



**Ahmed (Aka Suleiman Ahmed Ali Mombasa) v Standard Chartered Bank Kenya Limited
(Environment & Land Case 35 of 2021) [2025] KEELC 4463 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 35 OF 2021**

**YM ANGIMA, J
JUNE 12, 2025**

**BETWEEN
SULEIMAN AHMED (AKA SULEIMAN AHMED ALI MOMBASA) .. PLAINTIFF
AND
STANDARD CHARTERED BANK KENYA LIMITED DEFENDANT**

RULING

A. Introduction

1. By a plaint dated 17.02.2021 the plaintiff sued the defendant seeking the following reliefs;
 - a. A permanent injunction against the intended sale of the defendant's property number Mombasa/Block IX/333.
 - b. An order directing the defendant to provide the status of the current account and financials for the facility.
 - c. Any other relief this honourable court may deem fit and just to grant.
2. The plaintiff pleaded that on or about 06.12.2006 he obtained a credit facility of Kshs. 20,000,000/= from the defendant on the security of his title No. Mombasa/Block IX/333. It was further pleaded that the defendant was in breach of the terms of the credit facility in demanding exaggerated amounts and failing to provide a current status of the loan account.
3. The plaintiff further pleaded that in furtherance of the defendant's breach the defendant had advertised the suit property for sale thereby prejudicing his right of redemption. It was contended that despite issuance of a demand and notice of intention to sue the defendant had failed to make good his claim hence this suit.



B. Issue of jurisdiction

4. Before the matter could be listed for pre-trial directions the court, of its own motion, raised the issue of jurisdiction to entertain the suit. The court directed the parties to present their submissions on the issue and directed the defendant's advocate to notify the plaintiff's advocate accordingly since the latter was absent.
5. The material on record shows that the defendant filed its submissions on jurisdiction on 28.05.2025 whereas the plaintiff's submissions were not on record by the time of preparation of the ruling.

C. Analysis and determination

6. The court is of the opinion that the jurisdiction of the Environment and Land Court both under Article 261(2)(b) of *the Constitution* and Section 13 of the ELC Act was authoritatively interpreted by the Court of Appeal in *Cooperative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 Others* (2017) eKLR. The Court of Appeal also authoritatively interpreted the meaning of the terms use, occupation and title to land. Anything else falling outside the definition of those terms would usually fall outside the jurisdiction of the court.
7. In the *Cooperative Bank of Kenya Ltd* case, the Court of Appeal summarized the respondents' grievances as follows;

“As stated earlier, the mainstay of the Kang’ethes’ application was that the statutory sale was unlawful for having been commenced prior to the issuance of the mandatory 90 day statutory notices as by law required. Consequently, that the instruction of the auctioneers was reckless and unlawful as not only was the rightful procedure ignored, but that the sum claimed was in excess of what was owed.....”
8. In rejecting the appellant's submissions that charging of land constituted use of land within the meaning of Article 162 2(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*, the Court of Appeal held as follows;
 36. By definition, a charge is an interest in land securing the payment of money or money's worth or the fulfillment of any condition (see Section 2 of the *Land Act*). As such, it gives rise to a relationship where one person acquires rights over the land of another as security in exchange for money or money's worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the *Land Act*). The creation of that relationship therefore, has nothing to do with use of the land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced the chargor.
9. Similarly, in the case of *Diamond Trust Bank Limited v FHH Civil Appeal No. 18 of 2020* [2022] ICECA 769 KLR it was held that;
 - “28. In *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* (above) it had been contended that the High Court lacked jurisdiction to entertain a matter where the plaintiffs therein had sought to restrain a bank therein from taking steps to sell charged property in exercise of statutory power of sale and that the jurisdiction over the matter lay with the ELC. It was contended in that case that charging the suit land constituted “use” of land



within Article 162(2)(b) of the Constitution. In rejecting that contention, this Court stated:

36. By definition, a charge is an interest in land securing the payment of money or money's worth or the fulfilment of any the condition (see Section 2 of the Land Act). As such, it gives rise to a relationship where one person acquires rights over the land of another as security in exchange of money or money's worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the Land Act). The creation of that relationship therefore, has nothing to do with use of land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced of a charger.
37. Further, Section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use.”
29. The Court went on to say that “in addition, the cause of action herein was not the validity of the charge, but a question of accounts.” The other contention on jurisdiction in Co- operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (above) that was rejected by this Court was the contention that the dispute fell under ELC on account of Section 13(2) (d) of the Environment and Land Court Act which provides that the ELC has power to hear and determine disputes “relating to...land and contracts, choses in action or other instruments granting any enforceable interests in land”. In that regard, the Court expressed that the jurisdiction of the ELC to deal with disputes relating to contracts should be understood within the context of the court's jurisdiction to deal with disputes connected to “use” of land; that such contracts ought to be incidental to the “use” of land and do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.
30. The holding by the learned Judge in the present case that “a charge is an instrument granting and enforceable interest in land meaning therefore that this court has jurisdiction to hear disputes relating to charges” therefore flies in the face of the decision of this Court in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (above). Recently, this Court in P. J. Dave Flowers Limited v Limuru Hills Limited, Malindi Civil Appeal No. 123 of 2019 in affirming that the ELC had, in the circumstances of that case, jurisdiction to entertain the dispute noted that the appellant therein “clearly had an interest in the suit premises as a purchaser” and had therefore acquired interest that conferred jurisdiction on the ELC to hear and determine the matter.
31. In the present case, although the respondent is not privy to the instrument of legal charge, there is no doubt that what the respondent is seeking before the ELC, is to restrain the Bank from exercising its statutory power of sale. That in our view, following the decision of this Court in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (above), is a commercial matter for adjudication before the High Court. In our view therefore, the



Judge erred in holding that the ELC was the correct forum and that it was properly seized of the matter.”

10. It has been held that the jurisdiction of a court or tribunal is everything and that a court of tribunal should down its tools the moment it forms the opinion that it has no jurisdiction to entertain a matter. In the case of Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd[1989]KLR1 it was held by the Court of Appeal that;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....”

11. The upshot of the foregoing is that the court finds and holds that the nature of the dispute among the parties is of a commercial nature hence it has no jurisdiction to entertain the same. As a result, the plaintiff’s suit is for striking out without prejudice to his right to file a fresh suit before the right forum.

D. Conclusion and disposal order

12. Since the court has found and held that it has no jurisdiction to entertain the suit, the natural consequence is that the plaintiff’s suit ought to be struck out. Accordingly, the plaintiff’s suit is hereby struck out with no order as to costs.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 12TH DAY OF JUNE, 2025.

.....

Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

No appearance for the plaintiff

Ms. Karanja for the defendant

