



Ardhilink Limited v Equity Bank Limited & another (Environment and Land Case E023 of 2025) [2025] KEELC 7704 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7704 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E023 OF 2025**

JA MOGENI, J

NOVEMBER 6, 2025

BETWEEN

ARDHILINK LIMITED PLAINTIFF

AND

EQUITY BANK LIMITED 1ST DEFENDANT

NGURU AUCTIONEERS 2ND DEFENDANT

RULING

1. In the Notice of Preliminary Objection dated 28/03/2025, the 1st Defendant has averred that the suit should be dismissed in limine on the following grounds:
 1. That this Honourable Court lacks jurisdiction to be seized of, entertain, or determine the issues raised in the Application as the same offends Article 162(2)(b) of *the Constitution* of Kenya 2010 and Section 13 of the *Environment and Land Court Act*.
 2. The Application as filed and prayers sought therein are unmeritorious, an abuse of the Court process and should be dismissed with costs to the 1st Defendant/Respondent.
 3. The Application is incompetent, fatally defective, and the same ought to be struck out or dismissed with costs.
2. The Notice of Preliminary Objection proceeded by way of written submissions. The 1st Defendant's advocate submitted that the primary issue in the Plaintiff's application and suit is whether the 1st Defendant's Statutory Power of Sale has properly accrued. From the Plaint the 1st Defendant submits that the Plaintiff does not dispute the charge instrument nor the creation of the enforceable interest. Therefore, it is the Applicant's submission that the main question to be determined is whether the Statutory Notices were issued prior to the attempted sale, which according to the 1st Defendant is to be determined by the High Court.



3. The gist of the Notice of Motion Application filed by the Plaintiff dated 18/02/2025 is that the Plaintiff applied for a loan financial facility from the 1st Defendant/Respondent who advanced to the Plaintiff a loan of Kesh 8,000,000 on 26/01/2022 and a further Kesh 10,000,000 on 24/06/2022.
4. That the Plaintiff charged Land Parcels Nos. Ruiru/Ruiru East Block 111858, Ruiru East/Juja East Block 2/41219 and Ruiru East/Juja East Block 2/41220 to the 1st Defendant to secure the two loans.
5. In the Supporting Affidavit sworn by the Director of the Plaintiff Patrick Ngigi Mbugua, he avers that the Plaintiff continued to service the loan up till 14/02/2025 when it became aware that the charged properties had been advertised for public auction on 21/02/2025. Yet according to him, the Plaintiff was not issued with the requisite statutory notices but its properties are at risk of being sold without the 1st Defendant following the laid down statutory provision despite the Plaintiff servicing the loans diligently.
6. The 1st Defendant averred that the Environment and Land Court has no jurisdiction in addressing issues of charges. It stated that the jurisdiction of Environment and Land Court is derived from Article 162 (2b) of *the Constitution* and Section 13 of the Environment and *Land Act*.
7. It was the 1st Defendant's submission that the issue of jurisdiction can be determined through a Preliminary Objection. They referred to the cases of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributor Ltd [1969] EA 696 as cited in Cooperative Bank of Kenya Limited v Kimani & Another (Environment and Land Appeal E033 of 2023 [2024] KEELC 3584 (KLR) (12 April 2024) (Ruling), Business Partners International Kenya (II) Limited v Rudufu Limited & 2 Others (Miscellaneous Application E027 of 2023) [2023] KEELC 22458 (KLR) among others.
8. Further the 1st Defendant averred that the primary issue in the suit is the issuance of the notices and the subsequent Statutory Power of Sale, the Courts have held that the Environment and Land Court lacks jurisdiction to entertain the suit.
9. In holding the position stated at paragraph 8 the 1st Defendant relied on the cases of Co-operative of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] KECA 79 (KLR), Thomas Mutuku Kasue v Housing Finance Company Limited (HFC) & Another [2021] eKLR cited with approval in Keter v EcoBank Kenya Limited (Civil Case 16 of 2018) [2022] KEHC 13352 (KLR) (28 September 2022) (Ruling), Murugi v Kanyi & Another (ELC Case No. E004 of 2023) [2024] KEELC 1823 (KLR) (20 March 2024) (Ruling), and Mturi & Another v Diamond Trust Bank Kenya Limited (Environment & Land Case E54 of 2023) [2024] KEELC 6167 (KLR) (26 September 2024) (Ruling).
10. On their part the Plaintiff/Applicant argued that Environment and Land Court under Section 13 (2) (d) has jurisdiction to hear disputes relating to contracts in land, choses in action and other interests in land. That a charge is an instrument that gives an interest in land.
11. The Applicant's view is that the Plaintiff was not served by the Defendants with 90-day statutory notice as mandated under Section 90 (2) (b) of the *Land Act*, 40 - day statutory notice under Section 96 (2) of the *Land Act* and the 45 - day redemption notice under Rule 15 (d) of the Auctioneers Rules. That as a matter of fact the Defendants did not conduct a forced sale valuation as mandated under Section 97 (2) of the *Land Act* so that a reasonable value for Plaintiff's properties is fetched and equally the advertisement by public auction did not also state the selling prize for the Plaintiff's properties. It is as a result of the forgoing that the Plaintiff filed the suit challenging the legality of the purported sale of charged properties Land Parcel No Ruiru/Ruiru East Block 1/1858; Ruiru East Juja East Block 2/41219 and Ruiru East Juja East Block 2/41220, which suit led to the filing of the instant Preliminary Objection.



