



REPUBLIC OF KENYA



**Ngugi v Sedco Consultants Ltd & 2 others (Environment and Land  
Appeal E049 of 2025) [2025] KEELC 4388 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4388 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E049 OF 2025**

**JG KEMEI, J  
JUNE 12, 2025**

**BETWEEN**

**MARGARET WAMBUI NGUGI ..... APPLICANT**

**AND**

**SEDCO CONSULTANTS LTD ..... 1<sup>ST</sup> RESPONDENT**

**PYRAMID AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**LERY ENTERPRISES CO. LTD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**(With Respect to the Applicants' Notice of Motion Dated 10/3/25)**

1. Vide an application dated 10/3/2025 the Applicant moved the Court and sought for the following orders;
  - a. Spent.
  - b. Pending the hearing and determination of this application, this Court be pleased to exercise its appellate jurisdiction to issue an order of stay of execution of the order dated 18<sup>th</sup> February, 2025 issued in Milimani Chief Magistrate Court Miscellaneous Application No. E351 of 2025, Sedco Consultants Limited & Others –vs- Lery Enterprises Company Ltd & others.
  - c. Further and or in the alternative to prayer b) above, pending the hearing and determination of this application, this Court be pleased to exercise its supervisory jurisdiction to stay proceedings in and execution of the order dated 18/2/25 in Milimani Chief Magistrate Court Miscellaneous Application No. E351 of 2025 Sedco Consultants Limited & others – V Lery Enterprises Company Limited & others.



- d. Pending the hearing and determination of the application herein and or appeal, this Court be pleased to exercise its appellate jurisdiction, to issue an order of injunction restraining M/ S Sedco Consultants Limited and Pyramid Auctioneers from taking over the management of all that parcel of land known as L.R.No.23364/27, 23364/28, 23364/29, 23364/30 and 23364/31 Kasarani Vision Plaza, Nairobi.
  - e. Pending the hearing and determination of the appeal herein, this Honourable Court be pleased to exercise its appellate jurisdiction to issue an order of stay of execution of the order dated 18<sup>th</sup> February, 2025 issued in Milimani Chief Magistrate Court Miscellaneous Application No. E351 of 2025 Sedco Consultants Limited & others –v- Lery Enterprises Company Ltd & others.
  - f. Further and or in the alternative to prayer 2, 4 and 5 above, this Honourable Court be pleased to exercise its supervisory jurisdiction to call and place before it the proceedings and or the lower Court file in Milimani Chief Magistrate Court Miscellaneous Application No. E351 of 2025 Sedco Consultants Limited & others v Lery Enterprises Company Ltd & others, for review and or to interrogate the legality and propriety thereof in order to make appropriate orders.
  - g. Costs of the application be provided for.
2. The application is premised on the grounds annexed thereto and the supporting affidavit of Margaret Wambui Ngugi (the applicant herein).
  3. She averred that the subject matter of the appeal, and the application is the commercial/residential development erected on Parcel Nos. 23364/27-31(suit properties) commonly known as Kasarani Vision Plaza, Nairobi valued at a sum of Kshs.500,000,000/-
  4. The deponent further averred that the 1<sup>st</sup> Respondent through Miscellaneous Application No. E351/2025 at Milimani obtained ex parte orders requiring police assistance on 18/2/2025 for entry and take-over of management of the suit properties. That the application in the lower Court was filed pursuant to Rule 9 of the Auctioneers Rules and yet the 1<sup>st</sup> Respondent is not an Auctioneer.
  5. That armed with the said Court orders, the 1<sup>st</sup> Respondent in the company of Police officers successfully invaded the suit properties in readiness for the takeover possession and management of the properties. She averred that in response to Miscellaneous Application No. E351/2025 at Milimani, the applicant filed an application seeking orders of stay of execution and setting aside the said ex parte orders on the grounds that; orders for entry and take-over management cannot be commenced by a miscellaneous cause without a substantive suit; the ex parte orders were final without affording the applicant the opportunity to be heard; the subordinate Court lacked jurisdiction to entertain the dispute in view of the pecuniary jurisdiction of the subject matter; the 1<sup>st</sup> Respondent is alleged to have been instructed by a receiver Manager of KCB Bank in which case the parties ought to have filed suit in the High Court under both the [Insolvency Act](#) and the [Companies Act](#); the 1<sup>st</sup> Respondent is not an Auctioneer in accordance with the [Auctioneers Act](#) and therefore could not have sought orders under Rule 9 of the Auctioneers Rules; the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed to disclose to the Court that the 3<sup>rd</sup> Respondent had earlier on filed ELC No.352/2022 at Milimani which suit was later withdrawn following a successful objection; the 1<sup>st</sup> Respondent failed to annex any charge documents or a letter from KCB Bank appointing Kollury Venkata Subbaraya as receiver manager. That there were no statutory requisite notices issued to enable the 1<sup>st</sup> Respondent and the purported receiver manager to take possession of a charged property.



