



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Letshego Kenya Limited v Mugo (Civil Appeal E028 of 2024)
[2025] KEHC 13034 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E028 OF 2024
RC RUTTO, J
SEPTEMBER 19, 2025**

BETWEEN

LETSHEGO KENYA LIMITED APPELLANT

AND

MARGRET KIGIO MUGO RESPONDENT

(Being an Appeal from the Ruling of the Chief Magistrates' Court at Thika delivered by the Hon. H.O Wanyaga, on the 29th January 2024 in Thika CM. ELC No. 194 of 2019)

JUDGMENT

1. This is an appeal from the ruling delivered by Hon. H. O. Wanyaga in Thika Environment and Land Court (ELC) Case No. 194 of 2019. The impugned ruling was precipitated by an application filed after Judgment in the main suit.
2. In the trial court, the Respondent filed a Plaintiff dated 19th December 2019, which was amended on 16th February 2021, seeking a declaration that the purported exercise of the Appellant's power of sale over Juja/Kalimoni Block 10/257 (the suit property) was unlawful and contrary to the law; a permanent injunction restraining the Appellant or its agents from alienating, dealing or in any way interfering with the suit property in purported exercise of its power of sale; and an order directing that the debits made on account of legal, auctioneers' or any other fees paid to other agent appointed by the Appellant, be credited back to the Respondent's loan account.
3. The Appellant, on its part, filed its Statement of Defence dated 26th February 2020 and amended on 24th March 2021, denying all allegations. The Appellant further urged it had exercised its statutory power of sale in accordance with the law, particularly the Land Act.
4. By a judgment delivered on 20th July 2022, the trial court found in favour of the Respondent, the court held that the purported exercise of the power of sale over the suit property was premature and unjustified for reasons that the requisite notices had not been issued. Consequently, the court ordered



- the Appellant to credit back to the Respondent's loan account the debits made on account of legal, auctioneers', or any other agent fees, and to within fourteen (14) days furnish the Respondent with a statement of account of her loan, duly factoring all repayments made and the debits so ordered. On the other hand, the Respondent was ordered to pay all justified arrears within three (3) months of being furnished with the statement. Each party was ordered to pay its costs.
5. None of the parties filed an appeal against this Judgment. Thereafter, the Respondent moved the trial court by way of Notice of Application dated 16th May 2023, brought pursuant to Sections 1A, 1B and 3 of the *Civil Procedure Act* and Article 159 of the *Constitution*. The motion was seeking an order, compelling the appellant to release the original title deed of the suit property to the Respondent; compelling the Appellant to furnish the Respondent with a discharge of charge and discharge of further charge for Kshs. 2,000,000.00 and 400,00.00, respectively, to enable the Respondent to register the same at the land's office; and costs.
 6. The crux of the application was that after the Judgment, the Appellant failed to comply with the court orders within the set timelines, and only complied on 11th October 2022 upon prolonged prodding and follow-up. Further, upon receipt of the updated loan statement, the Respondent paid Kshs.2,647,589.90 (the full outstanding balance per the furnished statement). Despite receipt of the payment, the Appellant had failed or neglected to release the title document and the discharge of charge and further on grounds of unjustified arrears.
 7. The application was opposed by the Replying Affidavit of Pesian Ketere, sworn on 3rd August 2023. The Appellant asserted that even if the Respondent had settled the loan balance indicated in the initial statement, the sum as per the said statement was not inclusive of interest and other charges accrued during the pendency of the suit. The Appellant also urged the trial court to determine what the outstanding loan amount was. Thereafter, the Appellant filed a Further Affidavit on Interest sworn on 14th November 2023, and in rejoinder, the Respondent filed a further Affidavit sworn on 5th December 2023. Both parties filed their submissions, and the application was determined by way of written submissions.
 8. By a ruling delivered on 29th January 2024, the lower court allowed the application and ordered the Appellant to release the title deed to the suit property to the Respondent within twenty-one (21) days, failure to which the Respondent was at liberty to file contempt proceedings. The court reasoned that the judgment and the orders issued on 20th July 2021 were clear, and the Appellant, having furnished the Respondent with the statement, could not turn around to urge the court to amend its judgment. Instead, if the Appellant was aggrieved, it should have appealed against the said judgment.
 9. Aggrieved by the court's ruling, the Appellant lodged this appeal on grounds that the Learned Magistrate erred in law and fact by, holding that the Respondent was not indebted to the Applicant despite there being concrete evidence to the contrary; by ordering the Appellant to release to the Respondent the title deed to the suit property held as security; by misconstruing the Appellant's delay in furnishing the Respondent with the loan statement; by omitting the shadow interest accrued on the Respondent's loan account; by entertaining an application post judgment in violation of the doctrine of *functus officio*; by determining contested issues based on Affidavit evidence without testing the evidence; by elevating estoppel beyond contractual and statutory rights resulting to unjust enrichment of the Respondent; and by disregarding crucial evidence and considering extraneous factors.
 10. The Appellant prays that the appeal be allowed with costs, and the trial ruling delivered on 29th January 2024 be set aside and substituted with a decision of this court.



