *Land Act* on the preliminary objection. Counsel submitted that although section 128 of the *Land Act* provides that any disputes arising out of any matter provided for under this Act may be referred to the Environment and Land Court for determination, that, that provision was not couched in mandatory terms and cannot be argued to mean that all disputes under the *Land Act* must be determined by this court.
7. As regards section 150 of the *Land Act* which provides that this court and subordinate courts empowered by any written law shall have jurisdiction to hear and determine disputes, actions, and proceedings concerning land under the *Land Act*, that that section is couched in similar terms to article 162 (2) of the *Constitution*, as it places emphasis on actions and proceedings concerning land. In that regard therefore, counsel argued that the Court of Appeal in the *Patrick Kangethe case* already interrogated the import of section 150 of the *Land Act* and held that the section does not give this court jurisdiction to determine accounting questions.
8. It was submitted for the defendant that this court is bound by the doctrine of precedent to follow the decisions of the Court of Appeal made in the cases of *Co-operative Bank of Kenya Limited v Patrick Kangethe* and *Diamond Trust Bank of Kenya Limited v Fatma Hassan Hadi*. To buttress this argument, counsel relied on the case of *Dodhia v National & Grindlays Bank Limited and another* [1970] EA 195 for the proposition that adherence to the principle of judicial precedent is of utmost importance in the administration of justice so as to provide certainty.

Submissions by the Plaintiff

9. Counsel for the Plaintiff submitted that a preliminary objection ought to consist of a point of law as was outlined in the case of *Mukisa Biscuit Manufacturing Co. Ltd*. Counsel also cited the case of *Samuel Kamau Macharia v KCB 7 others* [2012] eKLR wherein it was held that the jurisdiction of a court



- stems from the Constitution or legislation or both. Counsel relied on article 162 (2) of the Constitution and section 13 of the Environment and Land Court Act to argue that this court has jurisdiction to determine questions of use and occupation, and title to land.
10. Further reliance was placed on the decisions in the cases of Peter Kiama Maina v Industrial Commercial Development Corporation & another [2021], Alphonse Yankulije v One Twiga Road Limited & 2 others and Moses Barto Cherop t/a Crater Center v Postal Corporation of Kenya [2022] eKLR for the proposition that while this court has no jurisdiction to determine accounting disputes and the issue of exorbitant interest, the issues of the auctioneer's 45 days redemption notice and notification of sale; valuation; and permanent injunction were fully within the jurisdiction of this court.
 11. Counsel maintained that in the Patrick Kangethe case the Court of Appeal did not hold that this court did not have jurisdiction to handle any matter involving land that was the subject of a charge. According to counsel, the Court of Appeal took the view that the dominant question was that of tabulation of accounts which meant that it was the High Court with the requisite jurisdiction.
 12. It was contended for the plaintiff that charges are governed by both the Land Act and the Land Registration Act, both of which provide that this court has jurisdiction to deal with disputes concerning land falling within those Acts and that therefore this court has jurisdiction to hear and determine this dispute.
 13. In regard to the provisions of section 150 of the Land Act, counsel submitted that both section 150 of the Land Act and section 101 of the Land Registration Act were clear and unambiguous that it is this court that has jurisdiction to deal with disputes concerning land falling under the two respective Acts. Counsel cited the case of Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Ltd & another (2018) eKLR where the court held that the ELC court has jurisdiction to determine cases dealing with all instruments created under the Land Act and the Land Registration Act because the process of sale by chargee is laid down in the Land Act and the Land Registration Act and a sale by chargee just like a sale by a private individual involve title and the process of acquisition of title to land, which is within the jurisdiction of the Environment and Land Court.
 14. Counsel argued that by dint of article 165 (5) of the Constitution, the High Court's jurisdiction in regard to matters for the Environment and Land Court under article 162 (2), is ousted.
 15. Counsel argued that the matter before court relates to the process through which the defendant sought to exercise its power of sale conferred under the charge, and that although the issue of variation of the rate of interest from 5% to commercial rates was raised, that the predominant issue is whether or not the due and legal process of enforcing the security had been followed.
 16. Counsel maintained that the prayers in the plaint show that the Plaintiff is challenging the process of sale as outlined in sections 90(2) and 97(3) of the Land Act. Counsel emphasised that the plaintiff's prayers are not for accounts like in the Patrick Kangethe case, but that he seeks injunction and other prayers. Counsel submitted that the dominant issue in this case is noncompliance with sections 90(2), 96 (2) and 97 (3) of the Land Act. Counsel took the view that the Patrick Kangethe case was not a blanket decision on jurisdiction of the Environment and Land Court. Counsel argued that this court has jurisdiction to determine this matter.

