



**Kenya Farmers Association v Barclays Bank of Kenya Limited & another
(Civil Case 6 of 2023) [2024] KEHC 4178 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 6 OF 2023
PN GICHOHI, J
APRIL 17, 2024**

BETWEEN

KENYA FARMERS ASSOCIATION PLAINTIFF

AND

BARCLAYS BANK OF KENYA LIMITED 1ST DEFENDANT

JOSEPH M. KIKOYO T/A GARAM INVESTMENT 2ND DEFENDANT

RULING

1. The background of this matter is that the Plaintiff had sued the Defendants in High Court Civil Case No. 58 of 2015 vide a plaint dated 06/08/2015.
2. Simultaneously, the Plaintiff filed a Notice of Motion under certificate of urgency seeking injunctive orders.
3. Administratively, the High Court Registry transferred the matter to Environment and Land Court and gave it a new number being ELC Case No. 228 of 2015.
4. After hearing the parties on the Notice of Motion, Munyao Sila, J delivered a ruling dated 27/09/2017 where he held:-

“It is from my above analysis that I issue an order of injunction stopping the respondents from proceeding to offer the suit property for sale, until this suit is heard and determined.

The Applicant shall also have the costs of this application.”

5. The Defendants filed their Statement of Defence on 31/10/2017 and the matter remained there until the Defendants filed a Notice of Motion dated 11/10/2022 seeking that the Plaintiff's suit be struck out with costs to the Defendants/ Applicants on the grounds that the Environment and Land Court



lacked jurisdiction to handle the matter which they argued was within the jurisdiction of the High Court. The Plaintiff/Respondent opposed the Application.

6. After hearing both parties, Mwangi Njoroge J of the Environment and Land Court rendered his Ruling on 08/03/2023 thus:-

“Consequently, I hereby order that this matter is hereby transferred to High Court Nakuru for hearing and final disposal. The Deputy Registrar of this Court shall ensure that the file record is placed before the Presiding Judge of the High Court Nakuru for a mention for directions to the parties as his lordship’s diary may accommodate the matter.”

7. It is pursuant to those directions that the matter was transferred to this Court and issued with the number being High Court Civil Case No. 6 of 2023. However, on 14/03/2023, the Defendants filed before the Environment and Land Court, a Notice of Motion dated 13/03/2023 under a certificate of urgency seeking orders:-

1. Spent.
2. That leave be granted allowing the Defendants/Applicants to appeal against the ruling by Hon. Justice Mwangi Njoroge delivered via electronic mail on 8th March 2023.
3. That costs of this application abide the outcome of the intended Appeal.

8. The grounds are on the face of the application supported by the Affidavit sworn on 13/03/2023 by Boniface Muthinja.

9. While annexing documents justifying failure to seek leave at the time of delivery of the ruling, he depones that the Applicant deserve to exercise his constitutional right to appeal against the said ruling and that the said right has not been exhausted. That the Applicant has an arguable appeal and has filed this application timeously.

10. That application was opposed by the Plaintiff/Respondent on the grounds that:-

1. The application is bad in law, fatally incompetent, unsustainable and an abuse of the court process.
2. The High Court has no jurisdiction to hear and determine the said application for leave to appeal under Section 75 of the *Civil Procedure Act* as the impugned orders were not issued by High Court.
3. The application has been overtaken by events.
4. The application is unmeritorious and does not lie and therefore it should be dismissed with costs.

11. This application was disposed of by way of written submissions. The Applicants filed theirs on 12/02/2024 while the Respondent filed on 14/02/2024.

12. The Applicants argue that ideally, the Environment and Land Court which delivered the ruling, and before which Court this application was filed, should hear and determine it. That the application herein is specifically challenging part of the ruling, that is, the transfer of this matter.

13. They therefore urged this Court to consider forwarding the file to the said Court for hearing and determination of the application on urgent basis.



14. On its part, the Respondent submitted that under Order 43 Rule (3) of the [Civil Procedure Rules](#), leave to appeal cannot be made before High Court as the impugned ruling was made by Environment and Land Court.
15. In support of that argument, the Respondent relied on the case [Speaker of the National Assembly v James Njenga Karume](#) [1992]eKLR where the Court of Appeal held:-

“Where there is a clear procedure for redress of any particular grievance, prescribed, by the [constitution](#) or act of parliament , that procedure should be strictly followed.”
16. Further, they relied on several cases including [Serephen Nyasani Menge v Rispah Onsase](#)[2018]eKLR and [Diamond Trust Bank Limited v Invesco Assurance Co. Ltd & another](#) [2021]eKLR to emphasise the distinct nature of the two Courts and submitted that the transfer of this file to the Environment and Land Court as sought by the Applicants in their submissions is not feasible. From the foregoing, the Respondents urged the Court to dismiss this application with costs .

Determination

17. Having considered the application, the grounds of opposition and the submissions by parties, the issues for determination are whether:
 1. This Court has jurisdiction to issue hear and determine the application herein.
 2. This Court can transfer this file back to the Environment and Land Court for purposes of placing it before Judge who delivered the impugned ruling to hear and determine it.
18. Regarding jurisdiction of Courts, the Supreme Court in [Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others](#) [2012] eKLR addressed the issue as follows:

“(68) 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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, [In the Matter of the Interim Independent Electoral Commission](#) (Applicant), Constitutional Application Number 2 of 2011. Where the [Constitution](#) exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the [Constitution](#)...”
19. The Applicants acknowledge that leave has to be sought from the Environment and Land Court where Court the impugned Orders were made and in compliance with Order 43 of the [Civil Procedure Rules](#) and Section 75 of the [Civil Procedure Act](#). That means that this Court lacks jurisdiction to hear and determine the application.



20. This file has moved back and forth from High Court in the first instance to the Environment and Land Court where there are orders stopping the Applicants herein from proceeding to offer the suit property for sale until this suit is heard and determined.
21. Having found that this Court has no jurisdiction to hear this Application, the question then is whether this Court can send the file back for the ELC Judge to hear and determine the application and then return the file to this Court hearing of this suit in the circumstances.
22. Forwarding the file for the Judge in the circumstances would be tantamount to retransferring the file to the said Court yet, the Applicants are aggrieved by the same act of transferring of the file to this Court on the grounds that ELC Judge had no jurisdiction to transfer, having found that Environment and Land Court had no jurisdiction to hear and determine this suit. The Applicants are now blowing hot and cold air at the same time and clearly
23. In the circumstances, the Court makes the following orders:-
 1. This Court has no jurisdiction to entertain the Application herei.
 2. This Court has no jurisdiction to forward or retransfer this file to the Environment and Land Court.
 3. The Notice of Motion dated 13/03/2023 is struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 17TH DAY OF APRIL, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:-

Mr Waiganjo for Ms Gatu Magana for the Plaintiff/Respondent

Mr. Kimani for the Defendants/Applicants

Ruto- Court Assistant

