



**Equity Bank Limited v Hwanlee International Kitchen &  
Interior Design Limited & 2 others (Civil Case E021 of 2022)  
[2025] KEHC 1801 (KLR) (Commercial and Tax) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1801 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E021 OF 2022  
FG MUGAMBI, J  
FEBRUARY 14, 2025**

**BETWEEN**

**EQUITY BANK LIMITED ..... PLAINTIFF**

**AND**

**HWANLEE INTERNATIONAL KITCHEN & INTERIOR DESIGN  
LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**VIOLET B WACUKA NGUGI ..... 2<sup>ND</sup> DEFENDANT**

**MARK MBUTHIA NGUGI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**Background and introduction**

1. By a plaint dated 27<sup>th</sup> June 2019, the plaintiff (hereinafter referred to as ‘the Bank’) filed the present suit seeking to recover the amount of Kshs. 13,126,920.30 along with interest and costs, from the defendants. The claim is for the balance due after the Bank exercised its statutory power of sale over debt arrears related to a loan facility extended to the defendants.
2. The defendants filed their amended statement of defense, following a compromise of their application of 7<sup>th</sup> December 2023, seeking leave to amend. The statement of defense which is dated 5<sup>th</sup> June 2024 raises a counterclaim. Specifically, the defendants urge that the sale of the suit property (L.R. No. Juja/Kalimoni Block 17/221, off Juja Farm Road, Kiambu County) was irregular because no statutory notices had been issued and that the suit property was undervalued and sold at below market price. They also raise concerns about inaccuracies and unaccounted for funds from the statement of accounts issued by the Bank.



3. Consequently, the defendants pray for a declaration that the sale by auction of the suit property was unlawful, and that the suit property was sold below market value. They further seek compensation of the difference between the forced sale value and the market value of the property, a refund of Kshs. 732,927.12 being an overpayment on the loan, costs and interest.
4. Before the matter was fixed for hearing the plaintiff filed a notice of preliminary objection dated 18<sup>th</sup> June 2024, which is the subject of this ruling. The plaintiff asserts that this court lacks jurisdiction to hear and determine the counterclaim by dint of Article 162(2) of the *Constitution* and section 13 of the *Environment and Land [sic] Act*. This is because the counterclaim pertains to the value and sale of the suit property.
5. By way of written submissions dated 6<sup>th</sup> September 2024, the plaintiff argues that the issues raised in the counterclaim fall within the exclusive jurisdiction of the Environment and Land Court (hereinafter referred to as ‘the ELC’) and pray that the same be struck out. The defendants filed written submissions dated 30<sup>th</sup> September 2024, in opposition to the preliminary objection.

### **Analysis and Determination**

6. I have carefully considered the objection, submissions and case law cited by the parties. The issue for determination is whether this court should entertain the counterclaim filed by the defendants. As correctly noted, the issues in the counterclaim emanate from the valuation of the suit property, accounts post-auction and the process of the sale, all arising from a loan facility extended by the Bank to the defendants.
7. The Court of Appeal’s decision in *Co-operative Bank of Kenya Limited V Patrick Kangethe Njuguna & 5 Others*, [2017] eKLR was cited by the parties. The basis of the interlocutory appeal in that matter was that the statutory sale by the Bank was unlawful for having been commenced prior to the issuance of the mandatory 90-day statutory notices as by law required. Consequently, that the instruction of the auctioneers was unlawful as not only was the rightful procedure ignored, but that the sum claimed was in excess of what was owed.
8. An objection premised on lack of jurisdiction to determine the issues at hand was dealt with and dismissed by the High Court, culminating in the appeal. The Court of Appeal upheld the decision of the High Court.
9. Similarly, to the Co-operative Bank of Kenya Limited case [supra], the Bank in this case contends that the counter claim filed by the defendants falls within the jurisdiction of the ELC on account of Article 162(2)(b) of the *Constitution* which states:
  - “2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
    - (b) the environment and the use and occupation of, and title to, land.”
10. Additionally, the Bank submits that this jurisdiction is derived from Section 13 (2) (d) of the *ELC Act* which provides:
  - “In exercise of its jurisdiction under Article 162(2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes-



- d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land;”
11. Referring back to the *Co-operative Bank of Kenya Limited case* [supra], the Court of Appeal distinguished between the term ‘use of land’ which is a preserve of the ELC under Article 162(2)(b) and the context within which this mandate should be understood in relation to section 13(2)(d). The Court also differentiated disputes emanating from ‘use of land’ which fall under the jurisdiction of the ELC from those arising from contractual relationships established through documents creating securities such as charges, like in the present matter, which are commercial disputes. The Learned Judges stated:
- “The creation of that [chargor/chargee] relationship therefore, has nothing to do with use of the land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced the chargor” ... Consequently, the assertion that a charge constitutes use of land within the meaning of Article 162 of the the *Constitution* fails. In addition, the cause of action herein was not the validity of the charge, but a question of accounts.”
12. By parity of reasoning, the Court of Appeal decision is on all fours with the present matter. I find, as the Court of Appeal did, that the dominant issue in this case is the settlement of accounts arising from a contractual relationship of a banker and lender and the exercise of a statutory right emanating from that contractual relationship. As such, the counterclaim raised does not fall under any of the areas contemplated under Article 162 of the the *Constitution* or section 13 of the *ELC Act* as alleged by the Bank.

### **Disposition**

13. Accordingly, the notice of preliminary objection dated 18<sup>th</sup> June 2024 is dismissed with costs to the defendants.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025.**

**F. MUGAMBI**

**JUDGE**

