



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LC CASE NO. E117 OF 2024

CYRUS IKAHU KIRIRIU..... 1ST

PLAINTIFF

VERSUS

EQUITY BANK KENYA LIMITED..... 1ST

DEFENDANT

KEYSIAN AUCTIONEERS..... 2ND

DEFENDANT

REGISTRAR OF LANDS

NAIROBI DISTRICT LAND REGISTRY..... 3RD

DEFENDANT

AND

**MURITHI WA NGIGI MICHERE.....INTERESTED
PARTY**

RULING

1. Before me for determination is the Notice of Motion dated 17th March 2025, in which the Applicant seeks the following orders:

a) THAT this court be pleased to strike out and or dismiss the suit filed herein for want of jurisdiction.

b) THAT this court be pleased to vacate the orders issued on 21st March 2023, and order that the 3rd Defendant does expunge from the register to land title Number Nairobi/Block 105/1855 the registration of the said orders.

c) THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Murithi Wa Ngigi Michere sworn on even date.

THE APPLICANTS' CASE

3. The Applicant averred that he purchased the suit property from the 1st Defendant. He contends that this court lacks jurisdiction over issues relating to charges and mortgages, as such matters are exclusively under the High Court's jurisdiction.

4. He further contended that the Plaintiff's assertion that his property was sold below its market value by the 1st Defendant falls within the jurisdiction of the High Court.

THE PLAINTIFF'S CASE

5. The Plaintiff filed a replying affidavit dated 24th June 2025 in opposition to the application. He argued that the Applicant's allegation that the issue for determination in this suit is the undervaluation of the suit property is misleading.
6. He asserted that he is challenging the irregular sale and attempts to transfer ownership of the suit property. He further asserted that the dispute is not commercial as it is not related to the accounts between himself and the 2nd Defendant and therefore it falls under the jurisdiction of this court.
7. The application was canvassed by way of written submissions.

THE INTERESTED PARTY'S SUBMISSIONS

8. The Interested party filed his submissions dated 17th July 2025.
9. On behalf of the Interested Party, Counsel outlined the following issues for the court's determination: -

a) Whether this court has jurisdiction to entertain the current suit in the form and manner it has been filed?

b) Whether this suit should be struck out or transferred to the appropriate court?

c) Who should bear the costs of these proceedings?

10. Regarding the first issue, Counsel argued that this court lacks jurisdiction, as the main dispute concerns the alleged undervaluation of the property, which arose from the 1st Defendants exercise of its statutory power of sale on a charged property. It was contended that matters involving charges and mortgages are within the jurisdiction of the High Court. To support this argument, reliance was placed on Section 13 of the Environment and Land Court Act and the case of **Kisimani Holdings Limited & another vs Fidelity Bank Limited (2013) eKLR.**

11. Regarding the second issue, Counsel relied on the case **of Chaurembo Mumba & 7 others vs Maurice Munyao & 148 others and Owners of Motor Vessel "Lillian S" vs Caltexx Oil (Kenya) Ltd (1989)** to argue that this suit should be struck for want of jurisdiction.

THE PLAINTIFF'S SUBMISSIONS

12. The Plaintiff filed his submissions dated 10th August 2025.

13. On behalf of the Plaintiff, Counsel outlined the following issues for the court's determination:-

a. Whether this Hon Court has jurisdiction over this matter

b. Whether the Plaintiff's suit should be struck out.

14. Regarding the first issue, Counsel argued that the dispute is not commercial in nature because it involves the fundamental right to property and an unlawful disposition of the title. To support this argument, reliance was placed on the case of **Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited and another (2018) eKLR.**

15. It was submitted that the dispute is not of a commercial nature because it does not involve tabulation, enumeration, or consideration of accounts. It was further submitted that the suit is based on the unlawful sale, undervaluation of the suit property, and the imminent threat of transfer of the title, which fall within this court's jurisdiction.

ANALYSIS AND DETERMINATION

16. Having considered the application, the respective affidavits, and the rival submissions, the issue that arises for determination is whether this suit should be struck out.

17. The Court has power to strike out pleadings under Order 2 Rule 15(1) of the Civil Procedure Rules, which provides as follows:-

15(1) At any stage of the proceedings, the court may order to be struck out or amended any pleading on the ground that:-

- a) It discloses no reasonable cause of action or defence in law;**
- b) It is scandalous, frivolous or vexatious; or**
- c) It may prejudice, embarrass or delay fair trial of the action; or**
- d) It is otherwise an abuse of the process of the court and may order the suit to be stayed or dismissed or judgment to be entered accordingly as the case may be.**

In the case of **Co-operative Merchant Bank Ltd v George Fredrick Wekesa (Civil Appeal No. 54 of 1999)** the Court of Appeal held that:

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant’s defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent’s action,

or which is otherwise an abuse of the process of the court.”

18. Striking out a pleading is a draconian act which may only be resorted to in plain cases. The court must therefore exercise the powers to strike out a suit with the greatest care.

19. The Interested Party contends that this Court lacks jurisdiction, because the dispute involves a charged property sold by the 1st Defendant in exercise of its statutory power of sale. It was argued that matters involving mortgages and charges fall under the jurisdiction of the High Court. According to the Interested Party, the main issue for determination is whether the property was sold below its market value.

20. It is trite that jurisdiction is everything, and without it, a court cannot proceed further. In the celebrated case of **Owners of Motor Vessel ‘Lillian S’ vs. Caltex Oil (Kenya) Limited (1989) eKLR**, the Court held that:-

“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...”

21. Similarly, the Supreme Court in the case of **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR** pronounced itself thus:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It

cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”

22. A court derives its jurisdiction from the Constitution, legislation, or both. The jurisdiction of this court is derived from Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act.

23. The jurisdiction of the ELC Court is set out in Section 13 of the **ELC Act** as follows:

(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 the environment and land

24. It is not in dispute that the suit property was sold to the Interested party by the 1st Defendant in exercise of its statutory power of sale. The Plaintiff is contesting the transfer of the suit property to the Interested Party. The issue for determination is whether the title for the suit property should be transferred to the Interested Party, which falls under this

court's jurisdiction. In light of the foregoing, I find that this court has jurisdiction to hear and determine this case.

25. The upshot of the foregoing is that the application dated 17th March 2025 is devoid of merit and the same is hereby dismissed with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 31ST DAY OF OCTOBER, 2025.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Kamau holding brief for Mwangi for the Interested Party

Ahmed - Court Administrator