



M’Big Limited v Kcb Bank Kenya Limited & 4 others; Economic Housing Group Ltd (Interested Party) (Land Case 97 of 2024) [2025] KEELC 6580 (KLR) (Environment and Land) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6580 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
LAND CASE 97 OF 2024
MC OUNDO, J
OCTOBER 2, 2025**

BETWEEN

M’BIG LIMITED PLAINTIFF

AND

KCB BANK KENYA LIMITED 1ST DEFENDANT

KENYA RAILWAYS CORPORATION 2ND DEFENDANT

LAND REGISTRAR, NAIVASHA 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

AND

ECONOMIC HOUSING GROUP LTD INTERESTED PARTY

RULING

1. The instant suit was instituted vide Plaintiff dated the 1st February 2023 which was amended on 7th March 2023, further amended on 24th October 2023, further re-amended on 25th March 2023 and lastly further amended re-amended on the 27th July 2024 wherein the Plaintiff sought for the following orders:

- i. An order of injunction do issue against the 1st Defendant restraining it from advertising for sale, selling or in any manner whatsoever from interfering with land parcel numbers Bungoma Municipality/528, Bungoma Municipality/522, Bungoma Municipality/506, Bungoma Municipality/574.



- ii. A declaration that sale of LR No. 1144/522 and LR No. 1144/583 Naivasha Town, Nakuru County conducted by Garam Investments Auctioneers on 8th June 2017 was frustrated therefore null and void.
 - iii. An order for refund of Kshs. 95,000,000/= being a refund of the purchase price.
 - iv. In the alternative, the 2nd Defendant to issue consents and clearance certificates for transfer of LR Nos. 1144/522, 1144/552 and 1144/583 Naivasha Town, Nakuru County in favour of the Plaintiff and in default, the 3rd Defendant do waive requirement for consents and clearance certificates and register LR Nos. 1144/522, 1144/552 and 1144/583 Naivasha Town in the name M'big Limited upon presentment of other conveyance documents by M'big Limited.
 - v. Further in the alternative, an order compelling the 1st Defendant to settle all Rates and Rents areas in respect to LR Nos. 1144/552 and 1144/583 Naivasha Town-Nakuru County and surrender proof of such payment to the Plaintiff.
 - vi. Kshs. 94, 800,000/= being total sum of loans, interests and charges incurred by the Plaintiff as a direct consequence of the failed sale from July 2017 to December 2022.
 - vii. Compensation for Kshs. 67,000,000/= being lost business opportunity.
 - viii. Compensation for Kshs. 1, 240, 794, 062. 22 being the value of the BAT Tobacco Kenya Limited business and Kenya Breweries Limited distributorship business.
 - ix. Special damages for Kshs. 800,000/= (Valuation Report and Audit Report).
 - x. An order directing the 1st Defendant to discharge charges for parcel numbers Bungoma Municipality/506, Bungoma Municipality/574, Bungoma Municipality/522, Bungoma Municipality/528.
 - xi. General damages
 - xii. Aggravated damages
 - xiii. Cost of the suit.
 - xiv. Interests
 - xv. Any other relief the honourable court may deem fit to grant.
2. Pursuant to the service of the Further Amended Re-Amended Plaint upon the parties herein, they had complied with the pre-trial directions wherein the matter proceeded for hearing on 3rd June 2024. It was however upon the court taking the evidence of PW1, that it noted that the said evidence revealed a cause of action that leaned toward a breach of commercial transaction wherein the court, while being mindful of the holding by the Court of Appeal in the case of Co-operative Bank Vs Patrick Kangethe & 5 Others (2017) eKLR brought to the attention of the parties herein that the cause of action in the present case/transactions did not fall within its Jurisdiction but rather leaned more within the Jurisdiction of the High Court. Accordingly, the Plaintiff had been stood down to give time to the parties to reconsider this position and to address the court on this one issue.
 3. Subsequently, what is before me for determination through the parties' respective submissions is the question as to whether or not this court has jurisdiction to determine the matter or whether the same falls within the Jurisdiction of the High Court-Commercial division.



