



**Makau (Suing as the administratrix of the Estate of Jacob Ngite
Makau (Deceased) v Standard Chartered Bank (Civil Appeal
E140 of 2021) [2024] KEHC 5414 (KLR) (Civ) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E140 OF 2021

WM MUSYOKA, J

MAY 6, 2024

BETWEEN

**AGNES BANURA MAKAU (SUING AS THE ADMINISTRATRIX OF THE
ESTATE OF JACOB NGITE MAKAU (DECEASED)) APPELLANT**

AND

STANDARD CHARTERED BANK RESPONDENT

*(An appeal arising from the judgment of Hon. E Wanjala, Principal Magistrate,
PM, delivered on 19th February 2021, in Milimani CMCCC No. 7579 of 2019)*

JUDGMENT

1. The suit at the primary court was by the appellant, against the respondent, for surrender of a title deed; a declaration that the withholding of the title deed was unlawful and tantamount to detinue; general damages for loss of use, business and opportunities; and costs. The appellant claimed that the title deed was for a property owned by her late husband, who had obtained a loan from the respondent, secured with that title document. The said loan was allegedly fully paid for, by 10th June 2011, but the title deed was not released to her, as a result of which she suffered financial loss. The respondent filed a defence, in which it averred that it had misplaced the title document, and not withheld it, adding that it had sought to procure a provisional title instrument, but the appellant had refused to cooperate.
2. I have perused the record of the trial court, and noted that the suit in Milimani CMCCC No. 7579 of 2019, was initially filed at the High Court, as ELC No. 235 of 2014. Of course, by then the Environment and Land Court had been established by the *Environment and Land Court Act*, Cap 8D, Laws of Kenya, which commenced on 30th August 2011. The matter was handled by Environment and Land Court Judges, being Mutungi J and Obaga J. It was transferred to the Chief Magistrate's Court,



on an order that was made on 30th September 2019. The said transfer was based on an application, dated 25th June 2019, founded on grounds that the Chief Magistrate's Court had both pecuniary and territorial jurisdiction over the matter. The issue was not that the Environment and Land Court lacked statutory jurisdiction to handle the matter, but that the Chief Magistrate's Court had the pecuniary jurisdiction to hear and determine it, as an enabled subordinate court.

3. The issue raised in the suit revolved around surrender of a title deed and procurement of a provisional one, and other orders allied to that. The law on registration of land and issuance of title deeds or instruments is governed by the [Land Act](#), Cap 280, Laws of Kenya, and the [Land Registration Act](#), Cap 300, Laws of Kenya. It is about title to land. Jurisdiction over title to land and issues around that is vested in the Environment and Land Court, by Article 162(2) of [the Constitution](#), and sections 2 and 150 of the [Land Act](#), and sections 2 and 101 of the [Land Registration Act](#), and in the subordinate courts enabled by both the [Land Act](#) and the [Land Registration Act](#). Article 165(5) of [the Constitution](#) divests the High Court of jurisdiction over disputes around title to land, which include any dispute that revolves around title documents, be it surrender of such title documents or procurement of provisional title documents.
4. In view of the above, the High Court would have no jurisdiction to entertain an appeal arising from a decision of an enabled subordinate court, on a matter that would otherwise have been handled by the Environment and Land Court, were it not for the issue of pecuniary jurisdiction. The jurisdiction to handle such an appeal would lie with the Environment and Land Court, and that is the court before which the appeal herein should have been placed. It was filed before a court bereft of jurisdiction, and it is, therefore, incompetent. An incompetent cause suffers only one fate, striking out, and I hereby strike out the appeal herein. the respondent shall have the costs. This file shall be closed. Orders accordingly.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 6TH DAY OF MAY 2024

WM MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Nanjira, instructed by Mwagambo & Okonjo, Advocates for the appellant.

Mr. Obago, instructed by Oraro & Company, Advocates for the respondent.