6. In the alternative, the applicant urged this Court to invoke its supervisory jurisdiction and grant the orders on the grounds that the ex parte orders are impeachable and that the proceedings before the subordinate Court are marred with irregularities which have occasioned injustice to the applicant.
7. The application is opposed by the 1<sup>st</sup> respondent vide grounds of opposition dated 25/3/2025 on the following grounds; -
  - a. That the appellant has no proprietary rights over the suit properties as they were lawfully sold to the 3<sup>rd</sup> Respondent following the exercise of the Bank's statutory power of sale. This was affirmed in the ruling of Hon. Justice Alfred Mabeya issued on 19/5/2023, which found that the suit properties had already been sold to the 3<sup>rd</sup> Respondent and that the Appellant had no valid claim over them.
  - b. That this Honourable Court lacks the requisite jurisdiction to hear this matter relating to the exercise of statutory rights under charge.
  - c. That the Appellant's application for stay of execution is an abuse of the Court process as there is nothing left to stay. The orders issued by the lower Court on 18/2/25 merely facilitated police assistance in enforcing the lender's rights under the charge, and these orders have already been executed. The 1<sup>st</sup> Respondent has taken possession of the suit properties and assumed management.
  - d. That the orders sought by the Appellant are misconceived and untenable, as the Miscellaneous Application dated 9/1/25 was limited to seeking police assistance and did not involve the determination of proprietary interests or pecuniary jurisdiction over the properties in question.
  - e. That the 1<sup>st</sup> Respondent's application is misplaced and legally untenable, as the issue of police assistance in enforcement does not fall under the provisions of Order 37 of the Civil Procedure Rules.
  - f. That the application discloses no reasonable cause of action, is frivolous, vexatious, bad in law and an abuse of the Court process and that it lacks merit and should be struck out with costs.
8. In further opposition to the application, the 1<sup>st</sup> respondent vide a replying affidavit of 25/3/2025 deponed by one Paul Ruto stated that he is a licensed property manager under the provisions of the Management *Estate Agents Act* (Cap.533 of the Laws of Kenya) and practices as such under the name and style of Sedco Consultants Limited. He stated that the suit properties were initially registered in the name of the applicant and her company Kimuri Housing Company Limited. In 2016 KCB Bank Ltd advanced mortgage facilities in the sum of Kshs.562.6 million secured by a legal charge over the suit properties inter alia. It was a term of the said letter of offer that the company would pay rental and business income through its account held at KCB Bank. Arising from consistent defaults on loan repayments and diversion of rental proceeds from the company's account held with the bank, the bank exercised its statutory power of sale and sold the suit properties through a public auction on the 8/3/2022 to the 3<sup>rd</sup> respondent.
9. At the request of the 3<sup>rd</sup> respondent, the bank agreed to finance part of the purchase price of the suit properties and subsequently registered a charge in favour of the bank over her suit properties. It was a term of the financing agreement that all the rental income from the premises would be channeled through the accounts of the borrower (the 3<sup>rd</sup> Respondent) held with the bank until full redemption of the loan facility. The deponent further stated that despite the lawful sale, the applicant refused to vacate



and/or cease possession of the suit properties and continues to collect rental income hence occasioning defaults of payments of the loan advanced by the bank.

