



**Kinanu v Capital Sacco Limited & another (Environment and Land Appeal E002 of 2025) [2025] KEELC 7219 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7219 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E002 OF 2025  
BM EBOSO, J  
OCTOBER 23, 2025**

**BETWEEN**

**FRIDAH KINANU ..... APPELLANT**

**AND**

**CAPITAL SACCO LIMITED ..... 1<sup>ST</sup> RESPONDENT**

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

**RULING**

1. This appeal challenges the judgment of the Senior Resident Magistrate Court at Nkubu [Hon R Ongira – SRM] rendered on 17/12/2024 in Nkubu SPMC Civil Case No. E104 of 2023. The appellant was the plaintiff in the said case. Through a plaint dated 5/12/2023, the appellant sued the respondents and prayed for a declaration that the sale of land parcel number Nkuene/L-Mikumbune/683 by the respondents was fraudulent and illegal and should be cancelled. She also prayed for costs of the suit.
2. Her case in the trial court was that, at all material times, she was the registered proprietor of land parcel number Nkuene/L-Mikumbune/683 [the suit land]. In January 2018, she charged the suit land as a collateral for a loan of Kshs 800,000 which she took from the 1st respondent. She repaid the loan to the tune of Kshs 400,000. On 30/11/2023, she received a strange call from someone unknown to her, alleging that he had bought the suit land through a public auction carried out by the 2nd respondent.
3. The appellant averred in the plaint that her claim against the respondents was for an order reversing the sale of the suit land on the ground that it was done fraudulently and illegally. She itemized the following as the particulars of fraud and illegality by the respondents:
  - a. Advertising and selling the suit land without following the legal requirements of such a sale.
  - b. Failing to notify the plaintiff (appellant) the impending public auction of her land.



- c. Carrying out the auction in undisclosed location in order to deny the plaintiff (appellant) access to the venue in a clandestinely manner.
  - d. Selling the land below the market value to enrich themselves.
  - e. Failing to notify the plaintiff (appellant) to redeem her land.
4. The respondents filed a joint defence dated 16/5/2024 in which they averred that the appellant took a loan of Kshs 840,000 from the 1st defendant and subsequently failed to repay the loan within the agreed period despite the 1st respondent having restructured the loan at the appellant's request, giving her three additional years. They added that, as a result of the appellant's failure to repay the loan, the 1st respondent exercised the chargee's statutory power of sale and sold the suit land through public auction on 5/12/2023. They added that they followed all the laws, rules and regulations governing the exercise of the chargee's statutory power of sale, emphasizing that all the requisite statutory notices were duly served on the appellant. They contended that the public auction was conducted lawfully and openly. They urged the trial court to reject and dismiss the appellant's claim.
  5. Upon receiving evidence and submissions, the trial court rendered the impugned judgement in which it held that the suit by the appellant lacked merit. The trial court dismissed the appellant's suit with costs.
  6. Aggrieved by the judgement of the trial court, the appellant filed this appeal in the Environment & Land Court [the ELC], through a memorandum of appeal dated 23/12/2024. She advanced the following verbatim grounds of appeal
    1. The Learned Magistrate erred in law and in facts in finding that the appellant had not proved her case when she had tendered sufficient evidence to prove her case.
    2. The Learned Magistrate erred in law and in facts in deciding the suit outside the issues raised and she relied on extraneous facts in dismissing the plaint.
    3. The Learned Magistrate erred in law and in facts in deciding the whole case against the weight of evidence.
  7. The Deputy Registrar of the court was seized of the appeal from the date of filing to 11/9/2025. On 11/9/2025, the Deputy Registrar listed the appeal for directions before the Judge of the Environment and Land Court on 14/10/2025. Seized of the appeal for the first time, and upon perusing the record, the Judge requested the parties to the appeal to attend court on 22/11/2025 and address the court on the jurisdiction of the Environment and Land Court to hear and determine the appeal.
  8. Mr Kimathi Kiara appeared on behalf of the appellant and submitted that the dispute giving rise to the appeal was "an ELC matter". Counsel added that "the problem arose when the lower court designated the case as a civil case". Counsel added that the dispute was an "ELC matter" because it involved land. Counsel submitted that the dominant issue in the lower court was that "the plaintiff [appellant] accused the defendants [respondents] of selling her land fraudulently when she had repaid all the loan".
  9. The respondents were represented by Ms Kajuju. Counsel for the respondent submitted that the suit in the lower court was a civil case, adding that the issue in the lower court related to non-repayment of a loan secured by a charge against the suit land. Counsel submitted that the appeal should be transferred to the High Court but quickly added that she was aware that the court did not have jurisdiction to transfer the appeal. Counsel argued that the appellant should withdraw the appeal.



10. The court has considered the parties' submissions on the question of jurisdiction of the Environment and Land Court to entertain this appeal. The court has also perused both the original record of the trial court and the record filed in this appeal. The appellant's claim in the lower court has been summarized in the preceding paragraphs of this ruling. The defence of the respondents has also been summarized.
11. It is clear from the pleadings and from the evidence that was before the trial court that, through the suit in the trial court, the appellant challenged the 1st respondent's right to exercise the chargee's statutory power of sale. She also challenged the manner in which the respondents exercised the chargee's statutory power of sale. The dominant issue which fell for determination by the trial court was whether the 1st respondent's right to exercise the chargee's statutory power of sale had crystalized. That is the dominant issue which the trial court answered in the affirmative and dismissed the appellant's case. What was before the trial court was therefore a mortgage dispute. Does the Environment and Land Court have jurisdiction to deal with mortgage/charge disputes?
12. 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”
13. 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”.
14. 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”.

15. 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 whether the chargee served the requisite statutory notices under the Land Act falls outside the jurisdiction of the Environment and Land Court. Similarly, the question relating to the manner in which the statutory power of sale was exercised falls outside the jurisdiction of this court. Consequently, it is the finding of this court that this appeal was filed in a court that lacks jurisdiction to hear and determine it.

16. Can the appeal be transferred to the High Court? 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 properly 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.”

17. 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”.

18. Consequently, 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.”



18. On the question of costs of the appeal, the respondent did not raise the issue of jurisdiction. It is the court that raised the issue when the appeal was placed before the Judge for directions. Both parties were comfortably participating in an illegality. For this reason, parties will bear their respective costs of the aborted appeal.
19. 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 IN MERU THIS 23RD DAY OF OCTOBER, 2025**

**B M EBOSO [MR]**

**JUDGE**

