



**Son Hardware Limited v Development Bank of Kenya Limited & another; Arumba Limited (Interested Party) (Environment and Land Case 10 of 2021) [2025] KEELC 5194 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5194 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 10 OF 2021**

**MD MWANGI, J  
JULY 10, 2025**

**BETWEEN**

**SON HARDWARE LIMITED ..... PLAINTIFF**

**AND**

**DEVELOPMENT BANK OF KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENTS AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ARUMBA LIMITED ..... INTERESTED PARTY**

**RULING**

1. The preliminary objection under consideration is dated 23<sup>rd</sup> April 2025. The Defendants have raised three points as hereunder;
  - a. This Honourable Court lacks jurisdiction to hear and determine this matter given its specialized jurisdiction under Article 162 (2) (b) of *the Constitution* of Kenya and Section 13 of the Environment & Land Court Act which is limited only to the environment and the use and occupation of; and title to land as was inter alia held by the Court of Appeal in Cooperative Bank of Kenya Limited –vs- Patrick Kangethe Njuguna & five others (2017) eKLR.
  - b. The Plaintiff’s application and suit cannot be salvaged by transfer to the High Court’s Commercial Division since this court lacks jurisdiction to handle the matter in any way, including transfer as was held by the Supreme Court of Kenya in Albert Chaurembo Mumba & 7 others –vs- Maurice Munyao & 148 others (2019) eKLR.
  - c. The Plaintiff/applicant’s suit and application are therefore incurably defective, bad in law and ought to be struck out in limine.



2. The preliminary objection was heard by way of oral submissions on 3<sup>rd</sup> June 2025. The record of the proceedings of the day forms part of the record of this court.

**- Submissions by the parties.**

3. The Defendants in their submissions emphasized that the predominant issue in the suit before the court revolves around the loan facility that the 1<sup>st</sup> Defendant had extended to the Plaintiff using the suit property as one of the securities. The Plaintiff is essentially challenging the 1<sup>st</sup> Defendant's exercise of its statutory power of sale. Arumba Limited, the Interested Party herein was the purchaser of the suit property pursuant to a public auction conducted in exercise of the 1<sup>st</sup> Defendant's power of sale.
4. The Defendants therefore submits that the Plaintiff's suit is a commercial dispute that has nothing to do with the use, occupation and title to land. The Environment and Land Court therefore lacks the jurisdiction to entertain the suit. They relied on the Court of Appeal decision in Co-operative Bank of Kenya Limited –vs- Patrick Kangethe & 5 others (2017) eKLR, submitting that the facts in this case are almost similar to the facts in that case. They too cited the decision in the case of Bank of Africa Limited –vs- TSS Invest Limited & 2 others (2024) eKLR.
5. The Defendants further submitted that since the court lacks jurisdiction, the suit cannot be transferred to the High Court; its fate is that it must be struck out. They cited the Supreme Court of Kenya decision in Albert Chaurembo & 7 others –vs- Maurice Munyao & 12 others (2019) eKLR, to support their argument on that aspect.
6. The Interested Party was in support of the preliminary objection by the Defendants. The Interested Party's advocate, Mr. Havi submitted that the plaint filed by the Plaintiff was explicit on the reliefs sought. The ultimate relief seeks the annulment of the sale by the public auction. The Plaintiff's claim does not fall within the jurisdiction of this Environment and Land Court.
7. Responding to the submissions by the Defendants and the interested party, the Plaintiff's advocate Mr. Muinde submitted that the Plaintiff filed the suit essentially to restrain the transfer of the title of the suit property after the sale by public auction had already taken place. It was then in occupation of the suit property. Therefore, the suit was properly filed before the Environment and Land Court. It was the proper court.
8. The Plaintiff further submitted that the suit was filed way back in the year 2021. A lot of judicial time has already been expended in to the suit. The same law firm that represents the Defendants now has been on record all through but had not raised the issue of jurisdiction until now. They have not even pleaded the issue of jurisdiction in their statement of defence. Entertaining their preliminary objection at this point will prejudice the Plaintiff's right to a fair hearing.
9. The Plaintiff submitted that the authorities cited by the Defendants are easily distinguishable. The Supreme Court of Kenya decision was over an ELRC matter whereas the Plaintiff in the Co-operative Bank limited case was seeking to restrain a sale. In this case, the sale had already taken place. The circumstances are therefore different.
10. The Plaintiff referred to the decision in the case of Miriam Njoki –vs- Land Registrar (2020) eKLR and Lemlen –vs- Muketi & 2 others (2023) eKLR to back up his arguments.
11. In rejoinder, the Defendant's advocate submitted that there is need to establish the predominant issue. The Plaintiff is in court raising grievances arising out of the loan facility with the 1<sup>st</sup> Defendant bank.