Analysis and Determination

17. This being a Preliminary Objection challenging the court's jurisdiction, the only issue that this court needs to determine is whether this court is competent to hear and determine this suit. In the Court



of Appeal decision in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, the court held:

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it.

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 pending other evidence.

A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

18. Similarly, in the case of *Housing Finance Company of Kenya Limited v Brick & Mortar Holdings Limited* [2020] eKLR the trial Court had issued *ex-parte* orders. The Appellant filed an appeal against the said *ex-parte* orders citing lack of pecuniary jurisdiction. Upon hearing the appeal, the Court held as follows;

It is the firm belief of this Court that, it is the duty of every court, before entertaining any matter before it, and in particular *ex-parte*, to first satisfy itself that it has jurisdiction to handle the same. This will enable that court to save the parties the unnecessary costs in setting aside worthless proceedings and orders arising from unlawful exercise of jurisdiction.

19. It is settled, and not in doubt, that the jurisdiction of a court emanates from the *Constitution*, statute or both. The jurisdiction of this court is provided for in article 162 (2) (b) of the *Constitution* of Kenya 2010 as read with section 13 of the *Environment and Land Court Act*. In addition, sections 2 of the *Land Act* as well as the *Land Registration Act* defines the court that ought to determine matters under those Acts to be the Environment and Land Court.

20. Article 162 (2) (b) and (3) of the *Constitution* of Kenya 2010 provides as follows;

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to: -

a

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).

21. Section 13 of the *Environment and Land Court Act* provides for the jurisdiction of the Environment and Land Court as follows;

Jurisdiction of the Court

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 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.
22. Therefore, the jurisdiction of the Environment and Land Court as defined in article 162 (2) (b) and expounded in section 13 of the [Environment and Land Court Act](#) is in respect to use and occupation of, and title to land.
23. A charge is an instrument creating an interest in land, being an encumbrance on the land, as a guarantee for repayment of debt or for fulfilment of agreed terms between parties to the charge. Therefore, there can be no charge without an interest in land. Section 2 of the [Land Act](#) defines a charge as follows;
- Charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge, including—
- a. An informal charge, which is a written and witnessed undertaking, the clear intention of which is to charge the chargor’s land with the repayment of money or money’s worth obtained from the chargee; and
 - b. A customary charge which is a type of informal charge whose undertaking has been observed by a group of people over an indefinite period of time and considered as legal and binding to such people;
24. Section 2 of the [Land Act](#) also defines “court” as follows;
- “court” means the Environment and Land Court established under the [Environment and Land Court Act](#), 2011 (No. 19 of 2011).
25. Under the [Land Act](#), part VII (Section 78 to 106) of the Act makes provision for charges. Under sections 104 to 106 of the [Land Act](#), the Environment and Land Court has power, in respect to a dispute concerning a charge, to grant remedies and reliefs in regard to reliefs sought under part VII of the [Land Act](#). Sections 104 to 106 of the [Land Act](#) provides as follows;
- Section 104
- Power of the court in respect of remedies and reliefs
- (1) In considering whether to grant relief as applied for, a court—
 - (a) shall, have regard to whether the remedy which the chargee proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred if the charged land consists of agricultural land or commercial premises, and the



remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof;

