



**Kingdom Bank Limited v Kinara & another (Civil Appeal E005 of 2024)
[2025] KEHC 13813 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL E005 OF 2024
JN KAMAU, J
SEPTEMBER 30, 2025**

BETWEEN

KINGDOM BANK LIMITED APPELLANT

AND

EVANS ARUNGA KINARA 1ST RESPONDENT

ALFAYO MAGOMA OKOTSI 2ND RESPONDENT

*(Being an appeal from the Ruling and Order of Hon R. M. Ndombi (PM) delivered at Vihiga
in the Principal Magistrate's Court Civil Case No E048 of 2023 on 25th January 2024)*

JUDGMENT

Introduction

1. In her decision of 25th January 2024, the Learned Trial Magistrate, Hon R. M. Ndombi, Principal Magistrate, allowed the 1st Respondent's Notice of Motion dated 22nd August 2023 in the following terms:-
 - i. A temporary injunction do issue restraining the Appellant and the 2nd Respondent from jointly selling and/or disposing by way of public auction the 1st Respondent's land parcel no Kakamega/Chagenda/459 pending hearing and determination of the suit.
 - ii. Costs to the 1st Respondent in the cause.
2. Being aggrieved by the said decision, on 14th June 2024, the Appellant herein filed an undated Memorandum of Appeal. It relied on five (5) grounds of appeal.
3. Its Written Submissions were dated and filed on 10th January 2025 while those of the 1st Respondent were dated 27th January 2025 and filed on 26th February 2025. The 2nd Respondent's Written Submissions were dated and filed on 16th January 2025, although the court noted that its contents were



in reference to the Appellant's Notice of Motion application dated 29th February 2024, and not the appeal herein. The Judgment herein is, therefore, based on the said Written Submissions which parties relied upon in their entirety.

Legal Analysis

4. Having looked at the Grounds of Appeal and the respective parties' Written Submissions, it appeared to this court that all the grounds of appeal were related and the issues that had been placed before it for determination were as follows:-
 - a. Whether or not the Trial Court had the requisite jurisdiction to hear and determine the suit herein.
 - b. Whether or not the 1st Respondent met the threshold for grant of the order of injunction;
5. The court dealt with the said issues under the following distinct and separate heads.

I. Jurisdiction

6. The Appellant submitted that the 1st Respondent had sought for orders at the Trial Court to restrain it from exercising its statutory power of sale with respect to property title No Kakamega/Chagenda/459 (hereinafter referred to as the "subject property") where he had created an informal charge and the loan amount having been disbursed to the 2nd Respondent who defaulted.
7. It further submitted that on 13th November 2018, the 2nd Respondent obtained a facility from the Appellant for Kshs 1,000,000/= which was secured by an informal charge in respect of the subject property and deposit of the original title for the said subject property among others (sic).
8. It contended that prior to the issuance of the loan, the Appellant conducted due diligence on the subject property at the Lands Registry in Kakamega and it was confirmed that the 2nd Respondent was the registered proprietor and that the said subject property had no encumbrances. It pointed out that despite various reminders, the 2nd Respondent failed to pay the loan amounts and interest thereon and as at 5th May 2021, the outstanding loan balance for the facility stood at Kshs 1, 131, 731.76.
9. It cited Section 79 (6) of the *Land Act* Cap 280 (Laws of Kenya) and submitted that it took out Originating Summons in Vihiga HCCC No E004 of 2021 Kingdom Bank Limited vs Alfayo Magoma Okotsi seeking leave to exercise its statutory right of sale of the suit property, which was pledged to it by way of an informal charge.
10. It asserted that on 30th August 2022, P. J. Otieno J. delivered his Judgment in the suit granting it the leave to sell the suit property. It pointed out that thereafter, it issued the 2nd Respondent with the requisite statutory notices, requiring it to settle the outstanding amount but that instead of settling the same, through the 1st Respondent, it filed the suit in the Trial Court seeking various orders to restrain it from selling the subject property.
11. It placed reliance on the case of *The Owners of Motor Vessel "Lillian S" vs Caltex Oil Kenya*[1989] KLR 1 where it was held that jurisdiction was everything and without it, a court had no power to make one step. It argued that with the existence of valid orders issued by the superior court, the Trial Court lacked the jurisdiction to issue any contrary orders.
12. It further cited Section 3(3) of the *Law of Contract Act* Cap 23 (Laws of Kenya) and asserted that there was no written agreement between the 1st and 2nd Respondents that was signed and witnessed. It therefore averred that the 1st Respondent's purported claim was not maintainable and ought to be