12. The Defendants further submitted that a preliminary objection on jurisdiction can be raised at any time.

#### **Issues for determination.**

13. Having carefully considered the preliminary objection and the submissions by the parties, the sole issue for determination is whether the court has the jurisdiction to entertain and determine the Plaintiff's suit.
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#### **Analysis and determination.**

15. The preliminary objection by the Defendants challenges the jurisdiction of this court to entertain the Plaintiff's suit. It is well established in law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for lack or defect of jurisdiction. The point of jurisdiction may properly be taken at any stage of the proceedings including on appeal and decided there even if it was not raised at the original trial. The Plaintiff's argument that the Defendants waived the right to raise on the basis that this case has been in court for many years holds no water.
16. The Plaintiff's case against the Defendants is as pleaded in the amended plaint dated 15<sup>th</sup> September 2021. The Plaintiff prays for the setting aside of the sale of L.R. Ngong/Ngong/33632 by public auction, an injunction to restrain the Defendants from transferring and or presenting for registration any completion or transfer documents relating to the suit property and a declaration that the public sale of Ngong/Ngong/33632 is null and void on the premises that the sale was illegal, unlawful and or fraudulent.
17. The Plaintiff alleged that the 1<sup>st</sup> Defendant had advanced it a total sum of Kshs. 10,000,000/- against which they had executed a deed of assignment assigning the rental income of the suit property to the 1<sup>st</sup> Defendant in the event of default. Over the time, they agreed to some loan restructuring which resulted into very messy mismanagement of the Plaintiff's loan account by the 1<sup>st</sup> Defendant that ultimately made redemption illusory.
18. The Plaintiff pleads that it had secured some measure of court protection in a different case which is now pending before the Court of Appeal. A perusal of the court record discloses that the other case was Kajiado High Court No. 44 of 2018 which had been initiated by way of a plaint dated 3<sup>rd</sup> December 2018. The Plaintiff in the said case asserted that it had fully repaid a first loan advanced to it by the 1<sup>st</sup> Defendant herein. It subsequently negotiated a further loan facility and the bank agreed to fully finance its project. However, according to the Plaintiff, the bank merely released to it a sum of Kshs. 10,000,000/- with a promise to disburse the balance of Kshs. 21,134,934/- upon charging the Plaintiff's two properties, Ngong/Ngong/33632 and Ngong/Ngong/24258.
19. The Plaintiff alleged that the bank did not release the balance of Kshs. 21,134,939/- causing the Plaintiff to change plans eventually defaulting in repayment of the loan. The Plaintiff therefore sought an order of injunction to restrain the Defendant from selling, alienating, possessing, charging, advertising for sale or in any way interfering with properties known as Ngong/Ngong/24258 and Ngong/Ngong/33632. It further sought for an order of taking accounts and damages for breach of contract.



20. The Plaintiff rather than amend its plaint in the suit before the High Court to include the prayers sought herein, filed the current suit; a new suit, over the same subject matter and against the same party(s). Indeed, at paragraph 9(d) the Plaintiff accuses the Defendants of selling the suit property when a case challenging the validity of the statutory notice and the exercise of the statutory power of the sale was pending in the Court of Appeal. This is mischief aimed at forum shopping. A party in a suit is obligated to bring forth its whole case. The gravamen of the Plaintiff's suit is the alleged mismanagement of the Plaintiff's loan account with the 1<sup>st</sup> Defendant leading to the realization of the security charged to secure the loan.
21. The averment by the Plaintiff at paragraph 10 of the amended plaint further affirms the above conclusion. The Plaintiff avers that on 3<sup>rd</sup> August 2016, the Defendant fraudulently registered an illegal 2<sup>nd</sup> charge over its property aforesaid purportedly to secure Kshs. 12,500,000/- which sum was never advanced and or disbursed to the Plaintiff. The Plaintiff's suit invites the court to delve into its contract with the 1<sup>st</sup> Defendant as well as take accounts.
22. This court agrees with the submissions by the Defendants and the Interested Party that this suit falls outside the jurisdiction of the Environment and Land Court as provided for under Article 62 (2) (b) of *the Constitution* and section 13 of the *Environment and Land Court Act*. The holding of the Court of Appeal in the case of Co-operative Bank Ltd -vs- Patrick Kangethe & 5 others, was categorical that;
- “...the jurisdiction of the ELC to deal with disputes relating to contracts under section 13 of the ELC Act ought to be understood within the context of the court's jurisdiction to deal with disputes connected to ‘use’ of land as discussed herein above. Such powers in our view, ought to be incidental to the ‘use’ of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.”
23. This court therefore upholds the Defendant's preliminary objection and holds that it lacks the jurisdiction to entertain and determine this suit. Having said so, this court is left with only one option; to strike it out. In this regard, I am guided by the decision of Supreme Court of Kenya in the case of Albert Chaurembo Mumba & 7 others –vs- Maurice Munyao & 148 others (supra).
24. The Supreme Court of Kenya in the above case, cited with approval the decision in the case of Kagenyi –vs- Musiramo & another (1968) E. A.L.R 43 where the court held that an order of transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it.
25. Consequently, the Plaintiff's suit herein is struck out with costs to the Defendants and the Interested Party.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Muinde for the Plaintiff

Mr. Oyando for the Defendants

Mr. Nelson Havi for the Interested Party



Court Assistant: Mpoye