10. That as a result of the inability to collect rentals from the suit properties, the 3<sup>rd</sup> respondent defaulted in servicing the loan and the bank issued them with a 90 days' statutory notice dated 12/4/2023 and a 40 days statutory notice dated 20/7/2023. The bank also appointed a receiver under clause 8.1(b) of the charge instruments and Section 92 of the Land Act by issuing a 30 days notice statutory notice to the 3<sup>rd</sup> respondent. Subsequently, on the 5/8/2024 the bank appointed Mr. Kolluri Ventkata Subbaraya Kama Sastry as the receiver manager vide a deed of appointment dated 5/8/2024. The 1<sup>st</sup> respondent was thereafter contracted by the receiver Manager vide a property management agreement dated 16/12/2024 as an agent and property manager for the suit properties. That he attempted to assume control and management of the suit properties but was repulsed by the applicant and her agents and or servants, ostensibly, using a stay order allegedly issued in July, 2024, which order was not availed to the 1<sup>st</sup> respondent.
11. Faced with hostilities in carrying out its contracted mandate of collecting rents, the 1<sup>st</sup> respondent filed Miscellaneous Clause No.351/2025 at Milimani and obtained exparte orders requiring police escort/assistance in the entry and management of the suit properties. Despite being in possession of the exparte orders, the applicants, acting in concert with her children and/or agents of the company (Kimuri Housing) obstructed the lawful execution of the said orders of the Court and its mandate as the duly appointed receiver's agent. The deponent has detailed instances of hostilities emanating from the applicant under Paragraph 18 (a-e) of the Replying Affidavit sworn on the 25/3/2025.
12. In addition, the deponent avers that the applicant has failed to satisfy the legal requirements for grant of stay of execution of the exparte orders issued on 18/2/2025 for the reason that the orders have already been executed and therefore there is nothing left to stay since the 1<sup>st</sup> respondent with the help of the police took possession of the suit properties and assumed management despite futile violent attacks orchestrated by the applicant.
13. That the applicant has not demonstrated the substantial loss that she will suffer if the orders sought are not granted. That in any event, stay of execution is not a right but an equitable remedy predicated on clear demonstration of risk of substantial loss and not a mere allegation of potential or imaginary loss.
14. Thirdly, the applicant has failed to provide security for costs under the provisions of Order 42 Rule 6(sub-rule 2) of the Civil Procedure Rules. That this application is aimed at intimidating the tenants in the suit premises to pay rent to the applicant instead of the 1<sup>st</sup> respondent which amounts to unjust enrichment.
15. On the question as to whether the applicant is entitled to injunctive reliefs restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from taking over management of the suit properties, the deponent argued that the applicant has no proprietary rights over the suit properties since the said properties were sold to the 3<sup>rd</sup> respondent in exercise of the Banks statutory power of sale.
16. Has the applicant showed a prima facie case with a probability of success? The 1<sup>st</sup> respondent thinks not. The 1<sup>st</sup> respondent is of the view that the applicant has come to Court with unclean hands given her conduct of continuing to collect rent from the suit properties despite the absence of any proprietary rights.
17. Further, it was contended that the applicant has not demonstrated what prejudice she will suffer with the appointment of a receiver whose mandate is to collect and manage the suit properties and remit the rent proceeds to the bank. The balance of convenience therefore tilts in favour of the respondents as against the applicants. As the collected rental proceeds will be channeled to reduce the outstanding loan



arrears owed to the bank by the 3<sup>rd</sup> respondent. In any event, the orders obtained in the lower Court merely were for the purpose of ensuring the safety of the 1<sup>st</sup> respondent in conducting its mandate under the property management agreement of 16/12/2024.