- (b) shall, where the charged land consists of or includes, a dwelling- house, and the remedy proposed is to appoint a receiver, or take possession or lease the dwelling house or a part of it, have regard to the effect that the appointment of a receiver or the taking of possession or leasing the whole or a part of the dwelling house would have on the occupation of the dwelling house by the chargor and dependants and if the effect would be to impose undue disturbance on those owners, whether it is satisfied that—
 - (i) the chargee has made all reasonable efforts, including the use of other available remedies available, to induce the chargor to comply with the obligations under the charge; and
 - (ii) the chargor has persistently been in default of the obligations under the charge; and
 - (iii) if the sale is of land held for a customary land, the chargee has had regard to the age, means, and circumstance including the health and number of dependants of the chargor, and in particular whether—
 - (aa) the chargor will be rendered landless or homeless;
 - (bb) the chargor will have any alternative means of providing for the chargor and dependants;
 - (iv) it is necessary to sell the charged land in order to enable the chargee to recover the money owing under the charge;
 - (v) in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the charged land.
- (2) A court may refuse to authorise an order or may grant any relief against the operation of a remedy that the circumstances of the case require and without limiting the generality of those powers, may—
- (a) cancel, vary, suspend or postpone the order for any period which the court thinks reasonable;
 - (b) extend the period of time for compliance by the chargor with a notice served under section 90;
 - (c) substitute a different remedy or the one applied for or proposed by the chargee or a different time for taking or desisting from taking any action specified by the lessor in a notice served under section 90;
 - d) authorise or approve the remedy applied for or proposed by the chargee, notwithstanding that some procedural errors took place during the making of any notices served in connection with that remedy if the court is satisfied that—
 - (i) the chargor or other person applying for relief was made fully aware of the action required to be taken under or in connection with the remedy; and



- (ii) no injustice will be done by authorising or approving the remedy, and may authorise or approve that remedy on any conditions as to expenses, damages, compensation or any other relevant matter as the court thinks fit.
- (3) If under the terms of a charge, the chargor is entitled or is to be permitted to pay the principal sum secured by the charge by instalments or otherwise to defer payment of it in whole or in part but provision is also made in the charge instrument or any collateral agreement for earlier payment of the whole sum in the event of any default by the chargor or of a demand by the chargee or otherwise, then for purposes of this section the court may treat as due under the charge in respect of the principal sum secured and of interest on it only the amounts that the chargor would have expected to be required to pay if there had been no such provision for earlier payment.
- (4) A court must refuse to authorise or approve a remedy if it appears to the court that—
 - (a) the default in issue has been remedied;
 - (b) the threat to the security has been removed;
 - (c) the chargor has taken the steps that the chargor was required to take by the notice served under section 90; and
 - (d) the chargee has taken or attempted to take some action against the chargor in contravention of section 90(4).

Section 105

Power of the court to re-open certain charges and revise terms

- (1) The Court may reopen a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

Section 106

Exercise of power to re-open certain charges

- (1) The court may exercise the powers conferred on it by this Act either—
 - (a) on an application made to it for that purpose by either the chargor or the chargee—
 - (i) to enforce the charge; or
 - (ii) to commence an action under section 90; or
 - (b) on an application by the chargor for relief against the exercise by the chargee of any remedy in connection with a default by the charger under a charge; or
 - (c) on an application by the Registrar in respect of—
 - (i) charges provided by one or more specific chargees where there is prima facie evidence



of a pattern of unfair dealing and practices by that chargee or those chargees; or

- (ii) a chargee, being a corporate body, that appears to exercise discrimination against chargors on account of their gender, or by refusing to grant charges to persons on account of their gender except that a chargee, being a corporate body that is implementing any programme, approved or assisted by the national or county governments, designed to assist women to improve their economic and social position by providing them with advances secured by a charge of land shall not be taken to be acting in discriminatory manner if the advances under that programme are made only to women.

(2) In reopening the charge, the court may—

- (a) direct that the charge shall have effect subject to modifications that the court shall order;
- (b) require the chargee to repay the whole or part of any sum paid under the charge or any related or collateral agreement by the chargor or any guarantor or other person who assumed an obligation under the charge whether it was paid to the chargee or any other person;
- (c) require the chargee to pay any compensation to the chargor which the court shall think fit; or
- (d) direct the chargee, being a corporate body to cease acting in a discriminatory manner with respect to the granting of charges.