12. It is the Plaintiff's submission that a Preliminary Objection must be raised on the assumption that all facts pleaded by the adverse party are correct. It must not raise substantive issues from the pleadings which must be determined by Court upon perusal of evidence. No Preliminary Objection ought to be raised if any fact has to be ascertained.
13. The Plaintiff submits that Parliament had the role of determining the jurisdiction of the Courts created under Article 162 (2) and parliament enacted the *Environment and Land Court Act*, Cap 80 and section 13 of the said Act provides for the jurisdiction of the ELC Court.
14. The Plaintiff submitted that section 13(2)(d) of the Act provides that the Court has jurisdiction to hear disputes relating to inter alia, "contracts, choses in action or other instruments granting an enforceable interest in land". They further submitted that it cannot be argued that a charge is not an instrument that gives an enforceable interest in land, or that it is not an instrument that relates to land, or that it is not an instrument that is contractual in nature and is over land.
15. The Plaintiff submitted that it is the ELC and the empowered subordinate Courts have jurisdiction to hear disputes relating to matters in the *Land Act* and *Land Registration Act*. That this jurisdiction covers all instruments created within these statutes, which must also encompass charges, and generally all proprietary transactions.
16. That the process of sale by charge which is what is questioned in this case, is a process that it laid down in the *Land Act* and *Land Registration Act*. The Plaintiff in their submissions stated that the Plaintiff was not served by the Defendants with the 90 day statutory notice as mandated under section 90(2)(b) of the *Land Act* as earlier stated. That the sale of a charged property by chargee is really no different from a sale by one private individual to another and both sales involve title and the process of acquisition of title to land.
17. They equally submitted that if one argues that the ELC has no jurisdiction to hear a dispute over the process of sale by a charge then it can as well be argued that the ELC has no jurisdiction to hear a dispute over a sale of land by one individual to another which argument is absurd. It thus follows that the High Court does not have jurisdiction to hear such a matter given the provisions of Article 165 (5)(b) of *the Constitution* which provides that the High Court shall not have jurisdiction in respect in respect of matters falling within the jurisdiction of the Courts contemplated in Article 162 (2).
18. The Plaintiff has relied on the following cases among others Mukisa Biscuit Manufacturing Company Ltd v West End Distributor Ltd 1969 E.A 696, Muumbo & Another (C/o Muigai Kemei & Associates Advocates v Mwingi View Point Lodge Limite & 8 Others (ELC Case 10 OF 2023) 2024 1KEELC, 6921 (KLR) (22 October 2024) (Ruling), Supreme Court in Republic v Chengo & 2 Others (Petition 5 of 2015) (2017) KESC 15 (KLR) (26 May 2017) (Judgment), Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another (2018) KEELC 1599 (KLR), Stephen Kibowen v Agricultural Finance Corporation [2015] KEELC 592 (KLR), Supreme Court in Republic v Chengo & 2 Others (Petition 5 of 2015)[2017] KESC 15 (KLR) (26 May 2017) Judgment, Court of Appeal in the case of Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5Others (2017) KECA 79 (KLR), Gestered Professional Services v KCB Kenya Limited & Another (ELC Case No. E014 of 2024) [2025] and Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another [2018] KEELC 1599 (KLR).
19. My brothers Justice Sila Munyao and Justice Olao distinguished the Court of Appeal decision in Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others (2017) KECA 79 (KLR) where the Judges found that the dominant issue in the cases was not about the money that was to be paid to forestall the auction or on the part of Silas Munyao, J he clearly stated that one cannot be