Submissions.

4. The Plaintiff vide its Submissions dated 16th June, 2025 summarized the factual background of the matter while explaining that the honourable court had posed the question of jurisdiction suo moto in the middle of the trial wherein it had directed parties to the suit to consider the court's decision in Patrick Kang'ethe Edward versus Co-operative Bank of Kenya Limited and Joserick Merchants Auctioneers and the Court of Appeal decision in Co-operative Bank of Kenya Limited versus Patrick Kang'ethe Njuguna & 5 Others in their respective responses.
5. The Plaintiff then placed reliance in the Patrick Kang'ethe's case (supra) where the Court of Appeal had emphasized that the jurisdiction of the Environment and Land Court (ELC) to deal with disputes relating to contracts under the provisions of section 13 of the Environment and Land Court Act (ELC Act) did not include mortgages, charges, collection of dues and rents which fell within the civil jurisdiction of the High Court. Further reliance was placed on the provisions of Article 162 of the Constitution and Section 13 of the ELC Act on the jurisdiction of the Environment and Land Court to submit that the ELC Act had expanded the jurisdiction ELC to include disputes relating to contracts, choses in action or other instruments granting any enforceable interests in land. It explained that in the past, courts had employed the pre-dominant purpose test to determine whether a dispute was about contracts on land which should be litigated in the ELC or whether the dispute was about contracts predominantly on provision of goods and services. Reliance was placed on the decisions in the case of Suzanne Achieng Butler & 4 Others versus Redholl Heights Investments Limited & Another (2016) eKLR.
6. That the pre-dominant test required the court to look for the pre-dominant purpose of the transaction at the center of the dispute between the parties to determine whether the transaction was the sale of land or otherwise. That if the court determined that the transaction at the center of the dispute concerned sale of land, it would then follow that the ELC had jurisdiction to determine the dispute. If, however, a finding was made that the transaction was about provision of goods and services, then the appropriate forum for the dispute would be the High Court. Further reliance was placed on the decisions in the case of Kinyua Koech Ltd & 2 Others versus Nairobi Homes (Mombasa) Limited & 11 Others (Malindi Court of Appeal Civil Appeal No. 40 of 2014) and Mohammed Ali Baadi & Others versus The Hon. Attorney General & 11 Others (2018) eKLR.
7. It was its submission that the dispute in the case herein was with regard to a Memorandum of sale dated 8th June 2017 between the Plaintiff and Garam Investments Auctioneers on behalf of the 1st Defendant in respect of two parcels of land namely Land Registration Numbers 1144/552 and 1144/583 (suit properties). That their main bone of contention had been after it had entered into a land sale agreement with the 1st Defendant for the purchase of the suit properties, the sale had been frustrated when the 2nd Defendant denied it the mandatory consent to transfer. That further, the 1st Defendant, while entering into the sale of land agreement knew that it had not fulfilled certain obligations owed to the 2nd Defendant who was the head lessor of the suit properties. That subsequently, the Plaintiff seeks a declaration that the land sale agreement had been frustrated and therefore void.
8. That however, in the event that the court found that the 1st Defendant was not to blame and had fully performed its obligations under the sale agreement, the Plaintiff seeks, in the alternative, a declaration that the 2nd Defendant unreasonably withheld the consent and an order be issued compelling the 2nd Defendant to issue the consent to facilitate the registration of the suit properties in the name of the Plaintiff.