11. The appeal was canvassed by way of written submissions. The Appellant's submissions are dated 10th November 2024, while the Respondents' submissions are dated 28th November 2024.

Appellant's Submissions

12. The Appellant reiterated the background of the case as well as its proffered grounds of appeal as outlined in the earlier paragraphs of this judgment. It thereafter framed four (4) issues for determination: whether the application post judgment violated the doctrine of *functus officio*; whether contested issues can be determined on the basis of untested affidavit evidence; whether the finding that the Respondent was not indebted to the Appellant was proper; and whether the appeal is merited.
13. On the doctrine of *functus officio*, the Appellant submitted that the lower court, having issued its judgment, lacked jurisdiction. In support of its assertion, it cited *Telkom Kenya Limited v John Ochanda* (suing on his own behalf and on behalf of 996 former Employees of Telkom Kenya Limited) [2014] eKLR; and *Odinga v Independent Electoral & Boundaries Commission & 3 others* (petition 5,4 &3 of 2013) [2013] KESC 8. It emphasised that according to this doctrine, a body vested with adjudicative or decision-making authority, as a general rule, exercises those powers only once in relation to the same matter.
14. On whether contested issues can be determined by way of untested affidavit evidence, the Appellant submitted that the determination of the indebtedness of the Respondent to the Appellant and the release of the title documents to the Respondent were weighty contested issues that warranted a trial. To buttress, it cited *Onyango & 5 other v See & 7 others; Ajulu (Appellant)* [2022] KECA 531 (KLR).
15. As pertains to the finding that the Respondent was not indebted, the Appellant submitted that the Chief Magistrate erred in his finding for the reason that the statement furnished to the Respondent was not represented as a full and final account of the outstanding loan amount. The Appellant also argued that it was not estopped from demanding any additional sum above what was set out in the initial statement. In any case, it insisted that estoppel cannot be used to found a cause of action. To that end, the Appellant argued that even if the Respondent had settled Kshs.2,647,589.90, there was an outstanding balance of Kshs. 573,093.00, which continues to attract interest until payment in full.
16. Consequently, it submitted that the appeal is meritorious and urged this Court to allow the appeal with costs.

Respondent's Submissions

17. The Respondent submitted that the Appellant furnished it with a revised loan statement on 30th September 2022, in compliance with the Court orders, albeit three months late. Guided accordingly, the Respondent paid the statement amount in full settlement of the advanced loan. The respondent further submitted that the Appellant lacked a basis to claim any further unpaid arrears.
18. While relying on various decisions including *Silvanus Kizito v Edith Nkirote Mwiti HC Civil Appeal No. 46 of 2020*; *Runji & 3 others v National Land Commission* (Constitutional Petition no 17 of 2018) [2024] KEHC 13399; *MNN v GMN*; *EWN (Being an administrator of the deceased) SNN (Interested Party) Civil suit 52 of 2014* [2023] KEHC 27173 (KLR) among others, the Respondent submitted that the court was not *functus* as its proceedings had not been fully concluded and its orders perfected. It argued that a court can only be held *functus* in relation to its judgment once the same has been complied with. She further contended that in this case, when the lower court issued the impugned orders, the Appellant had not yet complied with the court order.



19. In conclusion, the Respondent submitted that the appeal lacked merit and urged this Court to dismiss the appeal with costs.

Analysis and Determination

20. Having considered the record of appeal, grounds of appeal, the parties' written submissions and the cited authorities, the key issues for determination are;
- i. Whether this court has jurisdiction to hear and determine the appeal;
 - ii. Whether the appeal is meritorious; and
 - iii. Who bears the costs?

