



Mutethia Kibira Advocates LLP v Co-operative Bank of Kenya Limited & another (Environment & Land Case 78B of 2022) [2023] KEELC 16762 (KLR) (8 March 2023) (Directions)

Neutral citation: [2023] KEELC 16762 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 78B OF 2022
BM EBOSO, J
MARCH 8, 2023**

BETWEEN

MUTETHIA KIBIRA ADVOCATES LLP PLAINTIFF

AND

CO-OPERATIVE BANK OF KENYA LIMITED 1ST DEFENDANT

NEW AGE DEVELOPERS AND CONSTRUCTION COMPANY

LIMITED 2ND DEFENDANT

DIRECTIONS

1. This suit was filed at Thika Environment and Land Court on June 20, 2022. The application dated June 17, 2022 and the application dated October 12, 2022 were subsequently canvassed in the suit. The two applications fall for determination today.
2. While reading the voluminous bundles in the file, in preparation for writing of the ruling, it emerged that the dispute in the suit revolves around the issue as to whether Co-operative Bank of Kenya Limited [the Bank] is entitled to replacement charges over all the subdivision titles that were surveyed out of Land Reference Number 11486/257. The said title was charged to the Bank prior to the discharge of the charge to facilitate the subdivision. Release of the title to the plaintiff and discharge of the charge was procured on a professional undertaking by the plaintiff to the effect that he was going to procure registration of replacement charges against the subdivision titles.
3. Another key issue in the dispute is whether M/s Muteithia Kibira Advocates LLP are in breach of their professional undertaking to the Bank to procure replacement charges over the titles relating to the subdivisions.
4. The two issues raise the question as to whether the subdivision titles are still held as collaterals for money lent to the 2nd defendant by the Bank.



5. This court is alive to the fact that its jurisdiction is defined under Article 162(2)(b) of *the Constitution* and is elaborated under Section 13 of the *Environment and Land Court Act*. The court is also alive to the prevailing pronouncements by the Court of Appeal, emphasising that disputes relating to charges fall outside its jurisdiction. [See (i) *Diamond Trust Bank Kenya Limited v FHH* (Civil Appeal 18 of 2020) [2022] keca 769 (KLR) (24 June 2022) and (ii) *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017]eKLR].
6. Without making any definitive or conclusive pronouncements on the question of jurisdiction at this stage, it does appear there are doubts as to whether this court is the proper forum to adjudicate the dominant issues in the dispute in this suit.
7. For the above reason, the court hereby vacates the order reserving a ruling date for the two applications and directs that parties do appear before it to address it on the question as to whether the Environment and Land Court is the proper court to adjudicate the dominant issues in this dispute. The court will make a pronouncement on the question of jurisdiction after hearing the parties on the question.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 8TH DAY OF MARCH 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Abdullahi for Mr Munyalo for the 1st defendant

Ms Mathai holding brief for Mr. Wageita for the 2nd defendant

Court Assistant: Ms Osodo

THIKA ELC CASE NO 78B OF 2022 (DIRECTIONS) Page 3