18. It was further averred that the power to appoint a receiver is an express term of the charge instrument executed between the bank and the 3<sup>rd</sup> respondent and the exparte orders for police assistance to facilitate its reinforcement of the lender's rights under the charge. All in all, the applicant lacks the requisite locus standi to institute this appeal against the respondent since she has no legal or equitable claim over the suit property having been divested of all such proprietary rights upon the lawful sale to the 3<sup>rd</sup> respondent. That the orders of 18/2/2025 did not determine proprietary interests or the pecuniary jurisdiction over the properties in question and for these reasons, the Court was urged to dismiss the application with costs to the respondent.
19. On the 26/3/2025, both Counsel for the applicant and the 1<sup>st</sup> respondent made lengthy submissions through the virtual Court(CTS) which submissions reiterated, by and large the contents of the party's pleadings before the Court.
20. Having considered the application, the grounds of opposition and the replying affidavit, together with the oral arguments presented by the applicant and the 1<sup>st</sup> respondent's Counsels, the Court finds that the key issues for determination are;
  - a. whether the Court has jurisdiction to determine the application and the appeal as filed
  - b. If the answer to a) above is in the affirmative, whether the application dated 10/3/2025 has merit.
  - c. who meets the cost of the application?
21. The Supreme Court in Petition No. 7 of 2013 *Mary Wambui Munene Vs. Peter Gichuki Kingara and Six Others*, [2014] eKLR cited the celebrated case of "Lilian S" Supra where it was stated thus;

"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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."
22. In the case of *Jamal Salim v Yusuf Abdulahi Abdi & another* Civil Appeal No. 103 of 2016 [2018] eKLR the Court of Appeal stated:

'Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. In the case of *Adero & Another v Ulinzi Sacco Society Limited* [2002] 1 KLR 577, the Court stated as follows;

  - 1) .....
  - 2) The jurisdiction either exists or does not ab initio ...
  - 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced inactions which presume the existence of such jurisdiction.
  - 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.'



23. This Court is established from Article 162 *CoK* which states;
162. System of courts
- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
  - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-
    - (a) employment and labour relations; and
    - (b) the environment and the use and occupation of, and title to, land.

24. Section 13 of the ELCA elaborately provides for the jurisdiction of the Court that;

13. Jurisdiction of the Court

- (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.

25. The question of the jurisdiction of this Court vis a vis charges/mortgages was discussed in detail in the case of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017]eKLR the Court stated as follows;

“By definition, a charge was an interest in land securing the payment of money or money’s worth or the fulfillment of any condition. As such, it gave rise to a relationship where one person acquired rights over the land of another as security in exchange for money or money’s worth. The rights so acquired were limited to the realization of the security so advanced. Therefore, the creation of that relationship had nothing to do with use of the land as defined. That relationship was simply limited to ensuring that the chargee was assured of the repayment of the money he had advanced the chargor.

5. Section 2 of the *Land Act* recognized a charge as a disposition in land. A disposition was distinguishable from land use. While the former created the relationship, the latter was the utilization of the natural resources found on, above or below the land. Land use connoted the alteration of the



environmental conditions prevailing on the land and had nothing to do with dispositions of land. Saying that creation of an interest or disposition amounted to use of the land, was akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constituted land use”

26. The background of the suit properties is commonly acknowledged that the suit properties are registered in the name of the 3<sup>rd</sup> Respondent as 5/10/22 and charged to KCB Bank Limited on even date. See the copies of titles found on pages 49-56 of the applicants annexed exhibits. It can also be deduced from the same exhibits that the suit properties were previously owned by the applicant and charged to KCB Bank Limited on 23/9/2015.
27. At page 79 of the applicant’s application, the Ruling of the Court issued on the 19/5/2023, it has not been denied that the applicant was advanced loan facilities in the sum of Kshs 453 Million by KCB Bank Limited. The suit lands among others were given as security for the said facilities and upon default the bank exercised its statutory power of sale and sold the suit lands to the 3<sup>rd</sup> Respondent herein on 8/3/22 by way of a public auction. It is this sale that is subject to the suit in HCCC No E263 of 2022 where the applicant and Kimuri Housing and another have challenged the sale. It would appear the suit is still pending in the High Court.
28. It was averred that the 3<sup>rd</sup> Respondent paid the deposit at the fall of the hammer and the balance was financed by the bank through a loan with the suit properties being charged to cover the loan facilities. Arising from defaults in loan repayment by the 3<sup>rd</sup> Respondent, the bank appointed a receiver manager pursuant to Clause 8.1 (b) of the charge on 5/8/24 namely Kollury Sastry. The receiver manager appointed the 1<sup>st</sup> Respondent vide a management agreement dated the 16/12/24 as an agent and property manager. The 1<sup>st</sup> respondent has informed the Court that its attempts to carry out its mandate was thwarted by the applicant and her employees and or agents who denied it entry into the premises prompting the 1<sup>st</sup> respondent to move the Court vide Misc. Application No E351 of 2025 and obtain the orders issued on the 18/3/25. These are the orders the subject of this application for stay of execution and proceedings and the appeal before the court.
29. For purpose of emphasis the orders are reproduced as follows;  

