



Muriithi v Biashara Sacco Society Limited & 4 others (Environment and Land Miscellaneous Application E005 of 2025) [2025] KEELC 6226 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2025
JM MUTUNGI, J
SEPTEMBER 25, 2025**

BETWEEN

NAHASHON MURAGE MURIITHI APPLICANT

AND

BIASHARA SACCO SOCIETY LIMITED 1ST RESPONDENT

HUMPHREY MAGUTA MWAI 2ND RESPONDENT

ABRAHAM MAINA MWANGI 3RD RESPONDENT

GIANT AUCTIONEERS 4TH RESPONDENT

ROSE IRENE NJERI GAKURA 5TH RESPONDENT

RULING

1. By a Notice of Motion dated 6th February 2025, the Applicant seeks the following orders:
 1. That this Honourable Court be pleased to extend time for the Applicant to file an Appeal out of time from the Judgment and orders of Hon. Martha Mutuku (CM) in Chief Magistrate's Environment and Land Case No. E060 of 2022, delivered on 26th November 2024.
 2. The costs of the application be in the cause.
2. The application is supported on the Supporting Affidavit sworn on 6th February 2025 by the Applicant, Nahashon Murage Muriithi. He avers that he had filed Kerugoya CM ELC No. E060 of 2022 at the Chief Magistrate's Court in Kerugoya against the Respondents, wherein he sought, among other reliefs, a declaration that the sale and transfer of land parcel L.R. No. Inoi/Kariko/4266 to the 5th Respondent on 20th January 2022 was fraudulent and should be set aside.



3. Before the matter could be heard on its merits, the Respondents raised a Preliminary Objection challenging the Court's jurisdiction. The objection was upheld, and the suit was struck out through a Ruling delivered on 26th November 2024.
4. Dissatisfied with that outcome, the Applicant filed High Court Appeal No. 125 of 2024 on 10th December 2024 through his then advocates, M/s Jackline Kiragu & Co. Advocates. He subsequently changed representation and instructed M/s Muthigani & Co. Advocates, under whose advice he came to understand that the High Court lacked jurisdiction to entertain land-related disputes.
5. He now seeks extension of time to file an Appeal in this Court, asserting that the initial filing before the High Court was not deliberate, was done within the prescribed timelines under Section 79G of the [Civil Procedure Act](#), and that the intended appeal raises weighty jurisdictional and legal issues deserving of consideration.
6. The 1st Respondent opposed the application through a Replying Affidavit sworn on 25th March 2025 by Elijah Ngugi Waithaka, its Operations Manager. He deponed that the present application was premature and misconceived, arguing that the Applicant had not withdrawn the Appeal filed before the High Court in Appeal No. 125 of 2024.
7. The 1st Respondent contends that the Applicant's assertion that filing the Appeal in the High Court was not deliberate and therefore excusable does not amount to sufficient cause to warrant the Court's exercise of discretion to extend time. The 1st Respondent further deposed that while mistakes by counsel may be regrettable, they must be weighed against the need for finality in litigation. The 1st Respondent contended that allowing the application would occasion prejudice by causing unnecessary uncertainty and a multiplicity of proceedings.
8. The 5th Respondent, Rose Irene Njeri Gakura, also opposed the application through a Replying Affidavit sworn on 4th April 2025. She contended that the High Court possesses unlimited original jurisdiction in Civil matters, including disputes touching on land and legal charges, and therefore the appeal as filed was properly before that Court.
9. She asserted that the transaction giving rise to the dispute involved legal charge and the exercise of a statutory power of sale, making it a commercial dispute, which this Court lacks jurisdiction to adjudicate on. It was further her position that the 1st Respondent had lawfully exercised its statutory power of sale, and that the Applicant had not only approached the wrong forum but also failed to demonstrate any legal basis for extension of time. She thus urged the Court to find that the application lacks merit and that it ought to be dismissed for want of jurisdiction.
10. The Applicant filed written submissions dated 6th May 2025, where he highlighted two issues for consideration; whether this Court had jurisdiction to entertain the intended Appeal, and whether sufficient cause had been shown to warrant extension of time to file the Appeal.
11. On the issue of extension of time, the Applicant submitted that the delay in approaching this court was neither inordinate nor deliberate. He explained that he initially filed High Court Appeal No. 125 of 2024 within the thirty-day period provided under Section 79G of the [Civil Procedure Act](#). He deponed that it was only after he changed legal representation and engaged his current advocates that he was advised that the High Court lacked jurisdiction to determine the matter, which related to land and fraudulent sale of the property.
12. The Applicant contended that upon realizing the Appeal had been erroneously filed in the wrong forum, he took prompt action to withdraw the High Court Appeal but the statutory period for filing Appeals from the Subordinate Court to this Court being the proper forum where the Appeal ought