9. That the 1st Defendant had however maintained that it had fulfilled its obligation under the sale agreement and blames the Plaintiff for not securing the registration of the suit properties in its name. That the 1st Defendant also maintained that having secured consent to charge, it did not need another consent from the 2nd Defendant before offering the parcels of land for sale. That on its part, the 2nd Defendant had argued that it had refused to give its consent for the reasons that the 1st Defendant had failed on its obligation to settle rates arrears in respect of the suit properties as provided under the provisions Section 101 of the Land Act.
10. That from the foregoing, it was clear that the dispute herein had pre-dominantly concerned sale of land agreement which was meant to grant the Plaintiff title and enforceable interest on the suit properties which was clearly distinguished from the Patrick Kangethe's case (supra) which had concerned a legal charge and the exercise of the Chargee's power of sale. Reliance was placed in the decided case of In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR) where the Court had held that any disputes or questions or issues that require court intervention, which revolve around sale, registration and transfer of land, fell within the jurisdiction of the Environment and Land Court.
11. That the Plaintiff's contention, despite the voluminous pleading that had laid foundation of his case, was that as a result of the failed land sale agreement, it had suffered financial loss. Subsequently, it had sought for a refund of the purchase price together with interests at market rates from the date of the sale, loss of business opportunity, loss of businesses, special damages, general damages, aggravated damages and costs of the suit which prayers had been supported by pleadings and documents.
12. That accordingly, for the honorable court to determine whether the Plaintiff was entitled to the said prayers, it was required to first determine the main dispute between the parties as had been exemplified herein. It was thus its contention that the court had jurisdiction to award compensation after the main issue in controversy had been determined. It placed reliance on the provisions of Section 13(5) of the Environment and Land Court Act.
13. That the consequential questions that the court was being called to ventilate did not make the claim herein a "mixed grill" case since the honourable court has jurisdiction to make awards in compensation for losses incurred as a consequence of the wrongs proved. That in any case, in the event that the court finds that the dispute herein is a "mixed-grill" case, then it has jurisdiction to transfer the suit to the High Court since courts had devised mechanisms to deal with "mixed grill" cases. Reliance was placed in the decided case of Frikogen Limited versus Margdaline Khamitwa Musotsi (2024) eKLR where the Court cited the decisions in the cases of Peter Mutisya Musembi & Another versus National Bank of Kenya (2014) eKLR, Suzanne Achieng Butler (Supra) and Mohammed Ali Baadi (Supra), and taken the view that splitting a "mixed grill" case to another court in the same judicial tier would unreasonably emasculate and whittle down the inherent power of a court of law to render justice without undue regard to technicalities.
14. It was its submission that all the aforementioned decisions were in agreement that the court seized with jurisdiction to entertain the pre-dominant question in dispute, would also have jurisdiction to determine the other questions between the parties. That indeed, so as not to defeat the cause of justice, courts presented with "mixed-grill" cases and a subsequent determination made that the pre-dominant question lay elsewhere, had consistently held that they had jurisdiction to transfer the cases to the appropriate forums.
15. It hinged its reliance in the Court of Appeal's decision in the case of Kisauni Bridge Limited versus Kenya Urban Roads Authority & Another (2019) eKLR, where the court of appeal had declined an invitation by the appellant to interfere with the decision of the High Court Judge to transfer the case



to the Environment and Land Court where it had been presented with a “mixed-grill# dispute on a constitutional question, which could fall under the jurisdiction of the High Court and issues on the ownership of land, which fell squarely under the jurisdiction of the ELC Court.

16. That in the decided case of TSS Investments Limited & Another versus NIC Bank Limited (2019) eKLR, the Court of Appeal had supported the decision by the Environment and Land Court to transfer a suit to the Commercial Division of the High Court since the substantive dispute had been about creation of security over land, which did not constitute land use, as provided for under the provisions of Article 162(2) of *the Constitution*.
17. That the suit herein revolved purely around land, land sale and consent to transfer which was a preserve of ELC wherein the remedies sought were among the remedies that the ELC was mandated to issue as per the provisions of ELC Act.
18. That nonetheless, in case the court was persuaded otherwise, and find that the sui herein was a “mixed grill” case, it still had the powers to transfer the suit to the High Court. That in any case, all the parties to the suit had in their pleadings admitted to jurisdiction of the Court based on the fact that they had appreciated that the suit herein revolved around land, sale of the same and transfer thereof and whether lack of consent had vitiated the sale or otherwise.

