



**Ekakoro v KCB Group PLC t/a KCB Bank (Civil Case 2A of 2022)
[2023] KEHC 23401 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL CASE 2A OF 2022
WM MUSYOKA, J
OCTOBER 13, 2023**

BETWEEN

REVENIA MARY EKAKORO PLAINTIFF

AND

KCB GROUP PLC T/A KCB BANK DEFENDANT

RULING

1. What I am tasked with determining is a Motion, dated June 22, 2022, which seeks orders to restrain disposal, by way of sale or otherwise, of North Teso/Kamuruai/1926, pending the hearing and disposal of the suit herein. Detailed grounds, on which the Motion is premised, are set out on the face of the application, and in the supporting affidavit, sworn by Revenia Mary Ekakoro, the plaintiff. She essentially avers that she is the registered proprietor of North Teso/Kamuruai/1926, and that she had availed the title deed for that property to one Annah Nafula Wafula, to secure advances to her by the defendant of sums of Kshs. 1,000,000.00 and Kshs. 700,000.00, but the defendant had gone on to register third and fourth charges over the property, in 2015, with respect to borrowings of further sums of money, being Kshs. 5,200,000.00 and Kshs. 700,000.00 without her authority. She asserts that the creation of the 2 additional charges was unauthorized and fraudulent. The principal prayers in the plaint are for return of the title deed for North Teso/Kamuruai/1926, and an injunction to restrain disposal of that property, and damages.
2. The response to the Motion is by Walter Mususi Klervy, the Credit Administration Manager of the defendant's Kisii West Branch. He concedes the creation of the disputed charges, but counters that the same was done legally, and that the plaintiff was misleading the court, as she executed all the legal charges in respect of the said suit property, and was aware of the transactions. It is asserted that the plaintiff has not established fraud on the part of the defendant. The statement of defence essentially denies the allegations made in the plaint, and asserts that the charges were not created fraudulently.



3. The matter looks fairly straightforward. Loan facilities were given, and North Teso/Kamuruai/1926 was offered as security. The plaintiff, the registered proprietor of the subject property, asserts that the same was to secure the first 2 borrowings, and that she did not authorize creation of charges over the property with regard to the subsequent borrowings. The issue for determination is fairly simple: whether the additional 2 charges were created fraudulently and without the authority of the plaintiff or not.
4. Much as the matter appears straightforward, I doubt whether I have jurisdiction to handle the matter. Creation and registration of charges to secure borrowings is governed by the [Land Registration Act](#), No. 3 of 2012, and the [Land Act](#), No. 6 of 2012. The [Land Registration Act](#) provides for charges under Part V of the Act, running from section 56 to section 59 of the Act. The [Land Act](#) provides for it in Part VII of the Act, running from section 78 to section 106 of the Act. Section 101 of the [Land Registration Act](#) delineates the jurisdiction of the courts over disputes, actions and proceedings concerning land under the said Act, and states, “The Environment and Land Court established by the [Environment and Land Court Act](#), 2011 (No. 19 of 2011) and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.” Section 2 of the said Act defines “court,” for the purposes of the Act, to mean “... the Environment and Land Court established by the [Environment and Land Court Act](#), 2011 (No. 19 of 2011), and other courts having jurisdiction on matters relating to land.” On the other hand, section 150 of the [Land Act](#) states the jurisdiction of the court with respect to proceedings relating to matters governed by that Act, and states “Jurisdiction of the Environment and Land Court: The Environment and Land Court established in the [Environment and Land Court Act](#) 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 2 of the [Land Act](#) defines “court,” for the purposes of the said Act, to mean: “... the Environment and Land Court established under the [Environment and Land Court Act](#), 2011 (No. 19 of 2011).”

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5. None of the sections in Part V of the [Land Registration Act](#) refer to or mention “court.” However, sections 90(2)(e), 90(4)(b), 91(2), 92(7), 94(8)(c), 95(2)(a), 95(3)(a), 97(1), 97(3)(b), 98(9)(10), 100(1)(2), 103(1)(2)(3)(4), 104, 105 and 106 in Part VII of the [Land Act](#) refer to or mention “court,” and it would follow, going by section 2 of the [Land Act](#), that that reference to or mention of “court” would mean “... the Environment and Land Court established under the [Environment and Land Court Act](#), 2011 (No. 19 of 2011),” and, when read together with section 150 of the [Land Act](#), it would include the empowered subordinate courts; and any disputes, actions and proceedings, relating to matters the subject matter of these provisions, would be outside the jurisdiction of the High Court.
6. Sections 2 and 101 of the [Land Registration Act](#) and sections 2 and 150 of the [Land Act](#) should be read together. The net effect of these provisions is that any disputes, actions and proceedings, arising out of the provisions of these 2 statutes, are to be handled exclusively by the Environment and Land Court and such subordinate courts as empowered or enabled by any written law. It would mean that reference to “court,” with respect to the provisions in the [Land Registration Act](#) and the [Land Act](#), relating to charges and mortgages, would be the courts defined in sections 2 and 101 of the [Land Registration Act](#) and sections 2 and 150 of the [Land Act](#). Given the provisions in sections 2 and 101 of the [Land Registration Act](#) and sections 2 and 150 of the [Land Act](#), there would be no jurisdiction in the High Court to entertain the suit herein and the Motion, dated June 22, 2022. Jurisdiction is granted by the [Constitution](#) and statute, and it is not to be conferred or vested by judicial craft. As courts we are duty bound to apply the law, and the law to be applied is that handed down to the courts by Parliament.