heard to say that a sale by a charge does not confer an interest in land. Since the purchaser acquires an interest in land and thus a title. This being the case the matter is indeed under the jurisdiction of the ELC Court.

Analysis and Determination

20. The Preliminary Objection herein is challenging the Court’s jurisdiction, the only issue that this Court needs to determine is whether this Court is competent to hear and determine this suit. In the Court of Appeal decision in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR, the Court held:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. 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.”

21. As earlier stated it is settled, and not in doubt, that the jurisdiction of a Court emanates from *the Constitution*, statute or both. The jurisdiction of this Court is provided for in Article 162 (2) (b) of *the Constitution* of Kenya 2010 as read with Section 13 of the *Environment and Land Court Act*. In addition, Sections 2 of the *Land Act* as well as the *Land Registration Act* defines the Court that ought to determine matters under those Acts to be the Environment and Land Court.

22. Therefore, the jurisdiction of the Environment and Land Court as defined in Article 162 (2) (b) and expounded in Section 13 of the *Environment and Land Court Act* is in respect to use and occupation of, and title to land.

23. A charge is an instrument creating an interest in land, being an encumbrance on the land, as a guarantee for repayment of debt or for fulfilment of agreed terms between parties to the charge. Therefore, there can be no charge without an interest in land. Section 2 of the *Land Act* defines a charge as follows; “Charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a sub charge and the instrument creating a charge, including:-

- a. An informal charge, which is a written and witnessed undertaking, the clear intention of which is to charge the chargor’s land with the repayment of money or money’s worth obtained from the chargee; and
- b. A customary charge which is a type of informal charge whose undertaking has been observed by a group of people over an indefinite period of time and considered as legal and binding to such people.

24. Section 2 of the *Land Act* also defines “Court” as follows;

“Court” means the Environment and Land Court established under the *Environment and Land Court Act*, 2011 (No. 19 of 2011).”

25. Under the *Land Act*, part VII (Section 78 to 106) of the Act makes provision for charges. Under Sections 104 to 106 of the *Land Act*, the Environment and Land Court has power, in respect to a



dispute concerning a charge, to grant remedies and reliefs in regard to reliefs sought under part VII of the *Land Act*. Sections 104 to 106 of the *Land Act* provides as follows;

“Section 104

Power of the Court in respect of remedies and reliefs

1. In considering whether to grant relief as applied for, a Court;
 - a. shall, have regard to whether the remedy which the chargee proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred if the charged land consists of agricultural land or commercial premises, and the remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof;
 - b. shall, where the charged land consists of or includes, a dwelling-house, and the remedy proposed is to appoint a receiver, or take possession or lease the dwelling house or a part of it, have regard to the effect that the appointment of a receiver or the taking of possession or leasing the whole or a part of the dwelling house would have on the occupation of the dwelling house by the chargor and dependants and if the effect would be to impose undue disturbance on those owners, whether it is satisfied that—
 - i. the chargee has made all reasonable efforts, including the use of other available remedies available, to induce the chargor to comply with the obligations under the charge; and
 - ii. the chargor has persistently been in default of the obligations under the charge; and
 - iii. if the sale is of land held for a customary land, the chargee has had regard to the age, means, and circumstance including the health and number of dependants of the chargor, and in particular whether;
 - (aa) the chargor will be rendered landless or homeless;
 - (bb) the chargor will have any alternative means of providing for the chargor and dependants;
 - iv. it is necessary to sell the charged land in order to enable the chargee to recover the money owing under the charge;
 - v. in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the charged land.