1st Defendant’s Submissions

19. The 1st Defendant vide its submissions dated 16th June 2025 first summarized the factual background of the matter as well as the prayers sought in the Further Amended Re-Amended Plaintiff to submit that the instant suit arose from the purchase by the Plaintiff of two properties namely LR No. 1144/522 and LR No. 1144/583, auctioned by Garam Investments on behalf of the 1st Defendant pursuant to the 1st Defendant’s statutory power of sale. That the parcels of land had initially been charged to the 1st Defendant by Economic Housing Group Limited, who then defaulted on its loan obligations. That the purchase by the Plaintiff had partially been financed by the 1st Defendant, through existing legal charges over properties owned by the Plaintiff including land parcel Nos. Bungoma Township/528, Bungoma Township/522, Bungoma/Town/506 & Bungoma Municipality/574 & L.R. No 209/4205 together with the purchased properties.
20. That however, the 2nd Defendant, the head lessor of the 2 properties had declined to issue consent for transfer of the auctioned properties to the Plaintiff citing unpaid land rates and a 2% fee on the purchase price. That the Plaintiff had defaulted in repaying its loan facilities which had prompted the 1st Defendant to issue the requisite statutory notices with respect to the securities. That subsequently, the Plaintiff filed the instant suit seeking the prayers as outlined in its Further Amended Re-Amended Plaintiff.
21. On the issue for determination as to whether the Honorable Court had the jurisdiction to hear and determine the instant suit. It placed reliance on the provisions of Article 162(2)(b) of *the Constitution* of Kenya, 2010 and Section 13 of the ELC Act on the jurisdiction of ELC and the types of disputes that the ELC may hear.
22. That looking at the prayers sought in the suit, it was evident that the instant suit was a mixed grill case whereby various issues raised fall within the jurisdiction of both the High Court and the Environment and Land Court and that the predominant purpose test had thus become the guiding principle in such cases bas was held in the case of Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Ltd [2018] eKLR and the case of Suzanne Achieng Butler & 4 Others vs Redhill Heights Investments Limited & Another (2016) eKLR to submit that a suit ought to be filed in the court which has jurisdiction to hear the predominant issue.



23. That applying the predominant purpose test to the prayers sought in the Further Amended Re-amended Plaintiff, it was necessary to assess whether the central issue of the dispute had concerned land (in which case jurisdiction lies with the ELC), or whether the dispute predominantly involved claims in contract, tort, or commercial matters, in which case the High Court would have jurisdiction. That whereas prayer (a) in the Further Amended Re-Amended Plaintiff had sought an injunction to restrain the 1st Defendant from advertising for sale or otherwise interfering with several land parcels might appear to fall within the ELC's purview due to the involvement of land, a closer review shows that the land in question had been offered as security to the 1st Defendant, a financial institution.
24. That indeed, the injunction was sought to restrain the 1st Defendant's statutory power of sale and that courts have held that disputes involving statutory power of sale and realization of security fell within the High Court's jurisdiction as was held in the case of *Thomas Mutuku Kasue v Housing Finance Company Ltd (HFC) & Another* [2021] eKLR.
25. Those prayers (b), (c), (f), (g), (h), (i) & (k) predominantly involved enforcement of the statutory power of sale, commercial claims for refund, damages, loan interests and contractual obligations between a financial institution and a borrower which fell squarely within the jurisdiction of the High Court.
26. That on the other hand, prayers (d), (e) & (j) relate directly to issues of title transfer, issuance of consents and clearance certificates, settlement of land rates arrears and discharge of charge which are within the core jurisdiction of the Environment and Land Court
27. That finally, prayers (l) through (p), for general and aggravated damages, costs, interest, and other relief were standard final prayers which depended on the Court's determination of the substantive claims.
28. It was its submission that the coexistence of the overlapping issues suggested that the matter was a mixed suit involving both commercial (banking and contractual) claims and land title disputes and that the law requires such matters to be heard in the court with jurisdiction over the predominant issue. That from the above analysis, it was evident that the predominant issue in the instant matter concerned the enforcement of a statutory power of sale, the commercial relationship between a financier and borrower, and related claims for refund, damages, and performance of contractual obligations. That whilst some prayers had incidentally touched on land (e.g., title, consents, discharge of charges), the same were consequential to the exercise of the statutory power of sale and the performance of financing obligations, which were within the jurisdiction of the High Court as had been held in multiple decisions. Reliance was hinged in the Court of Appeal's decision in the case of *Co-operative Bank of Kenya Ltd v Patrick Kang'ethe Njuguna & 5 Others* [2017] eKLR.
29. In conclusion, it submitted that the predominant issue in the instant suit was a commercial dispute arising from a frustrated property sale and the enforcement of financial and contractual obligations, rather than a dispute over land per se. That although land had been mentioned in several prayers, it was incidental to the central commercial grievances. That subsequently, applying the predominant purpose test, the matter properly fell within the jurisdiction of the High Court, not the ELC. That however, should the Honourable Court agree with the afore stated submissions, it did not have the power to transfer the matter to the High Court since once the Court finds that it lacks jurisdiction, the suit becomes nullity ab initio and cannot be transferred to the High Court, whether by consent or otherwise, the proper recourse was thus to strike out the same for want of jurisdiction. Reliance was placed in the Court of Appeal's decision in the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR.