Whether this Court has jurisdiction

21. Before delving into the substantive issues, a court must establish whether it is clothed with the requisite jurisdiction. It is trite law that jurisdiction flows from either a Statute or the *Constitution*, and no court assumes jurisdiction on its own. That is to say that a court can neither expand its jurisdiction through judicial craft or innovation, nor can a party confer a court power it does not have. This was the Supreme Court finding in *S.K. Macharia and Another v. Kenya Commercial Bank Ltd. & 2 Others*, Sup. Ct. Civil Application No. 2 of 2011; [2012] eKLR. Also see the locus classicus case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR.
22. The principle espoused in the above cases was emphasized by the Supreme Court in *Ngugi v Commissioner of Lands; Owindo & 63 others (Interested Parties) (Petition 9 of 2019)* [2023] KESC 20 (KLR) where the court held;

Jurisdiction goes to the root of any cause or dispute before a court of law. A court must exercise restraint to avoid overstepping its constitutional role in order to maintain its legitimacy. If a court has no jurisdiction, a judgment rendered therein does not adjudicate the dispute. It does not bind the parties, nor can it be made the foundation of any right. It is a nullity without life or authority. In short, it is coram non judge and amounts to a nullity because, as Nyarangi, JA famously said in the locus classicus, *Owners of the Motor Vessel "Lillian S" v Caltex Oil, (Kenya) Ltd* [1989] KLR 1, "jurisdiction is everything. Without it, a court has no power to make one more step".

23. It is also settled in law that a jurisdictional issue is fundamental and can be raised at any stage of the proceedings before judgment, even by the court suo motu. This was persuasively and aptly determined in *Nyaga v French Embassy - Nairobi & another; International (Interested Party) (Constitutional Petition 365 of 2017)* [2025] KEHC 3870 (KLR).
24. With this background, I must now evaluate whether this court's jurisdiction has been properly invoked. This is an appeal from the Magistrates' Court sitting as an Environment and Land Court. The Magistrates' Courts' jurisdiction to preside over cases involving environment and land matters is anchored on Section 26 of the *Environment and Land Court Act* (Cap 8D). Section 26(3) and (4) provides as follows;
- (3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.
 - (4) Subject to Article 169(2) of the *Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —



- a. disputes relating to offences defined in any Act of Parliament dealing with the environment and land; and
- b. matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.

25. Similarly, Section 150 of the [Land Act](#) (Cap 280) provides as follows;

The Environment and Land Court established in the [Environment and Land Court Act](#) (Cap. 8D) and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

Section 101 of the [Land Registration Act](#), Cap 300, makes a similar provision.

26. Importantly, Section 26(5) of the [Environment and Land Court Act](#) sets out the appellate jurisdiction over matters determined by a Magistrates' court sitting as an environment and land court in the following terms;

Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court [emphasis added].

27. Therefore, by virtue of the above provisions and the requirements of Articles 162(2)(b) and 165(5) (b) of the [Constitution](#), the High Court has no jurisdiction over matters relating to title to, use and occupation of land. Yet, the Magistrate's Court does have jurisdiction over those matters or aspects of them. Similarly, appeals from decisions of Magistrate's Courts, over those matters or their aspects, cannot be entertained by the High Court. The proper appellate Courts ought to be the Environment and Land Court.

28. In the appeal before me, the Respondent filed Thika CM. ELC No. 194 of 2019 mainly seeking declaration that the purported exercise of the Appellant's power of sale over Juja/Kalimoni Block 10/257 (the suit property) was unlawful and contrary to the law, and an injunction restraining the Appellant or its agents from alienating, dealing or in any way interfering with the suit property in purported exercise of its power of sale.

29. Similarly, the application, from which the impugned ruling emanated, was filed in CM. ELC No. 194 of 2019 seeking an order for the release of the original title deed of the suit property and the discharge of the suit property.

30. From the case reference number assigned at filing, to wit CM ELC No. 194 of 2019, to the subject matter of the suit, that is Juja/Kalimoni Block 10/257, and the prayers sought before the lower court, now before me on appeal, it is evident that the Magistrates' Court was exercising its jurisdiction by virtue of the provisions set out above. The trial court was adjudicating a dispute relating to the title to and use of land.

31. Therefore, by dint of Section 26(5) of the [Environment and Land Court Act](#), an appeal would properly lie with the Environment and Land Court, not the High Court. In light of the foregoing, this Court finds that it lacks jurisdiction to hear and determine the appeal before it. Therefore, the other issues identified for my determination must fall by the wayside.

32. In the upshot, the Memorandum of Appeal dated 19th February 2024 is hereby struck out with costs to the Respondent.



33. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

