



Ndiang’ui v Pinnacle Developers Limited & another (Environment & Land Case E008 of 2022) [2022] KEELC 15431 (KLR) (20 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E008 OF 2022
MN GICHERU, J
DECEMBER 20, 2022**

BETWEEN

EUNICE WAMBUI NDIANG’UI PLAINTIFF

AND

PINNACLE DEVELOPERS LIMITED 1ST DEFENDANT

NCBA BANK LIMITED 2ND DEFENDANT

(Being an application for stay of execution of the ruling dated January 27, 2022 by Honourable Becky Cheloti and the resultant orders and any subsequent proceedings in ELC Case No 31 of 2021, Eunice Wambui Ndiang’ui v Pinnacle Developers Limited and NCBA Bank Limited)

RULING

1. This ruling is on notice of motion dated February 9, 2022. It is by the appellant NCBA Bank Limited and seeks a stay of execution of the ruling dated January 27, 2022 by Honourable Becky Cheloti and the resultant orders and any subsequent proceedings in ELC Case No 31 of 2021, Eunice Wambui Ndiang’ui v Pinnacle Developers Limited and NCBA Bank Limited pending the hearing and final determination of the impending appeal.
2. Before I delve any further into the current application, I wish to state that I have looked at the plaint dated February 5, 2021 particularly at paragraph 24 (a) to (h). I find that there is no claim for land.
3. Under article 162 (2) (b) of the Constitution, the jurisdiction of this court is limited to the hearing and determination of disputes to “environment and use and occupation of, and title to, land.”
Section 13 2 (a) of the Environment and Land Court Act further defines the jurisdiction of the Environment and Land Court. It does not include the prayers in paragraph 24 of the plaint which are refund of deposits, general damages for breach of agreement and the reimbursements of Kenya shillings and US dollars.



4. Jurisdiction is the first test that a court or tribunal must address before it embarks on its decision making function and in its absence disqualifies itself from determining the question before it. See [*Joseph Njuguna Mwaura and 2 others v Republic* \[2013\] eKLR \(Nairobi Court of Appeal\)](#).
5. In this case, it is clear that this court lacks jurisdiction to entertain the appeal. Consequently, I direct that the appeal be filed at the High Court.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2022.

MN GICHERU

JUDGE

