



Agricultural Finance Corporation v Oruma (Environment and Land Appeal E004 of 2022) [2025] KEELC 6510 (KLR) (30 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6510 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E004 OF 2022
MD MWANGI, J
SEPTEMBER 30, 2025**

BETWEEN
AGRICULTURAL FINANCE CORPORATION APPELLANT
AND
SAMUEL KIPAMPI ORUMA RESPONDENT

JUDGMENT

Background

1. This court vide its ruling of 30th April 2025 granted the parties in this matter 14 days each to file and serve their further submissions on the issue of jurisdiction of the court to entertain this appeal. This was after the court flagged out the issue of jurisdiction upon analysis of the proceedings before the subordinate court. The subordinate court had in its impugned judgment identified the dominant issue for determination as to whether the Respondent who was the plaintiff in the case was entitled to benefit from the presidential directive on waiver of loans owed to the Appellant; the Agricultural Finance Corporation (AFC).
2. The issue of jurisdiction is central and determinative and must be handled promptly once identified to be in issue. As the court of appeal pronounced in the case of *Kakuta Maimai Hamisi –vs- Peris Pesi Tobiko & 2 others* (2013) eKLR,

“So central and determination is the jurisdiction that it is at once fundamental and overarching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cul-de-sac. Courts, like nature, must not act in vain”.



3. Considering the centrality of the issue of jurisdiction, I will handle it forthwith.
4. By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it. Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.
5. As I noted in the ruling of 30th April 2025, none of the parties had raised the issue of jurisdiction of this court to entertain this appeal. However, this court is obligated to satisfy itself that it has the jurisdiction to entertain any matter placed before it. The High Court in Zedekiah Kabara Osire –vs- Nahashon Onyango Otondo & another (Civil Appeal 19 OF 2016), citing the locus classicus case of the owners of Motor Vessels “Lilian S –vs- Caltex Oil Kenya Limited (1989) (KLR), rightly stated that;

“ Although the parties did not raise the issue of jurisdiction of this court in this appeal this court is however called upon by *the constitution* and the law to first satisfy itself that it has the jurisdiction over the dispute before it deals with the matter further”.

Pleadings before the Subordinate Court;

6. The case before the Subordinate Court was instituted by the Respondent herein by way of the plaint dated 5th March 2021. The Respondent’s case was that the Appellant had advanced him a sum of Kshs. 2,500,000/- on 29th February 2016 pursuant to a loan agreement for purposes of livestock farming. The Respondent offered the title for his parcel of land known as KJD/Lorngusua/2070 as the security for the loan.
7. The Respondent alleges that though he had began paying the requisite installments in the year 2016, there was a severe drought and all the livestock he had invested in died.
8. It was the Respondent’s case that in the year 2017, the President of the Republic of Kenya in a bid to ease financial pressure upon farmers across the country caused by the severe drought in the preceding year, directed the Appellant to waive the loans due to the corporation from the affected farmers and release their title deeds. The Respondent having suffered from the drought and coming from a county amongst the counties in which the waiver was to apply asserts that he had the legitimate expectation that his loan was amongst those that were to be waived in accordance with the Presidential directive.
9. The Respondent pleads that to his shock and disbelief he was served with a statutory notice by the Appellant on 8th December 2020 demanding that he regularizes his account by making a lump sum payment of Kshs. 3,311,800/= by 7th March 2021, failing which his parcel of land that had been offered as the security for the payment of the loan was to be sold by public auction. The Respondent contended that he was discriminated against by the Appellant by its failure to waive his loan yet he had qualified for the waiver.
10. The Respondent alleged that he made further efforts to reach out to the Appellant seeking more time to repay the loan to no avail. He reiterates that he is not a willful defaulter but that circumstances beyond his control had put him in the predicament he was in. Interestingly, the Respondent simultaneously sought for an order of permanent injunction restraining the Appellant from selling, attaching, repossessing or in any other way interfering with his quiet possession of the land parcel KJD/Lorngusua/2070, and an order that his loan be waived as per the presidential directive of 10th July 2017 and that the original title of his parcel of land be returned to him.
11. The Appellant in its statement of defence affirmed that the Respondent was not entitled to a waiver of his loan on the premises that he had not met the threshold on the basis that;