(3) In considering whether to exercise the powers conferred on it by this section, the court shall have regard to—

- (a) the age, gender, experience, understanding of commercial transaction, and health of the chargor at the time when the charge was created, if the chargor is an individual;
- (b) the financial standing and resources of the chargor relative to those of the chargee at the time of the creation of the charge;
- (c) the degree to which, at the time of the creation of the charge, the chargor was under financial pressure and the nature of that pressure;
- (d) the interest rates prevailing at the time of the creation of the charge and during the continuation of the charge and the relationship of those interest rates to the interest rate applying from time to time in the charge;



- (e) the degree of risk accepted by the chargee, having regard to the value of the charged land and the financial standing and other resources of the chargor;
- (f) the importance of not undermining the confidence of reputable chargees in the market for charges; and
- (g) any other factors that the court considers relevant

26. Besides, section 150 of the [Land Act](#) provides in respect of the jurisdiction of the Environment and Land Court as follows;

The Environment and Land Court established in the [Environment and Land Court Act](#) and subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act

27. On the other hand, article 165(3) of the [Constitution](#) provides for the jurisdiction of the High Court as follows;

“Subject to clause (5), the High Court shall have-

- a. Unlimited original jurisdiction in criminal and civil matters;
- b. Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- c. Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- d. Jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of-
 - i. The question whether any law is inconsistent with or in contravention of this Constitution;
 - ii. The question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution.
 - iii. Any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - iv. A question relating to conflict of laws under Article 191; and
- e. Any other jurisdiction, original or appellate, conferred on it by legislation

28. Therefore the question that must be answered herein is whether the dispute as framed by the Plaintiff herein is a dispute concerning land under the [Land Act](#) and therefore subject to the jurisdiction of this court in view of the provisions of Sections 2, 104, 105, 106, and 150 of the [Land Act](#)?

29. To determine whether this court has jurisdiction to determine this suit, it is important to set out the dispute herein. This suit was filed on 24th April 2023 vide a Plaint dated even date. According to the Plaint as filed by the plaintiff herein, the defendant in exercising its statutory power of sale against the



Plaintiff in respect of the Plaintiff's parcel LR No. 18474/196, failed to comply with sections 90 (1) and (2), 96 (2) and 97 (30) of the Land Act by failing to issue notice under section 90 (2) of the Land Act. It stated that in 2022, the Plaintiff agreed with the defendant to hire a consultant named Peter Nyaga who still works with the Plaintiff but is paid by the defendant, whose terms of reference were to report on the plaintiff's business viability and provide turnaround plan which was done wherein the consultant advised that the defendant injects \$433,000 to enable the Plaintiff's business start repaying the defendant's loan from February 2023. Further that the intended sale was actuated by malice, on the part of the defendant in cahoots with one of the Plaintiff's shareholders, as the plaintiff has a financier, namely Scipion Trading Capital, who are willing and ready to finance the plaintiff's business to enable the plaintiff repay the defendant's loan. That besides, the Plaintiff invited United Bank of Africa and access Bank to provide working capital but the defendant declined.

30. Therefore the Plaintiff sought the following orders;
 - a. An order of injunction restraining the Respondents through their directors, employees, servants, agents and/or anyone deriving benefits and/or instructions from the advertising, seeking, alienating, and in any way interfering with the quiet enjoyment of properties known as Title Nos.18474/196 (L.R No.167993) Meru Greens Horticulture Epz Ltd Mavoko Machakos County.
 - b) An order that the Respondents failed to follow the provisions of section 90 and (2) 96 (2) and 97 (3) of the Lands Act.
 - c) A court order to declare the purported sale process void.
 - d) Injunctive orders and also declaratory orders declaring the entire process of sale pursuant to section 90, 96 and 97 void of the Lands Act and non-compliant and void.
31. The Defendant's argument that this court has no jurisdiction is anchored on the decision of the Court of Appeal in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (supra). More specifically the holding that the ELC's jurisdiction is on land use which is basically in regard to employment of the surface of the land or the air above it or the ground below it, which has nothing to do with the creation of a charge as a charge relationship is limited to ensuring that the chargee has assurance of the payment of the debt given to the chargor. That the charge relationship creates a commercial relationship which ought to be determined by the High court.
32. On the other hand, the Plaintiff argued that where a dispute relates to matters other than the accounts, for instance, valuation, and the legality of notices including redemption notice to be served under Part VII of the Land Act, then the ELC has jurisdiction and that section 150 of the Land Act and section 101 of the Land Registration Act, provide for the jurisdiction of this court. He maintained that as his suit was challenging compliance of Sections 90, 96 and 97 of the Land Act which fall within part VII of the Land Act providing for charges, then this court has jurisdiction to determine the dispute herein.
33. In view of the above, it is evident that the Plaintiff's claim is a challenge on the process of the exercise of the defendant's statutory power of sale. According to the Plaintiff, the defendant contravened sections 90 (2), 96 (2) and 97 of the Land Act. The question therefore is which court between this court and the High Court has jurisdiction to determine the question posed in the dispute.
34. If the test as to whether the question on jurisdiction rests on the binary perspective of commercial versus non-commercial disputes as argued by the defendant, then the question that ought to be answered is whether it can be reasonably concluded that the powers of the Environment and Land Court under sections 104 to 106 of the Land Act have no commercial bearings or implications or lead to exclusively non-commercial outcomes. My view is that those powers have in every sense commercial



