



**Mwananchi Credit Limited v Rioki & another (Environment and Land Case E001 of 2023) [2025] KEELC 4643 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4643 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND CASE E001 OF 2023**

**DO OHUNGO, J  
JUNE 23, 2025**

**BETWEEN**

**MWANANCHI CREDIT LIMITED ..... PLAINTIFF**

**AND**

**CAROLINE NYAKERARIO RIOKI ..... 1<sup>ST</sup> DEFENDANT**

**QMACS REALTORS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff moved the Court through Plaint dated 4<sup>th</sup> July 2023 in which it averred that it instructed the Second Defendant to conduct a valuation on land parcel number West Mugirango/Siamani/3XX1 (the suit property) for purposes of securing a loan which had been sought by the First Defendant. That the Second Defendant conducted a faulty, negligent, fraudulent and misrepresentation valuation which led to the Plaintiff incurring losses.
2. The Plaintiff therefore prayed for judgment against the Defendants for a declaration that the Defendants' acts, valuation, loan application, information and documents supplied to appraise the loan and amount disbursed on the suit property were fraudulent, negligent, a misrepresentation and illegal and that as a result the Plaintiff had incurred financial loss and damage. The Plaintiff further sought compensation for the loss and damage suffered by the plaintiff in terms of the total loan arrears as at the time of filing the suit including the principal sum borrowed and interest. Lastly, the Plaintiff sought costs, interest and any further or other relief as the Court may deem fit and just.
3. The First Defendant filed Defence and Counterclaim through which she sought dismissal of the suit and that judgment be entered against the Plaintiff and the Second Defendant for, among other reliefs, a declaration that loan contract between her and the Plaintiff was illegal and incapable of enforcement and that the suit property be discharged.



4. The suit initially proceeded to hearing in the absence of the Second Defendant with evidence of service. The Plaintiff's as well as the First Defendant's cases were closed. Subsequently, through ruling delivered on 17<sup>th</sup> October 2024, the Court gave the Second Defendant an opportunity to file its defence and compliance documents and to participate in further proceedings.
5. Shortly thereafter, the Second Defendant filed Notice of Preliminary Objection dated 23<sup>rd</sup> October 2024, which is the subject of this ruling. She contended that the Court lacked jurisdiction and sought striking out of the suit on grounds reproduced below:
  1. That the honorable ELC court has no jurisdiction under Article 162(2) of *the Constitution* and Section 13 of ELC Act to hear and determine the plaintiff and the 1<sup>st</sup> defendant case and cause of action against the 2<sup>nd</sup> defendant based on negligence of a valuer as the court jurisdiction is limited to matters of land, title, environment, and cannot extend jurisdiction to issues of professional negligence against a valuer based on valuation report.
  2. The prayers sought in terms of paragraphs 20 & 21 of the plaint cannot be issued by this court as they are contractual in nature and does not relate to land title and environment. ELC court has no jurisdiction over loan recovery disputes, charges, financial securities, nor professional negligence by valuers or professionals.
  3. The plaintiff has not exhausted the alternative remedy available under the *Valuers Act* against the 1<sup>st</sup> defendant who is a valuer.
6. The objection was canvassed through written submissions. The Second Defendant filed submissions dated 9<sup>th</sup> November 2024 in which she argued that the dispute between her as a professional valuer and the Plaintiff had no relation to the use of land, and that a valuation report is not an instrument creating an enforceable interest in land. Relying on the cases of Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] eKLR and Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others [2024] KECA 410 (KLR), she urged the Court to uphold the objection and strike out the suit with costs to her.
7. The First Defendant filed submissions dated 19<sup>th</sup> November 2024 through which she argued that the objection did not raise a pure point of law and should be dismissed. She further argued that the dispute in the suit concerns the process of realising the registered instrument and the Court has jurisdiction. She relied on the cases of Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & another [2018] eKLR, Private Development Co. LTD v Rebecca Ngonyo & 2 other [2019] eKLR, Alphose Yankulije v One Twiga Road Limited & 2 others [2019] eKLR as well as Mathew Namusei Chahasi v Cooperative Bank Limited & Nicholas Muga Owino t/a Links Intergrated Services [2021] KEELC 624 (KLR) and urged the Court to dismiss the objection for being unmeritorious.
8. Although Counsel for the Plaintiff informed the Court on 5<sup>th</sup> February 2025 that the Plaintiff had filed submissions, I have neither seen any in the Case Tracking System nor in the physical file.
9. I have carefully considered the objection and the submissions. The issues for determination are whether the objection is a valid objection and whether the Court has jurisdiction.



10. The law relating to preliminary objections was stated Law JA in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 thus:

So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

11. Consequently, a valid preliminary objection must raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. A preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. I have perused the objection herein and I am satisfied that grounds 1 and 2 thereof raise pure points of law and are thus valid objections which merit consideration by the Court. On the other hand, ground 3 turns on contested facts and is therefore not preliminary objection.