2nd Defendant's Submissions.

30. Vide its submissions dated 17th June 2025, the 2nd Defendant placed reliance on the provisions of Article 162(2)(b) of *the Constitution* of Kenya, 2010 and Section 13(2) of the *Environment and Land Court Act* to submit that the Honorable Court's jurisdiction was limited to matters where the core and substantive issues concerned proprietary interests in land, that is, matters involving ownership, occupation, use, or title to land. That the guiding principle emerging from the jurisprudence was that jurisdiction was determined by the substance and character of the dispute rather than the mere incidental mention of land in the pleadings. It placed reliance in the decided case of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR), where the Court of Appeal had authoritatively held that disputes revolving around the realization of securities through statutory power of sale constitute commercial disputes falling within the jurisdiction of the High Court. The Court had also emphasized that while a charge created an interest in land, the exercise of statutory power of sale primarily engages contractual and financial obligations between the Chargor and the Chargee, and did not involve questions of land use, occupation, or title that would attract the jurisdiction of the Environment and Land Court.
31. Further reliance was placed in the Court of Appeal's decision in the case of *Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others* [2024] KECA 410 (KLR) and the case in *Thomas Mutuku Kasue v Housing Finance Company Ltd (HFC) & another* [2021] KEELC 4524 (KLR), to submit that disputes concerning enforcement of charges, refund of monies, and claims for damages arising out of statutory power of sale transactions were commercial in nature, and as such, fell outside the purview of the Environment and Land Court and further that matters pertaining to issuance of statutory notices, realization of securities, and recovery of monies under charges and mortgages were commercial disputes, properly falling under the jurisdiction of the High Court.
32. That in the decided case of *Suzanne Achieng Butler & 4 Others v Redhill Heights Investments Limited & Another* [2016] eKLR, the Court had applied the predominant purpose test, emphasizing that where the core dispute concerned commercial arrangements such as provision of goods, services, or financial arrangements, jurisdiction lay with the High Court and that the mere fact that land was referenced in the course of the transaction did not, in itself, confer jurisdiction upon the Environment and Land Court unless proprietary interests in land were directly in issue.
33. That it was evident that the substance and character of the Plaintiff's claim had clearly fallen outside the jurisdiction of this court and lay squarely within the commercial and contractual jurisdiction of the High Court. That the genesis of the Plaintiff's claim had arisen from a sale transaction that had been entered into pursuant to the exercise of the 1st Defendant's statutory power of sale under a charge arrangement. That indeed, the Plaintiff had averred that upon purchasing the suit properties, it had encountered difficulties in procuring the necessary consents for transfer of title, primarily owing to the 2nd Defendant's refusal to issue such consent and as a consequence of the alleged frustration of the transaction, the Plaintiff was now seeking a refund of the purchase price that had been paid, together with consequential financial remedies.
34. That a careful analysis of the Plaintiff's Further Amended Re-Amended Plaintiff demonstrates that the predominant reliefs sought were purely financial in nature, namely:
 - i. Firstly, the Plaintiff seeks a refund of the purchase price paid, being the sum of Kshs. 95,000,000/=, which it alleged to have advanced in consideration of acquiring the suit properties pursuant to the exercise of the 1st Defendant's statutory power of sale. That the said refund claim was quintessentially a claim for restitution of sums paid under a failed or



