



County Government of Kakamega & another v Nyandieki & 4 others (Environment and Land Case 134 of 2016) [2025] KEELC 6058 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6058 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 134 OF 2016
DO OHUNGO, J
SEPTEMBER 18, 2025**

BETWEEN

COUNTY GOVERNMENT OF KAKAMEGA 1ST PLAINTIFF

DIOCESE OF KAKAMEGA (REGISTERED TRUSTEES) 2ND PLAINTIFF

AND

FRANCIS MASAKHALIA NYANDIEKI 1ST DEFENDANT

SEWON ENTERPRISES LTD 2ND DEFENDANT

KATWE MARKETING AGENCY LTD 3RD DEFENDANT

EQUITY BANK LTD 4TH DEFENDANT

DEMONTE AUCTIONEERS 5TH DEFENDANT

JUDGMENT

1. The First Plaintiff moved the Court through Plaintiff dated 18th July 2016 which was later replaced by Amended Plaintiff amended on 11th August 2016. The Second Plaintiff was introduced into the matter through the said Amended Plaintiff.
2. The Plaintiffs averred in the Amended Plaintiff that the parcel of land known as S. Wanga/Ekero/1676 (the suit property) was hived off the parcel of land known as S. Wanga/Ekero/472. That S. Wanga/Ekero/472 was compulsorily acquired by the Government of Kenya inter alia for construction of Ministry of Public Works offices at Mumias. They further averred that a school owned by the Second Plaintiff stood on the suit property.
3. The Plaintiffs went on to aver that the First Defendant subdivided S. Wanga/Ekero/472 into S. Wanga/Ekero/1676 (the suit property) which he then registered in his name then transferred it to the Second Defendant. That the Second Defendant then obtained a loan of KShs 2 million from the Fourth



- Defendant but failed to repay the loan as a result of which the Fourth Defendant fraudulently started realisation of the security through the Fifth Defendant.
4. The Plaintiffs therefore prayed for judgement against the Defendants jointly and severally for a permanent injunction restraining the Fourth and Fifth Defendants from interfering with their quiet possession of the suit property, a declaration that the suit property belongs to the Plaintiff and cancellation of the title in respect of the suit property. They also sought costs of the suit.
 5. The Fourth and Fifth Defendants filed Amended Defence and Counterclaim through which the Fourth Defendant confirmed that it advanced the loan to the First Defendant under guarantee of the Second Defendant and that the loan was secured by way of a charge against the suit property. That the First Defendant defaulted and that it started the process of realisation of the security during which it discovered that the suit property was subsequently registered in the name of one Joseph Oguttu Muttumos and that there was no longer any charge in the encumbrances section. They averred that both the removal of the charge and registration in favour of Joseph Oguttu Muttumos were fraudulent.
 6. Consequently, the Fourth and Fifth Defendants prayed that the Plaintiffs' suit be dismissed with costs and that judgment be entered in their favour for KShs 1,161,942 being amount owing as of 28th September 2018, interest at commercial rates from 28th September 2018 until payment in full, costs of the counterclaim together with interest thereon, and any other relief that the Court may deem appropriate.
 7. The Second Plaintiff's case was withdrawn on 18th October 2021, prior to commencement of trial. Thus, the sole surviving Plaintiff in the case is the County Government of Kakamega. All subsequent references to "the Plaintiff" in this judgment shall mean the County Government of Kakamega.
 8. Ezekiel Buhuru Nandwa testified as the sole witness in respect of the Plaintiff's (the County Government of Kakamega) case. He stated that he was working for the Plaintiff as a surveyor and adopted his witness statement which he filed on 26th January 2022.
 9. Mr Nandwa testified that land parcel number S. Wanga/Ekero/472 was compulsorily acquired by the Government of Kenya around 1972 and a restriction dated 11th June 1987 was registered against it by the Chief Valuer. He produced a copy of a certificate of official search in respect of the suit property as of 30th November 2010 and a copy of a ruling delivered in Kakamega HCCC No. 220 of 1995 on 16th February 2006.
 10. Mr Nandwa further stated that parcel number S. Wanga/Ekero/472 was subdivided into S. Wanga/Ekero/1675 to 1679. That the Second Defendant obtained a loan of KShs 2 million from the Fourth Defendant which was secured by a charge over the suit property but failed to service the loan as a result of which the Fourth Defendant started realisation of the security through the Fifth Defendant.
 11. The Plaintiff's case was thereafter closed.
 12. Joseph Masakhalia Nandieki (DW1) testified on behalf of the First to Third Defendants. He stated that he is the First Defendant and adopted his witness statement dated 2nd October 2017. He also produced copies of the documents listed as item numbers 1 to 16 in the First to Third Defendants' list of documents dated 21st September 2022 as their exhibits. He added that he was a director of the Second Defendant and sole proprietor of the Third Defendant. He further confirmed that the Fourth Defendant advanced the loan of KShs 2 million to the Third Defendant and that the loan was secured by a charge over the suit property whose registered proprietor was the Second Defendant.
 13. DW1 added that as of 28th September 2018, the loan balance was KShs 1,161,942 and that due to default by the Third Defendant, Fourth Defendant started the process of realising the security. That a