to have been filed had lapsed. He submitted that this procedural misstep was not intentional. He urged the Court to exercise its discretion in the interest of justice and allow the filing of the Appeal out of time. He maintained that he acted diligently once the error was discovered and that no prejudice would be occasioned to the Respondents.

13. On the question of jurisdiction, the Applicant submitted that the Environment and Land Court is the proper forum to hear the intended Appeal. He pointed to the nature of the orders sought in his Amended Plaintiff, particularly prayer 5, which seeks the cancellation of the title in the name of the 5th Respondent, and prayer 6, which seeks a permanent injunction restraining the Respondents and their agents from evicting him or disposing of the suit property.
14. He argued that these remedies directly implicate issues of title to land, use, and possession, all of which fall squarely within the jurisdiction conferred on the Environment and Land Court under Article 162(2)(b) of the *Constitution* and Section 13 of the *Environment and Land Court Act*, 2011. He therefore urged the Court to find that it had jurisdiction, to excuse the delay in filing the Appeal, and to grant the orders sought.
15. The 1st Respondent filed submissions dated 8th May 2025 opposing the application. It submitted that the Applicant had not withdrawn High Court Appeal No. 125 of 2024 and that no sufficient cause had been shown to justify extension of time under Section 79G of the *Civil Procedure Act*.
16. The 1st Respondent relied on *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* (2014) eKLR, in which the Supreme Court emphasized that extension of time is a matter of Judicial discretion requiring good and sufficient cause. The 1st Respondent submitted that the Applicant had made no meaningful effort to correct the alleged error and that no satisfactory explanation for the delay had been offered. It urged the Court to dismiss the application and avoid prolonging the litigation.
17. The 5th Respondent filed submissions dated 23rd April 2025. She submitted that the dispute was one of a commercial nature, relating to and concerning the validity of a statutory sale under a legal charge, which fell within the jurisdiction of the High Court and not the Environment and Land Court. She argued that this Court lacked jurisdiction to entertain the matter and emphasized that the Applicant's approach was fatally flawed. She relied on the case of *Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989) eKLR, on the primacy of jurisdiction, and *Thomas Mutuku Kasue v Housing Finance Company Ltd & Another* (2021) eKLR, which held that matters involving the enforcement of charges and mortgages fall within the domain of the High Court. She urged the Court to uphold the jurisdictional bar and dismiss the application with costs.
18. I have considered the Notice of Motion Application, the Replying Affidavit by the 1st and 5th Respondents, and the parties' written submissions. The following issues arise for determination:
 1. Whether this Court has jurisdiction to entertain the intended Appeal, and
 2. Whether the Applicant has established sufficient cause for extension of time to Appeal.

Whether this Court has Jurisdiction to entertain the Intended Appeal

19. Jurisdiction is the pedestal upon which Judicial authority is exercised by the Court and without jurisdiction a Court can only act in vain as anything done would be null and void. As was emphatically stated in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR where the Court stated:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue



right away on the material before it. 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.”