2. A Court may refuse to authorise an order or may grant any relief against the operation of a remedy that the circumstances of the case require and without limiting the generality of those powers, may;
 - a. cancel, vary, suspend or postpone the order for any period which the Court thinks reasonable;
 - b. extend the period of time for compliance by the chargor with a notice served under section 90;
 - c. substitute a different remedy or the one applied for or proposed by the chargee or a different time for taking or desisting from taking any action specified by the lessor in a notice served under section 90;
 - d. authorise or approve the remedy applied for or proposed by the chargee, notwithstanding that some procedural errors took place during the making of any notices served in connection with that remedy if the Court is satisfied that;
 - i. the chargor or other person applying for relief was made fully aware of the action required to be taken under or in connection with the remedy; and
 - ii. no injustice will be done by authorising or approving the remedy, and may authorise or approve that remedy on any conditions as to expenses, damages, compensation or any other relevant matter as the Court thinks fit.
3. If under the terms of a charge, the chargor is entitled or is to be permitted to pay the principal sum secured by the charge by instalments or otherwise to defer payment of it in whole or in part but provision is also made in the charge instrument or any collateral agreement for earlier payment of the whole sum in the event of any default by the chargor or of a demand by the chargee or otherwise, then for purposes of this section the Court may treat as due under the charge in respect of the principal sum secured and of interest on it only the amounts that the chargor would have expected to be required to pay if there had been no such provision for earlier payment.
4. A Court must refuse to authorise or approve a remedy if it appears to the Court that;
 - a.
 - b. the default in issue has been remedied;
 - c. the threat to the security has been removed;
 - d. the chargor has taken the steps that the chargor was required to take by the notice served under section 90; and(d)the chargee has taken or attempted to take some action against the chargor in contravention of section 90(4).



Section 105

Power of the Court to re-open certain charges and revise terms

1. The Court may reopen a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

Section 106

Exercise of power to re-open certain charges

1. The Court may exercise the powers conferred on it by this Act either;
 - a. on an application made to it for that purpose by either the chargor or the chargee;
 - i. to enforce the charge; or
 - ii. to commence an action under section 90; or
 - b. on an application by the chargor for relief against the exercise by the chargee of any remedy in connection with a default by the charger under a charge; or
 - c. on an application by the Registrar in respect of;
 - i. charges provided by one or more specific chargees where there is prima facie evidence of a pattern of unfair dealing and practices by that chargee or those chargees; or
 - ii. a chargee, being a corporate body, that appears to exercise discrimination against chargors on account of their gender, or by refusing to grant charges to persons on account of their gender except that a chargee, being a corporate body that is implementing any programme, approved or assisted by the national or county governments, designed to assist women to improve their economic and social position by providing them with advances secured by a charge of land shall not be taken to be acting in discriminatory manner if the advances under that programme are made only to women.



2. In reopening the charge, the Court may—
 - a. direct that the charge shall have effect subject to modifications that the Court shall order;
 - b. require the chargee to repay the whole or part of any sum paid under the charge or any related or collateral agreement by the chargor or any guarantor or other person who assumed an obligation under the charge whether it was paid to the chargee or any other person;
 - c. require the chargee to pay any compensation to the chargor which the Court shall think fit; or
 - d. direct the chargee, being a corporate body to cease acting in a discriminatory manner with respect to the granting of charges
3. In considering whether to exercise the powers conferred on it by this section, the Court shall have regard to;
 - a. the age, gender, experience, understanding of commercial transaction, and health of the chargor at the time when the charge was created, if the chargor is an individual;
 - b. the financial standing and resources of the chargor relative to those of the chargee at the time of the creation of the charge;
 - c. the degree to which, at the time of the creation of the charge, the chargor was under financial pressure and the nature of that pressure;
 - d. the interest rates prevailing at the time of the creation of the charge and during the continuation of the charge and the relationship of those interest rates to the interest rate applying from time to time in the charge;
 - e. the degree of risk accepted by the chargee, having regard to the value of the charged land and the financial standing and other resources of the chargor;
 - f. the importance of not undermining the confidence of reputable chargees in the market for charges; and
 - g. any other factors that the Court considers relevant.”