certificate of search obtained by the Fourth Defendant on 24th June 2016 which showed Joseph Oguttu Muttimos as the registered owner of the suit property was not genuine. He added that parcel number S. Wanga/Ekero/472 was not compulsorily acquired by the Government of Kenya.

14. The First to Third Defendants' case was thereafter closed.
15. Alfred Otieno Mitimbo (DW2) testified on behalf of the Fourth and Fifth Defendants. He stated that he was Credit Manager at the Fourth Defendant's Mumias Branch and added that he knew Robert Shioso who his predecessor in the same job. He adopted his witness statement dated 6th November 2023 as well as a witness statement dated 3rd November 2020 which was signed by Robert Shioso. He further produced copies of the documents listed as item numbers 1 to 11 in the Fourth and Fifth Defendants' list of documents dated 24th August 2020 and a copy of the document in the Fourth and Fifth Defendants' additional list of documents dated 23rd June 2022.
16. DW2 testified that the Fourth Defendant advanced a loan of KShs 2 million to the First Defendant which was guaranteed by the Second Defendant and secured by a charge over the suit property. He also stated that the First Defendant defaulted and that the amount owed to the Fourth Defendant was KShs 1,161,942 plus interest.
17. The Fourth and Fifth Defendants' case was thereafter closed. Directions were then given that parties file and exchange written submissions. The Plaintiff filed submissions dated 2nd April 2024. On their part, the First to Third Defendants filed submissions dated 25th September 2024 while the Fourth and Fifth Defendants filed submissions dated 15th May 2024.
18. I have carefully considered the pleadings, the evidence and the submissions on record. The issues that arise for determination are whether the Court has jurisdiction to hear and determine the suit, whether compulsory acquisition has been established and whether the reliefs sought should issue.
19. The First to Third Defendants submitted that the Fourth and Fifth Defendants' counterclaim is a commercial claim and that the Court therefore lacks jurisdiction to hear and determine it. The Plaintiff did not file any submissions in response.
20. It cannot be overemphasised that jurisdiction is everything and that without it, any proceedings in court come to a certain end. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR. In *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the Supreme Court emphasised the centrality of jurisdiction 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. ...

21. Subsequently, in *R v. Karisa Chengo* [2017] eKLR, the Supreme Court held that:

By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...



where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

22. It follows therefore that jurisdiction is a legal reality that emanates from the law. Parties cannot confer it on the Court. Equally, the Court cannot seize it for itself.
23. Pursuant to Article 162 (2) (b) of *the Constitution*, the jurisdiction of this Court is limited to hearing and determining disputes relating to the environment and the use and occupation of, and title to, land. That provision in *the Constitution* is further clarified by Section 13 (1) to (4) of the *Environment and Land Court Act* which provides as follows:
- (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.
 - (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
 - (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
24. It is not in dispute that a relationship of chargee and chargor existed between the Second and Fourth Defendants respectively in respect of the suit property. The First Defendant was the borrower. It is also not in dispute that the sum of KShs 1,161,942 which the Fourth and Fifth Defendants have claimed in their counterclaim is an amount which was outstanding in respect of the loan facility secured by the charge. Indeed, the First to Third Defendants' witness admitted that the said amount is owing.
25. The Court of Appeal has severally held that this Court lacks jurisdiction to hear and determine cases concerning sums due under mortgages and charges. In *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR, the Court held that:
37. Further, section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land. As seen before, land use connotes the alteration of the environmental conditions prevailing on the land and has nothing to do with



dispositions of land. Saying that creation of an interest or disposition amounts to use of the land, is akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use. The mere acquisition or conferment of an interest in land does not amount to use of that land

41. Furthermore, 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 contracts, 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.

26. In the subsequent case of Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates v Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates [2019] eKLR, the Court of Appeal held as follows:

We reiterate the position taken in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land.

27. In a recent decision on the issue, the Court of Appeal held in Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others [2024] KECA 410 (KLR) thus:

18. In view of the foregoing, the only question that falls to be determined is whether the respondents' suit against the appellants involved "... matters relating to environment and the use and occupation, and title to land". We do not think so. In our considered view, the issues in contention in the suit, and the purpose for which the respondents moved the trial court for the injunctive relief sought and granted in the impugned ruling, were intended to forestall the 1st appellant's exercise of its statutory power of sale over the suit properties on the basis of the alleged tenancy relationship with the 3rd respondent.

