



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC CASE NO. 05 OF 2013.

GEORGE MATEYI GABRIEL.....PAINTIFF

VERSUS

JOSEPH MALALA1ST DEFENDANT

DENNIS S. NAWATE.....2ND DEFENDANT

SELLA N. NASIMIYU

BOTH T/A DELJO ENTERPRISES LTD.....3RD DEFENDANT

FAMILY BANK LTD.....4TH DEFENDANT

ORDER

This Court was due to deliver a ruling on the plaintiff's application dated 30th August 2017.

However, since 12th October 2017 when the Court of Appeal delivered its Judgment in **CO – OPERATIVE BANK OF KENYA LTD.V. PATRICK KANGETHE & OTHERS 2017 eKLR**, this Court has been divested of the jurisdiction to determine disputes relating to charges. From the plaint dated 10th August 2012 and filed herein on 11th July 2012, this dispute relates to a charge registered over land parcels **NO EAST BUKUSU/S.KANDUYI/15325, 15326, 15327, 15328, 15329** and **15330** by the plaintiff in favour of the 4th defendant. Submissions were invited and filed by both parties. Upon perusal of the pleadings, it is clear that this Court has no jurisdiction to determine the suit and the application dated 30th August 2017. Indeed, in his submissions, **MR KITUYI** counsel for the 4th defendant has made the following submission on the issue of jurisdiction: -

“Further, this being a commercial transaction, this Honourable Court has no jurisdiction to deal with this matter making the entire application and the suit bad in law, defective and incompetent hence should be struck out.”

I agree that on the basis of the decision in **CO-OPERATIVE BANK OF KENYA .V. PATRICK KANGETHE** (supra), this Court has no jurisdiction. But I don't take the view that I should strike out this suit and the application dated 30th August 2017. The proper thing to do is to transfer this suit to the High Court. I therefore, make the following order: -

1. This suit be and is hereby transferred to the High Court for mention on 3rd March 2020 to take further directions on the application dated 30th August 2017.

Boaz N. Olao.

J U D G E

27th February 2020

Mr Murunga for Mr Aswani for Applicant present

Mr Kituyi for Respondent present

Joy/Okwaro – Court Assistants

Boaz N. Olao.

J U D G E

27th February 2020