26. Besides, Section 150 of the [Land Act](#) provides in respect of the jurisdiction of the Environment and Land Court as follows;
- “The Environment and Land Court established in the [Environment and Land Court Act](#) and subordinate Courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”
27. Therefore the question that must be answered herein is whether the dispute as framed by the Plaintiff herein is a dispute concerning land under the [Land Act](#) and therefore subject to the jurisdiction of this Court in view of the provisions of Sections 2, 104, 105, 106, and 150 of the [Land Act](#)?
28. In the instant case the Plaintiff is the registered owner of the land parcels Nos. Ruiru/Ruiru East Block 1/1858, Ruiru East Juja East Block 2/41219 and Ruiru East Juja East Block 2/41220. The Plaintiff applied for a financial facility from the 1st Defendant and it advanced a loan of Kesh 8,000,000 on 26/01/2022 and a further loan of Kesh 10,000,000 on 24/06/2022. The parcels mentioned thereabove were charged to the 1st Defendant and the two loans consolidated to a cumulative value of Kesh 15,857,000 and the Plaintiff avers to have continued to service the loan up till 14/02/2025 where the Plaintiff became aware that its charged properties had been advertised for sale by public auction on 21/02/2025 in the Daily Nation of 6/02/2025 through the 2nd Defendant but the Plaintiff claims not to have been served by the Defendants with the 90 day statutory notice as mandated under Section 90 (2) (b) of the [Land Act](#), no statutory notice under Section 96(2) (b) of the [Land Act](#) and the 45 day redemption notice under Rule 15 (d) of the Auctioneers Rules.
29. Therefore, the Plaintiff sought the following orders:
- a. A Permanent order of injunction do issue restraining the Defendants whether by themselves, servants and/or agents from selling, disposing, leasing, occupying or in any way dealing with or alienating the property rights in the Plaintiffs charged properties being land parcels Nos. Ruiru/Ruiru East Block 1/1858, Ruiru East Juja East Block 2/41219 and Ruiru East Juja East Block 2/41220.
 - b. Costs of this suit.
 - c. Any further and other just relief this Honorable Court may deem fit to grant.
30. The 1st Defendant’s argument that this Court has no jurisdiction is anchored on several decisions that it relied on one of them being the of the Court of Appeal in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others (supra). More specifically the holding that the ELC’s jurisdiction is on land use which is basically in regard to employment of the surface of the land or the air above it or the ground below it, which has nothing to do with the creation of a charge as a charge relationship is limited to ensuring that the chargee has assurance of the payment of the debt given to the chargor. That the charge relationship creates a commercial relationship which ought to be determined by the High Court.
31. On the other hand, the Plaintiff argued that where a dispute relates to matters other than the accounts, for instance, valuation, and the legality of notices including redemption notice to be served under Part VII of the [Land Act](#), then the ELC has jurisdiction and that Section 150 of the [Land Act](#) and Section 101 of the [Land Registration Act](#), provide for the jurisdiction of this Court. He maintained that as his suit was challenging compliance of Sections 90, 96 and 97 of the [Land Act](#) which fall within Part VII of the [Land Act](#) providing for charges, then this Court has jurisdiction to determine the dispute herein.