12. The Second Defendant has contended that this Court lacks jurisdiction to hear and determine the suit. Jurisdiction is an issue that pervades all litigation. It is the entry point in any matter that a Court of law is called upon to determine and is the very life and soul of any judicial proceedings. Without jurisdiction, the proceedings come to a certain end and the court cannot take any further step. See Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.

13. As was stated by the Supreme Court stated in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR:

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.

14. The issue placed before the Court by the Plaintiff through her Complaint dated 4<sup>th</sup> July 2023 is whether the Second Defendant conducted a faulty, negligent, fraudulent and misleading valuation of the suit property. The valuation was required for purposes of appraising security for a loan which had been sought by the First Defendant. Also placed before the Court by the First Defendant for determination through her Defence and Counterclaim is whether the loan contract between her and the Plaintiff was illegal and incapable of enforcement. A reading of the Defence and Counterclaim reveals that the First Defendant's case revolves largely around the alleged shortcomings in the valuation as identified by the Plaintiff.

15. This Court's jurisdiction is spelt out under Section 13 (1) to (4) of the *Environment and Land Court Act* which provide as follows:

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes—
  - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;



- (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

16. There is no dispute that a relationship of chargee and chargor exists between the Plaintiff and the First Defendant and that the Second Defendant was involved as a valuer in the course of loan appraisal. The Court of Appeal has severally pronounced itself on whether this Court has jurisdiction to hear and determine cases concerning mortgages and charges. In *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR, the Court held that:

37. Further, section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land. As seen before, land use connotes the alteration of the environmental conditions prevailing on the land and has nothing to do with dispositions of land. Saying that creation of an interest or disposition amounts to use of the land, is akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use. The mere acquisition or conferment of an interest in land does not amount to use of that land ....

41. Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be understood within the context of the court's jurisdiction to deal with disputes connected to 'use' of land as discussed herein above. Such contracts, in our view, ought to be incidental to the 'use' of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.

17. The Court of Appeal reiterated the position in *Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates v Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates* [2019] eKLR thus:

We reiterate the position taken in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna* (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land.



18. More recently, the Court of Appeal revisited the issue in *Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others* [2024] KECA 410 (KLR) where it held:

18. In view of the foregoing, the only question that falls to be determined is whether the respondents' suit against the appellants involved "... matters relating to environment and the use and occupation, and title to land". We do not think so. In our considered view, the issues in contention in the suit, and the purpose for which the respondents moved the trial court for the injunctive relief sought and granted in the impugned ruling, were intended to forestall the 1<sup>st</sup> appellant's exercise of its statutory power of sale over the suit properties on the basis of the alleged tenancy relationship with the 3<sup>rd</sup> respondent.

19. Accordingly, we do not share the learned Judge's view that the issues in contention between the respondents and the appellants were matters relating to "... the environment and the use and occupation, and title to land" as contemplated in article 162 of *the Constitution*, section 13 of the Environment & Land Court Act, and in section 150 of the *Land Act*. To our mind, such matters could only be subject to litigation between the 1<sup>st</sup> and 2<sup>nd</sup> respondents as lessees, and the 3<sup>rd</sup> respondent as lessor.

20. We form this view taking to mind this Court's decision in the afore-cited case of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* (supra) where it was held that the ELC only has jurisdiction to deal with disputes connected to "use" of land and contracts incidental to the "use" of land, which do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. Moreover, a charge is a disposition that has no direct contractual relation to "use" (by a tenant or licensee) as in this case, of a chargor's land. In view of the foregoing, we agree with learned counsel for the appellants that the learned Judge had no jurisdiction to entertain the respondents' suit as pleaded.

19. Beyond revolving around a relationship of chargee and chargor existing between the Plaintiff and the First Defendant, the present suit also raises the issue of whether the actions of the Second Defendant as a valuer in the course of loan appraisal were negligent, fraudulent and misleading. None of those issues have anything to do with the environment and the use and occupation, and title to land.

20. I find merit in grounds 1 and 2 of the preliminary objection and I therefore uphold them. This Court has no jurisdiction to hear and determine the cases presented in both the Plaintiff and the Counterclaim. I therefore strike out both the Plaintiff and the Counterclaim. I award costs of both the preliminary objection and the suit to the Second Defendant. The Plaintiff shall bear those costs. I do not award any costs to the First Defendant in view of my finding that the Court has no jurisdiction to hear and determine her counterclaim.

**DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 23<sup>RD</sup> DAY OF JUNE 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

Ms Saleh holding brief for Mr Mwaka for the Plaintiff



First Defendant present in person  
Mr Nyende for the Second Defendant  
Court Assistant: B Kerubo