frustrated contractual transaction and was not a prayer for restoration or for rectification of land rights, nor did it relate to any question of who held title or whether that title had been validly created or transferred.

- ii. Secondly, the Plaintiff seeks the award of interest and consequential financial losses allegedly arising from the failed transaction. The claim for interest was premised upon the opportunity cost of funds advanced to the 1st Defendant, while the consequential losses relate to alleged downstream business losses and income disruption that had been occasioned by the failure of the transaction to complete. That the same were purely commercial heads of loss, grounded in principles of contract law, restitution, and financial loss assessment, and did not touch upon any land use, ownership, or occupation rights that would invoke this Court's jurisdiction.
 - iii. Thirdly, the Plaintiff seeks compensation for loss of business opportunities, which it attributed to the failure of the sale transaction. That the pleadings had suggested that the Plaintiff had contemplated operating certain businesses on the suit property once the acquisition had been completed hence the failure to obtain the title had allegedly caused the loss of those anticipated business ventures. That the same was plainly a claim for consequential financial damages flowing from the non-performance of a contract and did not raise any dispute over who was entitled to occupy, use, or own the suit property; rather, it was concerned with loss of expected commercial advantage - a classically commercial claim.
 - iv. Fourth, the Plaintiff seeks awards of special damages, general damages, aggravated damages, and costs of the suit which reliefs are monetary in nature and are standard remedies sought in commercial claims for breach of contract or frustration of contractual obligations. That notably, none of the said prayers seek or require determination of proprietary interests in land or adjudication of any conflicting claims over title or boundaries.
35. It was its submission that collectively, the aforesaid prayers had confirmed that the Plaintiff was not seeking specific performance of a land sale agreement, rectification of the register, cancellation of an invalid title, determination of boundaries, or possession of land which were the types of reliefs that would properly engage this Court's jurisdiction under the provisions of Article 162(2)(b) of 5 *the Constitution* and Section 13 of the ELC Act. That instead, the Plaintiff seeks financial redress for commercial losses allegedly arising from a failed land sale transaction, a dispute which squarely falls within the domain of the High Court exercising its ordinary civil jurisdiction over commercial matters. Reliance was placed in the Supreme Court's decision in the case of Republic v Chengo & 2 others [2017] KESC 15 (KLR) which had underscored that the jurisdiction of the specialized courts was strictly limited to the matters expressly assigned to them by *the Constitution* and the relevant statutes. The Supreme Court had emphasized that although the specialized courts were of equal status to the High Court, they exercised distinct and exclusive jurisdictional mandates which could not be extended to matters reserved for other superior courts.
36. As to whether this Court could transfer the suit to the High Court for determination, it submitted that once a court finds that it lacks jurisdiction to entertain a matter, it could not invoke any power to transfer the same to a court of competent jurisdiction. That the position in law was well settled that jurisdiction was not conferred by consent of parties, estoppel, or judicial discretion, but flows directly from *the Constitution* and enabling statutes. Subsequently, where a court lacks jurisdiction ab initio, it could not lawfully assume authority to undertake any further proceedings beyond declining jurisdiction. It placed reliance in the decided case of Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] KECA 250 (KLR).



37. That a suit filed before a court without jurisdiction was nullity ab initio, and therefore incapable of being transferred, as jurisdiction was a fundamental threshold that could not be conferred retroactively or by judicial discretion. Further reliance was placed in the decided case of Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR). That the proper and lawful course of action therefore was to strike out the suit in its entirety for want of jurisdiction.