32. In view of the above, it is evident that the Plaintiff's claim is a challenge on the process of the exercise of the Defendant's statutory power of sale. According to the Plaintiff, the Defendant contravened Sections 90 (2), 96 (2) and 97 of the Land Act. The question therefore is which Court between this Court and the High Court has jurisdiction to determine the question posed in the dispute.
33. In *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others* (above) it had been contended that the High Court lacked jurisdiction to entertain a matter where the Plaintiffs therein had sought to restrain a bank therein from taking steps to sell charged property in exercise of statutory power of sale and that the jurisdiction over the matter lay with the Environment and Land Court. It was contended in that case that charging the suit land constituted "use" of land within Article 162(2) (b) of the Constitution. In rejecting that contention, the Court of Appeal stated:
- “ 36. By definition, a charge is an interest in land securing the payment of money or money's worth or the fulfilment of any the condition (see Section 2 of the Land Act). As such, it gives rise to a relationship where one person acquires rights over the land of another as security in exchange of money or money's worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the Land Act). The creation of that relationship therefore, has nothing to do with use of land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced of a charger.
37. Further, Section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use.”
34. Given the foregoing observations and taking into account the issues raised herein, it is thus critical and paramount that I proceed to ascertain and authenticate whether indeed the nature of the dispute beforehand falls within the jurisdiction of this Honourable Court.
35. Be that as it may, it is now imperative to ascertain and discern; what then is the dispute before the Court. In this regard, it is evident and apparent both from the Plaintiff's complaint is that the 1st Defendant has neither issued nor served the requisite statutory, either as required under the law or at all.
36. On the other hand, the Plaintiff's/Respondent's complaint also touches on and concerns the legality or otherwise of the impugned exercise of the statutory power of sale by the 1st Defendant/Applicant.
37. Informed by the foregoing complaints, the Plaintiff/Respondent has thus sought to impress upon the Court that the intended exercise of the statutory power of sale is therefore illegal, null and void and ought to be averted, restrained and/or prohibited.
38. My understanding of the Plaintiff/Respondent's case is to the effect that same is challenging the propriety, validity and legality of the impugned exercise of the statutory power of sale by the 1st Defendant/Applicant.
39. Consequently, and in the premises, the question that does arise is whether a suit challenging and impeaching the exercise of the chargee's statutory power of sale by law falls within the jurisdiction of the Environment and Land Court or otherwise.



Issue for Determination

40. The singular issue for determination is to establish whether this Court has the jurisdiction to hear and determine this matter.

Analysis and Determination

41. The question of jurisdiction is not a trifling matter to be glossed over in the rush toward substantive adjudication; rather, it is the very foundation upon which all judicial proceedings must firmly stand. Jurisdiction is not assumed by convenience nor conferred by acquiescence; it must exist as a matter of law, clearly and unequivocally. If absent, the Court is duty-bound to lay down its tools.

42. I have taken the liberty to again consider and apply Patrick Kangethe’s case, (supra) in particular, Sila J in *Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another* (2018) eKLR sought to distinguish himself. He found that;

“My own understanding of the above decision, is that the Court of Appeal was of opinion that the particular dispute was more in relation to accounts of which the High Court had jurisdiction to hear.”

43. Like my Sister Nelly Matheka J observed in *Thabiti Capital Limited v Equity Bank (Kenya) Limited & Another* (Environment & Land Case E046 of 2023) [2023] KEELC 22310 (KLR) (14 December 2023) (Ruling);

“I do not think that the Court of Appeal was holding the position that once the Environment & Land Court (ELC) sees the word “charge” mentioned in any pleadings, then the ELC should down its tools, for if that were the case, this would conflict with what *the Constitution* under Article 162 (2) (b), and parliament under Section 13 of the *Environment and Land Court Act* No.19 of 2011, have prescribed as being the jurisdiction of the ELC.”

44. The Court was of the view that from Section 13 (2)(d) of the ELC Act, this Court has jurisdiction to hear disputes relating to contracts, choses in action or other instruments granting an enforceable interest in land. The Court proceeded to find that a charge is an instrument that gives an enforceable interest in land and that a dispute over the manner in which a charge has exercised his statutory power of sale would be a dispute within the *Land Act* and *Land Registration Act* and these statutes provide that the Court with jurisdiction is the ELC. The Court progressed to find that;

“I have already pointed out that the process of disposing of a charged property is a process elaborated in the *Land Act* and *Land Registration Act*, and these two statutes provide that it is the ELC with jurisdiction. The High Court cannot therefore have jurisdiction, given the provisions of Article 165(5) of *the Constitution*, to hear a matter relating to the process of sale of a charged property, unless that issue arises in a case relating to issues that the High Court would have jurisdiction, and the same cannot be severed from these other issues. It needs to be appreciated that the High Court cannot have jurisdiction over matters that fall within the jurisdiction of the ELC.”