implications. Under sections 104 to 106 of the Land Act, where disputes arise in regard to a charge, the Environment and the Land Court has power, *inter alia*, to grant remedies and reliefs in regard to reliefs sought under part VII of the Land Act, including the power to extend the period of time for compliance by the chargor with the notice served under section 90; allow the chargee to exercise the power of sale despite errors in service of notices; determine when the principle sum and interest is due in view of the terms of the charge; direct that the charge shall have effect subject to modifications and reopen and revise terms of certain charges. I do not think that for instance, in varying the terms of a charge, extending the period for payment or reopening and revising terms of certain charges, at that point it can be said the Environment and Land Court is not dealing with a commercial matter. My view is that it will be a commercial matter. Because, while exercising those powers, the court may not even touch on the charged land. My view is that it would be improper for splitting the jurisdiction in a dispute involving a charge on the basis of commerciality of the dispute, whenever the power of sale is challenged as the Environment and Land Court by dint of article 162 (2) (b) of the Constitution of Kenya 2010 has jurisdiction to determine disputes on interest in land by virtue of the mandate to deal in title to land, which is at the centre of the exercise of the power of sale.

35. While, section 128 of the land Act provides that any dispute arising out of any matter provided for under the Land Act may be referred to the Land and Environment Court, which provision is not couched in mandatory terms, Section 150 of the Land Act is in mandatory terms as the word shall has been used, and that is in regard to disputes, actions and proceedings concerning land under the Land Act. The key word therefore being a dispute, action and proceedings concerning land under the Land Act. Therefore, section 128 recognizes that a dispute under the Land Act may arise but the same may not concern land.
36. I take the position that in view of the definition of the court under section 2 of the Land Act; the powers of the Environment and Land Court to grant remedies and reliefs sought in regard to charges under sections 104 to 106 of the Land Act; and provisions of section 150 of the Land Act, as long as a dispute touch on an interest in land regarding a charge, it is the Environment and Land Court that has the jurisdiction to determine such dispute. However, where parties are merely disputing every other aspect of the debt or conditions between chargor and chargee, or other matters like the amount due or what has or has not been paid, or the interest to be charged; without any of them touching on or seeking remedy in respect of the charged land, such a matter would not be for the ELC and would fall within the bounds of section 128 of the Land Act and therefore may be determined by the High court.
37. Having said that, in view of the fact that this court is bound by the principle of stare decisis and therefore bound by the decisions of the Court of Appeal and more specifically the reasoning and findings in the case of the Co-operative Bank of Kenya v Patrick Kangethe (*supra*), in the premises, this court finds and holds that it has no jurisdiction to hear and determine this dispute. The same is hereby transferred to the High court sitting at Machakos for hearing and determination. For avoidance of doubt, the interim orders granted herein are discharged.
38. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 24TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

IN THE PRESENCE OF;

MR. OJIENDA FOR APPLICANT



**MR. ONDIEKI & MS SONGOK FOR THE DEFENDANT
ABDISALAM – COURT ASSISTANT**

