



Karimi v Kenya Commercial Bank Ltd & another; Magwata (Interested Party) (Environment and Land Miscellaneous Case E024 of 2025) [2025] KEELC 6905 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E024 OF 2025**

BM EBOSO, J

OCTOBER 2, 2025

BETWEEN

CHARITY KARIMI APPLICANT

AND

KENYA COMMERCIAL BANK LTD & ANO RESPONDENT

AND

JACKSON MUGAO MAGWATA INTERESTED PARTY

RULING

1. It is not clear why Charity Karimi filed this dispute as a miscellaneous suit in the Environment and Land Court. Her substantive statement of claim is in form of a petition. What she, however, registered is a miscellaneous application. Also uploaded alongside the miscellaneous application was a notice of motion dated 29/9/2025 in which she sought interlocutory injunctive orders restraining Kenya Commercial Bank Ltd against auctioning land parcel number N.Tharaka/Marimanti/3335. The application is the subject of this ruling
2. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit dated 29/9/2025. When the application came before the court under a certificate of urgency, the court directed the applicant to appear in the virtual court today at 10.00 a.m to address the court on the question of jurisdiction of the Environment and Land Court to hear and determine the dominant issue in the dispute. Mr. Asewe, the learned counsel for the applicant appeared and made oral submissions. The court is now required to determine whether, prima facie, it has jurisdiction to grant the interim ex parte orders that the applicant seeks.
3. Mr. Asewe submitted that, at the core of the dispute in this suit is a land right and an interest in land, adding that the applicant is not challenging the loan. Counsel emphasized that the applicant is only challenging the validity of the charge, contending that, this places the dispute within the purview of



- the Environment and Land Court. Counsel pointed out that the applicant is aggrieved by the Bank's non-compliance with the requirements of Section 79 (3) of the Land Act, relating to spousal consent to a charge against a matrimonial property that is a matrimonial home.
4. Counsel cited the frameworks in Article 162 (2) (b) of the Constitution and Section 13 (2) (f) of the Environment and Land Court Act and submitted that the above frameworks grant jurisdiction to this court to hear and determine this dispute. Counsel added that the Matrimonial Property Act requires spousal consent before a charge relating to a matrimonial property is registered.
 5. Counsel emphasized that, based on the reliefs sought in the petition, the proper court to hear and determine the dispute is the Environment and Land Court. Lastly, counsel submitted that unless the court intervenes, the charged property will be auctioned tomorrow and the applicant will be rendered homeless.
 6. The court has considered the pleadings, the application and the submissions by counsel. At this ex-parte stage, the court is required to make ex-parte and prima facie pronouncements on: (i) Whether, prima facie, the Environment and Land Court has jurisdiction to entertain the dominant issue in this dispute; and (ii) Whether the applicant has made out a case for an interim ex-parte injunctive relief. I will be brief.
 7. First, what is before court is a miscellaneous application. The substantive petition has not been registered and is not before court. The interim orders which the applicant seeks can only be issued on an application that is anchored on a substantive suit. The notice of motion is anchored on nothing. In the absence of a substantive suit, the notice of motion stands as to be struck out for having been anchored on nothing.
 8. The dispute in the application under consideration is not about title, occupation or use of the suit land. The dispute is about the validity of the charge that the Bank registered against the title relating to the suit land. The questions to be ultimately answered by the relevant trial court will be: (i) Whether the suit land is matrimonial property in respect of which spousal consent was required; and (ii) Whether the Bank obtained spousal consent before accepting the title to the suit land as a collateral. The broad dominant issue to be determined by the relevant trial court will be the question of validity of the charge which the Bank holds over the suit land.
 9. A question similar to the one the applicant was asked to address the court on 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 facts of the case were exactly the same as the facts in the present application. The Court of Appeal pronounced itself of the question of jurisdiction of the Environment and Land Court 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”



10. The Court of Appeal has, on various 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”.

11. . 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”.

12. . Even if one were to treat the applicant’s claim as a plea under the *Matrimonial Property Act*, this court is certainly not the court contemplated under that Act. Whichever way one looks at this dispute, the Environment and Land Court has no jurisdiction to entertain this dispute.

13. . Under the principle of stare decisis, this court is bound by the law as pronounced by the Court of Appeal. Based on the prevailing law, the application under consideration was filed in the wrong court. The application is a nullity ab initio on the above ground.

14. . Can the miscellaneous suit be transferred to the High Court by this court suo motto? Again, the Court of Appeal has, in a number of 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 E. A Assurance Company Limited -vs S. M. Thiga t/a Newspaper Service* Civil Appeal No. 244 of 2010 eKLR, the Court of Appeal stated 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. In another locus classicus in this subject, this Court pronounced; *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd.* (1989):



“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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

15. . 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”.

16. . For the above reasons, this miscellaneous application stands to be struck out for having been filed in a court that is not seized of jurisdiction. The court will down its tools at this point in tandem with the principle in *Owners of Motor Vessel “Lillian S” -v- Caltex Oil (Kenya) Ltd* [1989]. The applicant will be at liberty to file a competent suit and application in a court seized of jurisdiction.
17. . On costs, this miscellaneous suit is being disposed at an ex-parte stage. Consequently, there will be no award of costs.
18. . In the end, this suit is struck out on the ground of want of jurisdiction on part of the Environment and Land Court. There will be no award of costs. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF OCTOBER, 2025

B M EBOSO [MR]

ELC JUDGE

