



**Wakabu v Kiambu Unity Savings And Credit Co-operative Society Limited & another
(Environment & Land Case E090 of 2022) [2023] KEELC 16769 (KLR) (15 March 2023) (Order)**

Neutral citation: [2023] KEELC 16769 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E090 OF 2022
BM EBOSO, J
MARCH 15, 2023**

BETWEEN

EDWARD WAWERU WAKABU PLAINTIFF

AND

**KIAMBU UNITY SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
LIMITED 1ST DEFENDANT**

LAND REGISTRAR-KIAMBU 2ND DEFENDANT

ORDER

1. Edward Waweru Wakabu initiated this suit through a plaint dated July 29, 2022. Together with the plaint, he brought a notice of motion dated August 1, 2022 seeking, among other reliefs, an interlocutory injunctive order restraining the 1st defendant against auctioning land parcel number Kabete/Nyathuna/2006 [the suit property] in exercise of the chargee's statutory power of sale. The said application is one of the two motions that were reserved for ruling today. The other motion is the 1st defendant's application dated September 16, 2022, through which the 1st defendant seeks an order striking out this suit. The two applications were canvassed through written submissions.
2. While preparing to write a ruling on the two applications, it has emerged that the dispute in this suit revolves around a legal charge which the plaintiff created over the suit property. It does emerge that at one point, an entry denoting a discharge of charge relating to the charge was entered in the parcel register. The courts subsequently declared that the entry relating to the discharge of charge had been procured and entered fraudulently.
3. Recently, the Court of Appeal made emphatic pronouncements on the jurisdiction of the Environment and Land Court over disputes relating to charges, including questions relating to validity



of charges. Last year, the Court of Appeal made the following pronouncement in *Diamond Trust Bank Kenya Limited v FHH (Civil Appeal 18 of 2020) [2022] KECA 769 (KLR) (24 June 2022) (Judgment)*:

' 31. In the present case, although the respondent is not privy to the instrument of legal charge, there is no doubt that what the respondent is seeking before the ELC, is to restrain the Bank from exercising its statutory power of sale. That in our view, following the decision of this Court in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* (above), is a commercial matter for adjudication before the High Court. In our view therefore, the Judge erred in holding that the ELC was the correct forum and that it was properly seized of the matter.'

4. In light of the foregoing, there is doubt as to whether this court is the proper court to adjudicate the dispute in this suit. Consequently there is need for the parties to this suit to address the court on the question of jurisdiction of this court in relation to this dispute which entirely relates to a charge.
5. Arising from the foregoing, the following orders are made:
 - a. The order reserving a ruling date on the above two applications in this suit is vacated.
 - b. Parties are ordered to attend court and address the court on the question of jurisdiction.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF MARCH 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Kithinji holding brief for Mr Mbigi for the 1st defedant

Court Assistant: Ms Osodo

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