19. Accordingly, we do not share the learned Judge's view that the issues in contention between the respondents and the appellants were matters relating to "... the environment and the use and occupation, and title to land" as contemplated in article 162 of *the Constitution*, section 13 of the Environment & Land Court Act, and in section 150 of the *Land Act*. To our mind, such matters could only be subject to litigation between the 1st and 2nd respondents as lessees, and the 3rd respondent as lessor.

20. We form this view taking to mind this Court's decision in the afore-cited case of Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (supra) where it was held that the ELC only has jurisdiction to deal with disputes connected to "use" of land and contracts incidental to the "use" of land, which do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. Moreover, a charge is a disposition that has no direct contractual relation to "use" (by a tenant or licensee) as in this case, of a chargor's land. In view of the foregoing, we



agree with learned counsel for the appellants that the learned Judge had no jurisdiction to entertain the respondents' suit as pleaded.

28. The Fourth and Fifth Defendants' counterclaim is purely for recovery of sums due under a charge or lending contract. In view of the above decisions of the Court of Appeal which are binding on this Court, this Court lacks jurisdiction to hear and determine the counterclaim. In the circumstances, I strike out the counterclaim.
29. As for the Plaintiff's case, I note that the Plaintiff is seeking judgment for a permanent injunction restraining the Fourth and Fifth Defendants from interfering with their quiet possession of the suit property, a declaration that the suit property belongs to the Plaintiff and cancellation of the title in respect of the suit property. All those are matters within the jurisdiction of the Court since they concern use and occupation of, and title to, land.
30. I now turn to the issue of whether compulsory acquisition has been established. The Plaintiff's case is that parcel number S. Wanga/Ekero/472 was compulsorily acquired by the Government of Kenya inter alia for construction of Ministry of Public Works offices at Mumias. The Plaintiff's witness testified that the acquisition took place around 1972 and that the Chief Valuer registered a restriction.
31. The Plaintiff neither produced the register nor certificate of search in respect of parcel number S. Wanga/Ekero/472 to support its claims. In view of the timelines given by the Plaintiff, the alleged acquisition would have taken place while the Land Acquisition Act (repealed) was still in force. Land Acquisition Act was repealed on 2nd May 2012 when the [Land Act](#) came into force.
32. The Land Acquisition Act (repealed) had elaborate procedures for compulsory acquisition of land at its Part II. The Plaintiff did not adduce any evidence to prove compliance with the then established procedure for compulsory acquisition of land. In sum, I find that the Plaintiff has failed to establish that parcel number S. Wanga/Ekero/472 was compulsorily acquired by the Government of Kenya.
33. Based on the copies of the certificate of search in respect of parcel number S. Wanga/Ekero/1676 (the suit property) which both the Plaintiff and the First to Third Defendants produced as well as the testimony on record, there is no dispute that the Second Defendant is the registered proprietor of the suit property. The rights of a registered proprietor of land are well articulated in law. Such a proprietor is entitled to the rights, privileges, and benefits spelt out at Article 40 of [the Constitution](#) which secures protection of right to property and Sections 24 and 26 of the [Land Registration Act](#).
34. Section 26 of the [Land Registration Act](#) obligates the Court to accept the registered proprietor's certificate of title as prima facie evidence of proprietorship unless the provisos under Section 26 (1) (a) or (b) are established. The grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party and where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.
35. I have keenly perused the Amended Plaint herein. There is no attempt therein to impeach the Second Defendant's title on any of the grounds specified under Section 26 (1) of the [Land Registration Act](#). The allegation of fraud therein is against the First Defendant and concerns the manner in which the statutory power of sale was to be exercised. Even if the Plaintiff had alleged any fraud against the Second Defendant, which is not the case, it would have had to demonstrate that the Second Defendant was party to such fraud.
36. In view of the foregoing, I find that the Plaintiff has failed to establish its case. It follows therefore that the reliefs sought cannot issue. I make the following orders:
 - a. The Fourth and Fifth Defendants' counterclaim is struck out for want of jurisdiction.



b. The Plaintiff's case is dismissed.

c. The First to Third Defendants shall have costs of the suit. The Plaintiff shall bear the said costs.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 18TH DAY OF SEPTEMBER 2025.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the Plaintiff

Ms Sheunda holding brief for Mr Osundwa for the 1st to 3rd Defendants

No appearance for the 4th and 5th Defendants

Court Assistant: B Kerubo