7. The parties did not address me on jurisdiction. However, I am alive to [*Cooperative Bank of Kenya Limited v Fredrick Kang'ethe Njuguna & 5 others*](#) [2017] eKLR (Visram, Karanja & Koome, JJA), where it was stated that jurisdiction to deal with disputes on accounting, with respect to mortgages and charges, lay with the High Court, and not the Environment and Land Court. The dispute herein does not relate to accounts or accounting, but on whether the 2 charges in dispute were properly and validly created over land belonging to the plaintiff. Other than a dispute on accounting, all the issues, relating to matters and processes governed by the [*Land Registration Act*](#) and the [*Land Act*](#), fall squarely within the jurisdiction of the Environment and Land Court, including determinations on validity of charges and mortgages, by virtue of sections 2 and 101 of the [*Land Registration Act*](#) and section 2 and 150 of the [*Land Act*](#), for the reasons given above.
8. The court, in [*Cooperative Bank of Kenya Limited v Fredrick Kang'ethe Njuguna & 5 others*](#) [2017] eKLR (Visram, Karanja & Koome, JJA), did not define or interpret sections 2 and 101 of the [*Land Registration Act*](#) and sections 2 and 150 of the [*Land Act*](#). These provisions are plain on which courts have jurisdiction on creation of charges, and with respect to which courts should exercise jurisdiction on reliefs around the subject. The courts identified by those provisions do not include the High Court, in fact they exclude the High Court, and, therefore, the High Court has no jurisdiction with respect to those matters and processes provided for and governed by those statutes. Part of the argument, in [*Cooperative Bank of Kenya Limited v Fredrick Kang'ethe Njuguna & 5 others*](#) [2017] eKLR (Visram, Karanja & Koome, JJA), was that article 165(3)(a) of the [*Constitution*](#) vests the High Court with unlimited original jurisdiction over criminal and civil matters. However, that unlimited original jurisdiction is “limited” by other constitutional provisions, such as article 162(2) and 165(5). In addition, a plethora of statutes have frittered away aspects of that jurisdiction, and dispersed it to or shared it with other courts, tribunals and entities, and some statutes carry provisions which expressly exclude jurisdiction of the courts, including the High Court. article 165(3)(a) states a very broad general principle. In any case, the court, in [*Cooperative Bank of Kenya Limited v Fredrick Kang'ethe Njuguna & 5 others*](#) [2017] eKLR (Visram, Karanja & Koome, JJA), did not strike down sections 2 and 101 of the [*Land Registration Act*](#) and sections 2 and 150 of the [*Land Act*](#), and declare them to be inconsistent with the [*Constitution*](#). The fact that these provisions stand side by side with [*Cooperative Bank of Kenya Limited v Fredrick Kang'ethe Njuguna & 5 others*](#) [2017] eKLR (Visram, Karanja & Koome, JJA) creates the untidy situation, where the court says one thing, while the statute says another, with respect to which courts have jurisdiction to handle disputes, actions and proceedings arising from the provisions of the [*Land Registration Act*](#) and the [*Land Act*](#). There is still a conflict, and, when confronted with it, I would rather go by the written letter of the statutes, on jurisdiction.
9. I reiterate that jurisdiction is a constitutional and statutory matter, and where the same has not been vested by statute on a particular court, then that court cannot exercise it. In this case, it is very clear where jurisdiction lies. I do not have the jurisdiction to handle the matter before me, and I consequently lay down my tools with respect to it. The decisions, in [*Owners of the Motor Vessel “Lillian S” v Caltex Oil \(Kenya\) Limited*](#) [1989] eKLR (Nyarangi, Masime & Kwach, JJA), [*In the Matter of Interim Independent Electoral Commission*](#) [2011] eKLR (Mutunga CJ, Baraza DCJ, Tunoi, Ibrahim, Ojwang, Wanjala & Ndung'u, SCJJ) and [*Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others*](#) [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ), are on point, so far as jurisdiction is concerned. It is granted by either the [*Constitution*](#) or by statute, and where it is not given or conferred, it does not exist. The point was also made that jurisdiction is not conferred by judicial craft. I am not going to exercise a jurisdiction that the [*Constitution*](#) and the relevant statutes have not expressly conferred on or vested in the High Court, where I sit, but has been conferred expressly in other courts, to the exclusion of the High Court.



10. The Motion, dated June 22, 2022, is not properly before me, for the reasons given. I note that the suit was initially filed at the Environment and Land Court, before it was transferred to the High Court. The plaintiff is not responsible for the situation in which she finds herself in. Consequently, I shall not make any orders on costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 13 TH DAY OF OCTOBER 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Juma, instructed by JV Juma & Company, Advocates for the plaintiff.

Mr. Macharia, instructed by Mukele Moni & Company, Advocates for the defendant.

