



Kiriinya & another v Consolidated Bank Limited & another (Environment and Land Appeal E009 of 2023) [2025] KEELC 6816 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6816 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E009 OF 2023
BM EBOSO, J
OCTOBER 8, 2025**

BETWEEN

EUGENIA KINYA KIRIINYA 1ST APPELLANT

THURANIRA JAPHET KIRIINYA 2ND APPELLANT

AND

CONSOLIDATED BANK LIMITED 1ST RESPONDENT

VIEWLINE AUCTIONEERS 2ND RESPONDENT

(An Appeal against the Ruling of the Chief Magistrate Court at Meru [Hon. J. M. Njoroge - CM] dated 5/7/2023 in Meru CMC E & L Case No. E014 of 2023)

RULING

1. This appeal was initiated in the Environment and Land Court on 3/8/2023 through a memorandum of appeal dated 3/8/2023. Between 27/6/2024 and 22/5/2025, the Deputy Registrar of this court was seized of the matter. The appeal was placed before a judge for the first time on 17/9/2025. On that day, the court directed the parties to appear in court on 7/10/2025 and address the court on the question of jurisdiction of the Environment and Land Court to entertain what appeared to be a mortgage dispute.
2. On 7/10/2025, the parties' respective advocates appeared and made oral submissions. The question of the jurisdiction of the Environment and Land Court over this dispute falls for determination in this ruling. I will briefly outline the parties' submissions on the question before I analyse and dispose it.
3. The appellants were represented by Mr Mutuma, Advocate. Counsel for the appellants argued that the Environment & Land Court is seized of full jurisdiction to entertain this appeal. Counsel pointed out that the dispute in the lower court revolved around the question of whether there was service of the mortgagee's statutory notice under Section 90 of the *Land Act*. Counsel argued that disputes relating to service of the statutory notice under Section 90 of the *Land Act* fall within the jurisdiction of the



Environment and Land Court. Counsel urged that in the event the court came to a contrary finding, it should exercise jurisdiction under Section 18 of the Civil Principle Act and transfer the appeal to the appropriate court.

4. Ms Maina appeared on behalf of the respondents. Counsel for the respondents submitted that the Environment and Land Court does not have jurisdiction to entertain this appeal. Counsel pointed out that the dispute in the lower court is not about title to, use or occupation of land, adding that the dispute in the lower court is about the chargee's exercise of the power of sale due to non-payment of the loan taken by the borrower. Counsel was emphatic that Environment and Land Court does not have jurisdiction to entertain the dispute.
5. The court has considered the rival submissions by the parties' advocates. The court has also read and considered the record placed before it, including the impugned ruling, dated 5/7/2023. As pointed out, the question to be answered in this ruling is whether this court is seized of jurisdiction to entertain this appeal.
6. The position of the appellant is that the dominant issue before the trial court is the question as to whether the chargee satisfied the requirements of Section 90 of the *Land Act*, relating to service of notice of intention to exercise the chargee's statutory power of sale before selling the mortgaged property. It is also clear from the impugned ruling that the appellant sought orders restraining the respondents against exercising the chargee's statutory power of sale, contending that the chargee had not served the statutory notice of intention to exercise the statutory power of sale. Does the Environment and Land Court have jurisdiction over the above dominant issue? This court's answer to the above question is in the negative.
7. A similar question was the subject of judicial discussion by the Court of Appeal not too long ago in *Diamond Trust Bank Kenya Limited v FHH (Civil Appeal) (18 of 2020) (2022) KECA 769 (KLR)*. The Court of Appeal pronounced itself of the question of jurisdiction of the Environment and Land Court in relation to mortgage/charge disputes as follows:

“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”

8. The Court of Appeal has, on several past occasions, stated that disputes relating to mortgages or charges are not for the Environment and Land Court. The Court of Appeal stated the following in *Co-operative Bank of Kenya Ltd Vs Patrick Kangethe Njuguna & 5 Others Civil Appeal No. 83 of 2016*:

“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”



9. The Court of Appeal repeated the same pronouncement in *Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others (Civil Appeal E055 of 2022) [2024] KECA 410 (KLR) (26 April 2024)* in the following words:

“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”.

10. Under the principle of *stare decisis*, this court is bound by the law as pronounced by the Court of Appeal. The prevailing law is that the Environment and Land Court does not have jurisdiction to entertain mortgage/charge disputes. The question to whether the chargee served the statutory notice under Section 90 of the *Land Act* falls outside the jurisdiction of the Environment and Land Court. Consequently, it is the finding of this court that this appeal was filed in a court that lacks jurisdiction to entertain the appeal.

11. Can the appeal be transferred to the High Court as proposed by counsel for the appellants? Again, the Court of Appeal has, in numerous decisions, emphasized that a suit filed in a court that does not have jurisdiction is a non-starter and a nullity that cannot be transferred to a court seized of jurisdiction. In *Phoenix of East Assurance Company Limited v S.M Thiga Newspaper t/a Newspaper Service*; the Civil Appeal No. 244 of 2010, eKLR, the Court of Appeal outlined the law as follows:

“We are not persuaded that that proposition by the respondent is correct in law. Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction.

12. These words were echoed by the Court in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR* in the following words: -

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred.

Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign, It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks, parties cannot even seek refuge under the O2 principle or the overriding objective



under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same”.

13. Based on the prevailing jurisprudence it is the finding of this court that this appeal is a nullity that cannot be transferred. In light of the above findings, this court will down its tools in tandem with the principle in Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989) where Nyarangi JA stated as follows:

“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.”

14. On costs, the court notes that whereas what is before the lower court is purely a mortgage dispute, both parties have not bothered to move the lower court to properly designate the erroneously designated case. They are proceeding with the case as if it is a land case. What is before the lower court is an ordinary commercial/civil dispute. The erroneous designation of a civil/commercial dispute as a land case contributed to the lodging of the present appeal in the Environment and Land Court, a court that does not have jurisdiction to entertain the appeal. For this reason, parties will bear their respective costs of the appeal.
15. In the end, for the above reasons, this appeal is struck out on the ground that the Environment and Land Court does not have jurisdiction to entertain a mortgage/charge dispute. Parties will bear their respective costs of the appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2025.

B M EBOSO [MR]

ELC JUDGE