“ It is hereby ordered;

  1. That service of this application is dispensed with in the first instance.
  2. That a free access/escort order is hereby issued to the applicant, Paul Ruto t/a Sedco Consultants Ltd And Joseph Kimani t/a Pyramid Auctioneers
  3. That the officer-in-charge Kasarani Police Station OCS or any other police station near be and is hereby ordered to accompany Paul Ruto t/a Sedco Consultants Ltd And Joseph Kimani t/a Pyramid Auctioneers to the suit premises known as Land Reference Number 23364/27, 28, 29, 30 and 31 Kasarani Vision Plaza Occupied by Lery Enterprises Company Ltd And Margaret Wambui Ngugi & John Ngugi t/a Kimuri Housing Company in order to maintain law and order during access in the premises free entry and take over management on behalf of receiver manager.
  4. That this is not an eviction or demolition order and should not be construed as such but orders of Police Assistance/Break in access orders.”
30. From the above background it is clear that the nature of the dispute before the Court is commercial in nature. The root of the dispute is the exercise of statutory power of sale by a lender leading to the sale of



the suit premises by way of a public auction. It is this sale that is subject of a High Court Commercial division dispute in HCCC No E263 of 2022. Arising from the banks exercise of statutory power of sale through a public auction in 2022, the suit properties were sold to the 3<sup>rd</sup> respondent and the suit properties were given as security to the bank to secure the loan facilities. Evidence was led that due to the default of the 3<sup>rd</sup> Respondent, the bank appointed the Receiver manager who in turn contracted the 1<sup>st</sup> respondent to manage the properties and collect rentals from the tenants therein for purposes of meeting the repayment of the loan facilities advanced by KCB Bank Limited.

31. It is not disputed that the root of the 1<sup>st</sup> respondent's instructions emanate from KCB Bank which is a party in HCCC No E263 of 2022. Undoubtedly the crux of the dispute is the loan default repayments to the bank arising from the charge between the bank and the 3<sup>rd</sup> Respondent. It has not been explained why the bank being a party in the HCCC No E263 of 2022 had through its agents sought to institute what appears to be parallel proceedings in a matter already before a superior Court. The 1<sup>st</sup> respondent is but an agent of KCB Bank. Para 3 of the impugned orders are explicit that the 1<sup>st</sup> respondent is managing the suit properties on behalf of the receiver Manager. Besides, the question of whether or not there is a lawful receivership is a matter that is in the province of the High Court and not the ELC Court.
32. That said it is borne of the affidavit evidence on record that the High Court has dealt with the dispute to some extent. See the Ruling annexed by the Applicant on page 79 of the applicant's application.
33. All in all, the Court wishes to agree with the 1<sup>st</sup> Respondent that in a multifaceted case like this where the dominant issue revolves around disputes arising from charges and mortgages the primary jurisdiction rests with High Court.
34. With that this Court must down its tools, which I hereby do on grounds of want of jurisdiction and I say no more.
35. Final Orders for Disposal;
  - a. The application dated the 10/3/25 and the appeal dated 7/3/25 be and are hereby struck out.
  - b. Each party to bear their own costs.
36. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12<sup>th</sup> DAY OF JUNE, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

Mr. Kalii for HB for Mr. Mutua SC

Mr. Gitau HB for Ms. Ndirangu for the 1<sup>st</sup>-3<sup>rd</sup> Respondents

CA – Ms. Yvette