45. The Court from the *Lydia Nyambura Mbugua* (supra) was of the view that where a case presents mixed issues some falling within the jurisdiction of the ELC and some falling within the jurisdiction of the High Court, the best thing would be to dwell not so much on the purpose of the transaction but the subject matter or issue before the Court. In this case, the issues at hand revolve around the tabulation of



the sum owing under the charge and whether the statutory right of sale had arisen or whether statutory notices were issued prior to the attempted statutory sale. In addition, the Plaintiff contends that the Defendants have failed to undertake a valuation of the subject matter, and if one has been undertaken the same has not been shared with the Plaintiff, hence the intended sale by public auction is illegal. It is therefore clear that the Plaintiff is not only disputing the tabulation amounts but also the process under which the 1st Defendant seeks to exercise its statutory power of sale. In my view, this Court has jurisdiction to hear this dispute even where the question is whether the party has properly calculated its figures since a charge is a form of acquisition of title to land, which is governed by the Land Act and Land Registration Act for which this Court has jurisdiction over. This was the position taken in the above case where Sila J held that;

“Going back to the issue at hand, in cases revolving around a charge, and the chargee’s exercise of its power of sale, where the predominant issue is whether the statutory right of sale has arisen; or whether a statutory notice was issued; or whether the property has properly been advertised; or whether generally, the process of sale is in accordance with the provisions of the Land Act and Land Registration Act, then the matter would fall under the jurisdiction of the ELC, for these processes are laid down in the Land Act and Land Registration Act, for which it is the ELC which is the Court with jurisdiction. It should also not be forgotten that this is a process of acquisition of title to land. However, if the predominant complaint is whether the bank has properly calculated its figures, and not how the bank is proceeding to sell the property, then this could be a High Court matter, but again, as I have stated above, if this issue is collateral to the process of sale, and not severable, the ELC would still have jurisdiction to hear the whole of the dispute including related issues such as the amounts payable, where these cannot be severed from the dominant issue.”

46. It is therefore my honest view as has been held by several cases before that even where accounts arise, as it has done in this case, the same cannot be used to deprive this Court of its jurisdiction to hear and determine the dispute before it. The issue at hand is the creation of a charge over Parcels Land Parcel No Ruiru/Ruiru East Block 1/1858; Ruiru East Juja East Block 2/41219 and Ruiru East Juja East Block 2/41220 and the manner in which the 1st Defendant sought to exercise its statutory power of sale. Where a bank proceeds to release its statutory power of sale, the resultant acquisition of title of the suit property, which falls within the jurisdiction of this Court. Moreover, the Land Act, which provides for the chargee’s power of sale under Section 96, confers the ELC in Section 150 with the exclusive jurisdiction to hear and determine disputes, actions and proceedings under the Act. Section 150 of the Land Act, 2012 confers the Environment and Land Court (ELC) with the exclusive jurisdiction to hear and determine disputes, actions, and proceedings concerning land under the Act. This includes disputes related to the chargee’s power of sale provided for under Section 96 of the same Act.
47. Many Court cases have interpreted “disputes concerning land” to include challenges to the legality of the process of exercising the statutory power of sale by a chargee (lender), such as issues regarding the validity of statutory notices (Sections 90, 96, 97 of the Land Act) or property valuation.
48. While the relationship between a chargor (borrower) and chargee is commercial in nature, disputes that directly touch on an interest in land, such as challenging the actual sale or the process leading to it, fall under the Environment and Land Court’s jurisdiction. Disputes purely over accounts or the amount of debt owed, without seeking remedies regarding the charged land itself, may be heard by the High Court.



49. Therefore, on the basis of the analysis that I have made above it is my finding that this Court has jurisdiction to hear and determine the dispute before it and as such the Notice of Preliminary Objection dated 28/03/2025 lacks merit and is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 6TH DAY OF NOVEMBER, 2025.

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**MOGENI J
JUDGE**

In the presence of:-

Mr. Okeyo for Plaintiff

Ms. Omalla for the 1st and 2nd Defendants

Mr. Melita – Court Assistant

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**MOGENI J
JUDGE**