- struck out for non-compliance with Section 3(3) of the *Law of Contract Act*. In this regard, it relied on the case of *Daudi Ledama Morintat vs Mary Christine Karie & 2 Others*[2017]eKLR where it was held that the plaintiff therein was seeking to effectuate a contract that clearly did not comply with the provisions of Section 3(3) hence his suit against the defendant was not maintainable.
13. It further submitted that the 1st Respondent stated that he allegedly entered into a Sale Agreement with the 2nd Respondent on 15th September 2009 for purchase of the suit property which meant that almost fourteen (14) years had lapsed. It added that there was no proprietary interest that was endorsed in favour of the 1st Respondent at the Land Registry and consequently, the time limitation seeking any rights and/or any remedy thereto was statute bad.
 14. It also referred this court to Section 7 of the *Limitation of Actions Act* Cap 22 (Laws of Kenya) and relied on the case of *Edward Moonge Lengusuranga vs James Lanaiyara & Another*[2019]eKLR where it was held that Section 7 of the *Limitation of Actions Act* provided that an action to recover land may not be brought after the end of twelve (12) years from the date on which the right accrued.
 15. It submitted that as the cause of action arose on 17th September 2009 when the 1st Respondent allegedly paid the last instalment for the purported sale, he ought to have filed his suit by 17th September 2021 pursuant to Section 7 of the Limitations of Actions Act.
 16. To buttress its point, it cited the case of *Iga vs Makerere University*[1972]EA where it was held that a claim barred by limitation was barred by law and unless the applicant put himself within the limitation period by showing grounds upon which he could claim exemption, the court was required to reject his claim.
 17. It was emphatic that the 1st Respondent's claim was barred by limitation of time and that any purported claim therein was barred by law and the Trial Court could not grant any of the reliefs sought including the orders in the application. It argued that the Trial Court arrogated itself jurisdiction to entertain that which was barred in law thus erred in law.
 18. On his part, the 1st Respondent submitted that the Appellant's contention regarding the Trial Court's lack of jurisdiction was unfounded as the Environment and Land Court (ELC) as well as the subordinate courts were vested with jurisdiction to hear and determine disputes relating to land and contracts over land as stipulated under Article 162(2)(b) of *the Constitution* of Kenya, 2010 and Section 13 of the *Environment and Land Court Act* Cap 8D (Laws of Kenya). He was emphatic that the subject matter of the dispute herein squarely fell within the said jurisdiction.
 19. He further contended that the suit herein was not statute barred as his cause of action was founded on continuous possession and the 2nd Respondent's persistent refusal to effect the transfer constituted a continuing breach. He was, therefore, categorical that the limitation period had not lapsed and the suit was properly before the Trial Court.
 20. He argued that he acknowledged that although the subject property remained registered in the name of the 2nd Respondent, he had an equitable interest, arising from the sale agreement and long-term possession could not be disregarded. He added that as a financial institution, the Appellant had the duty to conduct due diligence before accepting the property as security. He added that the subject property the Appellant was purporting to have charged was within the jurisdiction of Vihiga County under the Vihiga Lands Registry and not Kakamega County as it had alleged. He pointed out that the principle of caveat emptor applied and that the Appellant could not claim ignorance of his interest.
 21. To buttress his point, he placed reliance on the case of *Mwangi & Another vs Mwangi*[1986] KLR 328 where it was held that a purchaser in possession had an equitable interest capable of overriding



subsequent dealings. In that regard, he argued that his equitable interest, therefore, took precedence over the Appellant's unverified legal charge. He urged the court to dismiss the Appellant's appeal and uphold the Ruling and order of the Trial Court.

22. This court perused the decision in the case Kingdom Bank Limited vs Okotsi[2022] KEHC 12771 (KLR), in the Kenya Law Reports website and noted that in determining the Appellant's Originating Summons dated 17th August 2021, P.J. Otieno J rendered himself as follows:-

“In conclusion, the originating summons dated August 17, 2021 is allowed as prayed, leave granted to the plaintiff to sell its security in the informal charge subject to compliance of the law on realisation of securities.”

23. The matter the Appellant had sought to appeal herein was Vihiga ELC E048 of 2023 Evans Arunga Kinara vs Alfayo Magoma Okotsi & Another.

24. Notably, Article 162(2)(b) of *the Constitution* of Kenya, 2010 provides as follows:-

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.”

25. Section 13 of the *Environment and Land Court Act* further provides:-

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.

1. ...

2. 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.

26. A perusal of the 1st Respondent's Complaint dated 22nd August 2023 and filed on 23rd August 2023 showed that the matter was touching on ownership of land. The Appeal herein also emanated from the Vihiga Environment and Land Court at the magistracy level. This was a matter that was strictly under the jurisdiction of the Environment and Land Court pursuant to Article 162(2)(b) of *the Constitution* of Kenya and Section 13 of the *Environment and Land Court Act* and not this court. The Appellant ought to have appealed at the Environment and Land Court as it was seized with the requisite jurisdiction to hear the dispute herein.



27. In the absence of any jurisdiction to handle this Appeal herein, this court did not consider the merits or otherwise of the Appeal herein. As jurisdiction was everything and a court had no power to make one step as was held in the case of Owners of Motor Vessel “Lillian S” vs Caltex Oil Kenya (Supra), this court found it prudent not to engage itself further in this matter.

Disposition

28. For the foregoing reasons, the upshot of this court’s decision was that the Appellant’s Appeal be and is hereby struck out for want of jurisdiction. Each party will bear its own costs of this appeal.

29. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF SEPTEMBER 2025

J. KAMAU

JUDGE

