



Simiyu (Suing as an Administrator to the Estate of Jeremiah Ngokho Wamocho Deceased) v Spur Africa Limited & 2 others (Environment & Land Case E003 of 2024) [2025] KEELC 3046 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3046 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E003 OF 2024**

**A NYUKURI, J
APRIL 2, 2025**

BETWEEN

DAVID B.K.N SIMIYU (SUING AS AN ADMINISTRATOR TO THE ESTATE OF JEREMIAH NGOKHO WAMOCHO DECEASED) PLAINTIFF

AND

**SPUR AFRICA LIMITED 1ST DEFENDANT
AMANI VENTURES LIMITED 2ND DEFENDANT
CO-OPERATIVE BANK OF KENYA 3RD DEFENDANT**

RULING

1. Before court is a Notice of Preliminary Objection dated 4th June, 2024 filed by the 3rd Defendant seeking that the plaintiff's suit be struck out with costs on ground that this court lacks jurisdiction to hear and determine the suit because the same is in regard to a charge and that the suit is misconceived, bad in law and an abuse of the court process.
2. On 14th October, 2024, the court directed that the Preliminary Objection shall be disposed by way of written submissions. Both the 3rd and 2nd defendants filed submissions dated 9th January, 2025 and 15th November, 2024 respectively. The plaintiff and the 1st defendant did not file any submissions.

3rd defendant's submissions

3. Counsel for the 3rd defendant submitted that the only issue arising for determination in this dispute is in regard to a charge over the suit property. Reliance was placed on the cases of *The Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited (1989) eKLR* and *Macharia & Another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR* for the proposition that jurisdiction is everything and that it only flows from *the Constitution* or Statute or both.



4. It was further submitted that Article 162(2) (b) of *the Constitution* as read with Section 13 of the *Environment and Land Court Act* provided for the jurisdiction of the Environment and Land Court (ELC) but that this court has no power to hear and determine matters to do with charges as was held in the cases of Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] eKLR and Abdu & 5 Others v Kanyi & Another [2024] eKLR. Counsel urged the court to find that it has no jurisdiction to entertain the plaintiff's claim.

2nd defendant's submissions

5. Counsel for the 2nd defendant relied on the cases of The Owners of Motor Vessel "Lilian S" (supra), Thomas Mutuku Kasue v Housing Finance Company Limited [2021] eKLR and Co-operative Bank of Kenya v Patrick Kangethe (supra) and submitted that as the plaintiff's suit touches on charges, this court lacks jurisdiction to hear and determine the same.

Analysis and determination

6. The court has carefully considered the Preliminary Objection and the submissions filed. The only issue that arise for the court's determination is whether or not this court has jurisdiction to hear and determine this suit.

7. Jurisdiction is the power of the court to determine a dispute. 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.

8. A court's jurisdiction emanates from *the Constitution* or statute or both and a court cannot arrogate itself jurisdiction it does not have. In the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others [2012] eKLR 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.

9. The jurisdiction of this court is to hear and determine matters relating to the environment and use of and occupation, and title to land. The jurisdiction of this court is provided for in Article 162 (2) (b) of *the Constitution* of Kenya as read with section 13 of the *Environment and Land Court Act* which provide as follows;

Article 162 (2) (b) of *the Constitution* of Kenya provides that;

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.

Section 13 of the *Environment and Land Court Act* provides that;

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 <i>the Constitution</i> 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 <i>the Constitution</i> , 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.

10. 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 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. In the above case, the court further 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 regarding charges are outside the jurisdiction of the ELC.
11. In the instant case, it is not disputed that the deceased Jeremiah Ngokho Wamocho, was the registered proprietor of the parcel of land known as Kakamega/Nzoia/10/98 (suit property). It is also stated by the plaintiff who has brought this suit as administrator of the deceased’s estate that the deceased obtained a loan from the 3rd defendant in the sum of Kshs. 8, 300, 000/= which loan he failed to repay, which resulted in the 3rd defendant’s exercise of its statutory power of sale by selling the suit property to the 1st defendant who in turn sold it to the 2nd defendant. Therefore, it is clear that the plaintiff’s suit is in regard to a charge whose validity is disputed by the plaintiff. In view of the position taken by the Court of Appeal in the case cited above to the effect that charges have nothing to do with land use and outside the jurisdiction of this court, I find and hold that this court lacks jurisdiction to hear



and determine this suit. I therefore strike out the plaintiff's suit herein with costs to the 2nd and 3rd defendants.

12. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 2ND DAY OF APRIL, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of

Ms. Shikola for the 2nd defendant

Ms Matara for the 3rd defendant

No appearance for the plaintiff

Court Assistant: M. Nguyai