20. In the present matter, the Intended Appeal arises from the decision of the Chief Magistrate’s Court striking out a suit in which the Applicant challenged the sale and transfer of L.R No. Inoi/Kariko/4266 to the 5th Respondent, which he claims was fraudulently done under a charge instrument. The 5th Respondent contends that the dispute related to the exercise of a statutory power of sale arising from a legal charge which constituted a commercial transaction in respect whereof the Environment and Land Court lacks jurisdiction as such jurisdiction lies with the High Court. The Applicant for his part argues that prayers in the Amended Plaintiff, that included prayer for cancellation of title and permanent injunction against interference with the suit land, fell within this Court’s jurisdiction as they related to occupation, use and title to land.
21. This Court jurisdiction is derived from Article 162(2)(b) of the *Constitution*, and Section 13 of the *Environment and Land Court Act*, 2011. Section 13(2) of the *Environment and Land Court Act* vests this Court with jurisdiction over disputes relating to the environment, use, occupation, and title to land. The High Court, on the other hand, retains jurisdiction over commercial (Civil) matters, including enforcement of securities which include charges and mortgages over land.
22. The suit before the Chief Magistrate’s Courts related to a challenge by the Applicant of the 1st Respondent’s exercise of its power of sale under a charge taken over the Applicants parcel of land, following a default on loan repayment. While the Applicant framed his reliefs in the plaint to include cancellation of title and injunctions, the real contest was over the lawfulness of the chargee’s action which is a dispute that the Courts have categorized as being in the realm of commercial transaction.
23. The Court of Appeal in the case of Bank of Africa (k) Ltd –vs- TSS Investment (2024) KECA 410 (KLR) and the Case of Co-operative Bank Ltd –vs- Patrick Kangethe Njuguna & Others (2017) KECA 79 (KLR) has emphatically held where a dispute arises and touches on the enforcement of a charge created over land as security, such dispute is of commercial nature arising out of a commercial transaction and does not constitute “use of land” so as to fall within the jurisdiction of the Environment and Land Court. The Court of Appeal held it was the High Court that had jurisdiction to deal with such matter as a commercial dispute.
24. In the case of Co-operative Bank Ltd –vs- Patrick Kengethe Njuguna case (supra) the Court stated at Paragraph 36 of the Judgment as follows:-
 36. By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfilment of any condition (see Section 2 of the *Land Act*). As such, it gives rise to a relationship where one person acquires rights over land of another as security in exchange for money or money’s worth. The rights so acquired are limited to 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.
25. The Court of Appeal in the Bank of Africa –vs- TSS Investment Case (supra) relied on the decision in the Co-operative Bank –vs- Patrick Kangethe Case (supra) and the same Court’s decision in the case of Joel Kytha Mbaluka T/a Mbaluka & Associates Advocates –vs- Daniel Ochieng Ogola t/a Ogola Okello & Co. Advocates (2019) eKLR where the Court in considering the jurisdiction conferred on



the Environment and Land Court under Article 162(2)(b) of the Constitution at paragraph 12 of the Judgment held:-

“(12) We reiterate the position taken in the Co-operative Bank of Kenya Ltd –vs- Patrick Kengethe 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.”

26. E. K. Ogola, J in the case of Keter v Ecobank Kenya Limited (Civil Case 16 of 2018) [2022] KEHC 13352 (KLR) (28 September 2022) held that it was the High Court that had jurisdiction to deal with a dispute where the dispute concerned a charge over land. He stated at paragraph 18 of his Ruling thus:-

“The substratum of the suit relates to the legal charges and the subsequent statutory power of sale. The High Court has jurisdiction to deal with a dispute in which the predominant issue is the exercise of the statutory power of sale by the charge. In Thomas Mutuku Kasue vs Housing Finance Company Ltd (HFC) & Another [2021] eKLR the Court held;

The Court of Appeal, whose decision is binding on this Court, has held that where the predominant issue in a suit involves mortgages, charges, collection of dues and rents, it is the High Court, and not the Environment and Land Court, that has jurisdiction to deal with the dispute. That being so, and the predominant issue in this matter being the issuance of the statutory notices by the chargee, it is my finding that this Court does not have jurisdiction to hear and determine this suit.”

27. In the suit before the Chief Magistrate’s Court there is no dispute that the Applicant charged his land parcel LR. No. Inoi/Kariko/4266 to the 1st Respondent to secure a loan facility advanced to the 2nd Respondent by the 1st Respondent. There was default in the repayment of the moneys advanced against the security with the consequence that the 1st Respondent initiated the realization of the security and the charged property was sold by public auction. The cause of action arose out of the charge that was created. On the authority of the above Court of Appeal decisions that I have referred to above, the dispute did not relate to the use and occupation of, and title to land but rather arose out of the interest created pursuant to the charge over the land. The land was offered as a security and the issue was whether the power of sale conferred under the charge had arisen, and if so, whether, it was validly exercised. Those are issues that this Court has no jurisdiction to determine.

28. As the Court lacks the jurisdiction to entertain any Appeal arising from the Learned Chief Magistrate’s decision, it is not necessary to consider whether or not the Applicant would be entitled to the Court’s exercise of discretion to extend time within which to file an Appeal.

29. The application is without merit and is struck out with costs to the 1st Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 25TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