- a. He was not a small scale farmer neither a rancher in Kajiado County;
 - b. Priority was given to genuine cases of people who had suffered climate related vagaries and had struggled to pay their loans since 2013;
 - c. The government had only released Kshs. 500,000,000/- and Kshs. 407,078,355/- respectively for all the 47 counties in Kenya which was inadequate to write off all loans by small holder farmers and ranchers;
 - d. The Respondent was a willful defaulter who had taken the loan with no intention of repaying it;
 - e. The loan agreement stipulated that all amounts due were repayable in full on due dates notwithstanding the vagaries of adverse weather, natural or man-made calamities howsoever caused; and
 - f. A political statement cannot override the tenets of law.
12. The Appellant further asserted that the Respondent had made an unequivocal admission of indebtedness. In any event, the Appellant insisted that it was legally entitled to institute recovery measures upon default by the Respondent. Consequently, it prayed for the dismissal of the Respondent’s case with costs.

Issues for determination

13. From the pleadings filed before the trial court, the predominant issue for determination, as correctly identified by the court, was whether the Respondent was entitled to a waiver of his loan with the Appellant in accordance with the Presidential directive on waiver of loans owed to the Agricultural Finance Corporation.
14. The predominant issue having been identified, the next issue then must be whether this court has the mandate to determine the appeal arising from a judgment on that issue. Was the appeal preferred to the court with the jurisdiction to determine it? I stated in the ruling of 30th April 2025 that the same question must be asked of the subordinate court which determined that issue.

Determination.

15. The jurisdiction of this court is provided for under Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. The holding of the Court of Appeal in *Co-operative Bank Limited –vs- Patrick Kang’ethe & 5 others* was categorical on the issue of the jurisdiction of this court. The Court of Appeal held that;

“...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 powers 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”.

16. From the foregoing, the issue whether the Respondent was entitled to a waiver of his loan in accordance with the presidential directive on waiver of loans owed to Agricultural Finance Corporation clearly falls outside the jurisdiction of the Environment and Land Court. It is a matter that falls within the civil jurisdiction of the High Court.



17. This court finds and holds that it lacks the jurisdiction to entertain this appeal.
18. Having made the finding, I need to go further and consider the implications of the finding on the impugned judgment of the subordinate court. I say so because the case was handled by the “Environment and Land Court Division” of the Kajiado Chief Magistrate’s Court. It was handled as an ELC matter, while it was an ordinary civil matter. That is the reason why the appeal found its way into this court. The “Environment and Land Court Division” of the Chief Magistrate’s court is mandated to handle matters falling within the scope of Section 9(b) of the Magistrates Court Act; which is a replica of Section 13 of the *Environment and Land Court Act*. In view of the holding that the predominant issue was whether the Respondent was entitled to benefit from the presidential directive on waiver of loans owed to the Appellant; the Agricultural Finance Corporation (AFC), then the matter was outside the scope of the mandate of the Environment and Land Court Division” of the Chief Magistrate’s court. It ought to have been dealt with as an ordinary civil case.
19. Having carefully considered this matter, the court issues the following orders;
 - a. The appeal herein is struck out in its entirety for want of jurisdiction.
 - b. The judgment of the Environment and Land Court Division of the Kajiado Chief Magistrate’s Court in Kajiado MC ELC E018 of 2021 delivered on 14th December 2021 is set aside in its entirety in view of the finding that the matter was outside the scope of the mandate of the Environment and Land Court Division of the Chief Magistrate’s court.
 - c. A new trial is ordered before the Civil Division of the Kajiado Chief Magistrate’s Court.
 - d. The file Kajiado MCELC E018 of 2021 to be placed before the Chief Magistrate for allocation.
 - e. Considering the circumstances of this matter and the eventual outcome of this appeal, each party will bear its own costs in respect of this appeal.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Kirisiet for the Respondent

N/A for the Appellant

Court Assistant: MPoye

M.D. MWANGI

JUDGE