Plaintiff's Supplementary Submissions

38. In rejoinder, the vide his supplementary submissions dated 26th June 2025 the Plaintiff maintained that the predominant issues for determination in the instant matter revolved around the impugned sale of land which was intended to confer proprietary interests over land registration numbers 1144/552 and 1144/583 Naivasha Town to the Plaintiff where the main issues for determination by the court would be whether the land sale agreement dated 8th June 2017 had been frustrated by refusal by the 2nd Defendant to issue consent to transfer the said parcels, whether the 1st Defendant were to blame for refusal by the 2nd Defendant to issue consent to transfer and whether the 2nd Defendant had unreasonably withheld the consent to transfer, which issues fell within the jurisdiction of the Environment and Land Court.
39. That the pre-dominant purpose tests as adopted by courts in Suzanne Achieng Butler (Ngugi J.) (supra) and Lydia Nyambura Mbugua (Munyao J.) (supra) when applied to the case herein, show that the court with jurisdiction to entertain the matter is the Environment and Land Court.
40. That neither of the tests had instructed them to look at the prayers sought by the Plaintiff in determining which court had the jurisdiction to entertain the dispute as had been suggested by the 1st Defendant through its submissions. That subsequently, the 1st Defendant's argument that most of the prayers (b), (c), (f), (g), (h), (i) and (k) in the further re-amended plaint were commercial in nature thereby divesting the Environment and Land Court the jurisdiction to entertain the matter therefore did not hold water. That instead, the test required the court to evaluate the issues in dispute in the land sale agreement dated 8th June 2017 and not the prayers sought by the Plaintiff in the further re-amended plaint.
41. That the Plaintiff in prayer (a) of the further re-amended plaint, sought for an injunction to restrain the 1st Defendant from advertising for sale or otherwise interfering with parcel Nos. Bungoma/Township/528, Bungoma/Township/522, 506, and 574. That in prayer g(a) and g(b) he sought for an order directing the 1st Defendant to discharge the parcels and delist/update the status of the Plaintiff and Kenneth Munene Chuaga from Credit Reference Bureaus.
42. That the said prayers were incidental to an order that had been issued by the honorable court on 28th November 2023 following the adoption of a consent dated 25th August 2023 between the Plaintiff and the 1st Defendant which had settled liabilities owed by the Plaintiff to the 1st Defendant. That the said order, that had settled all claims arising from loans and overdrafts that had been secured by charges in respect of the properties sought to be discharged, was made during the pendency of the suit herein hence the 1st Defendant's argument that the said prayers had made the instant matter a mixed-case should be rejected.
43. The Plaintiff thus urged the court to find that the instant suit was purely an Environment and Land Court matter for which the court has jurisdiction to hear and determine.



Determination.

44. This matter proceeded for hearing where upon having heard the evidence in chief of the Plaintiff, and being mindful of the provisions of Section 1B and 3A of the [Civil Procedure Act](#) as well as a binding decision by the Court of Appeal in the case of Co-operative Bank vs Patrick Kangethe & 5 Others (2017) eKLR, the court stood down the Plaintiff suo moto so that parties could address it (through written submissions) on whether or not the suit before it was commercial in nature thus ousting its jurisdiction to hear and determine the matter.
45. I have thus considered the submissions herein as well as the authorities cited. First things first, I have looked at the consent dated the 25th August 2023 that was adopted by the court on the 28th September 2023 alluded to by the Plaintiff that settled liabilities owed by the Plaintiff to the 1st Defendant. Needles to state that the said consent was only an acknowledgment by the Plaintiff that he was indebted to the 1st Defendant to a tune of Ksh. 1,129,527,319.00 (One billion, one hundred twenty-nine million, five hundred twenty-seven thousand, three hundred nineteen). That he would repay the loan in instalments, after the sale by private treaty, of property LR No. 209/4205 Kabarnet close Nairobi wherein at the lapse of 6 months, the 1st Defendant would be free to proceed to exercise its statutory power of sale of the said parcel of land to recover the outstanding sums, cost and interest accrued with no further reference to the Plaintiff. In my humble view, the said consent did not settle liabilities owed by the Plaintiff to the 1st Defendant but was only a proposal of the mode of repayment of the loan.
46. Now to determine on whether or not this court has the jurisdiction to hear and determine the matter before it; I have considered the prayers sought in the further amended re-amended Plaint herein which prayers disclose a cause of action and are the remedies, reliefs, and/or orders that the Plaintiff has asked the court to grant. These prayers thus defined the scope of the case, limited the court's final decision to what has been requested and defined the ultimate outcome the Plaintiff is seeking.
47. The court's power to grant the relief sought was thus limited generally to the prayers sought by the Plaintiff which prayers are the foundation upon which the final judgment is built and which further determine whether or not the court has the authority to hear the case. In other words, the prayers sought by the Plaintiff were the "heart" of his lawsuit.
48. In Republic v Chengo & 2 others (Petition 5 of 2015) [2017] KESC 15 (KLR) (26 May 2017) (Judgment), the Supreme Court had held as follows:

"Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the court's operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from [the Constitution](#), or legislation...

In addition to the above, we note that pursuant to article 162(3) of [the Constitution](#), Parliament enacted the [Environment and Land Court Act](#) and the Employment and [Labour Relations Act](#) and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of [the Constitution](#) and these Acts of Parliament, it is clear that a special cadre of courts, with suis generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC,



it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

49. Section 13 (1) & (2) of the *Environment and Land Court Act* provides for the Jurisdiction of the ELC Court as follows:

“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.”

50. Having previously stated that the prayers sought by a party to a suit form the heart of the suit, and looking at the prayers herein sought by the Plaintiff as herein above captioned, I have asked myself as to what is the predominant issue in the dispute between the Plaintiff and the Defendants and whether or not the said issues relate to the environment and the use and occupation of, and title to land.

51. The "predominant purpose test" requires a court to look beyond the individual prayers and identify the central, unifying issue of the suit. It is not contested that the genesis of the matter stems from the fact that the Plaintiff, through an auction, purchased two properties namely LR No. 1144/522 and LR No. 1144/583, which purchase had partially been financed by the 1st Defendant, through existing legal charges over properties owned by the Plaintiff including land parcel Nos. Bungoma Township/528, Bungoma Township/522, Bungoma/Town/506 & Bungoma Municipality/574 & L.R. No 209/4205 together with the purchased properties. The 2nd Defendant, who was the head lessor of the 2 properties however declined to issue consent for transfer of the auctioned properties to the Plaintiff citing unpaid land rates and a 2% fee on the purchase price thus frustrating the sale transaction. The Plaintiff subsequently defaulted in repaying its loan facilities which then prompted the 1st Defendant to issue the requisite statutory notices with respect to the securities.

52. I find that while this case involves a financial loan and commercial dealings, its genesis and ultimate objective are deeply rooted in a land dispute wherein the prayers sought seek to stop the sale of these parcels (Prayer i), declare a previous land sale void (Prayer ii), compel the transfer of land (Prayer iv), and order the discharge of land-related securities (Prayer x) which matters are directly concerned with the "use and occupation of, and title to, land."

53. I thus find that the monetary claims arising in prayers iii, vi, vii, and viii are consequential to a failed land transaction and therefore not the primary cause of action. The Plaintiff's financial losses-the refund, loan costs, and lost business opportunities-are a direct result of the alleged frustration of the land sale and the subsequent threat of a forced sale of the secured properties.



54. Therefore, because the entire suit is a reaction to a failed land purchase and a threat to charged land, its predominant purpose is a land dispute. The High Court, which handles general civil and commercial disputes, would thus likely lack the subject matter jurisdiction to hear this case.

55. In the end, I find that this case is distinguishable from the Patrick Kangethe Njuguna case (*supra*) for which the court has jurisdiction to hear and determine the same.

There shall be no orders to cost.

DATED AND DELIVERED AT NAIVASHA VIA MICROSOFT TEAMS THIS 2ND DAY OF OCTOBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

