



**JNG v Equity Bank Kenya Limited & 2 others (Environment and Land Case E059 of 2025) [2025] KEELC 7966 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7966 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E059 OF 2025  
JA MOGENI, J  
NOVEMBER 19, 2025**

**BETWEEN**

**JNG ..... PLAINTIFF**

**AND**

**EQUITY BANK KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENTS AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KIAMBU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 10/04/2025 and brought under Order 40 Rule 1, 2, 3 & 4 of the Civil Procedure Rules 2010 and Section 3A of the *Civil Procedure Act*, Cap 21, Article 159 (1) & (2) of *the Constitution* the Applicant seeks the following Orders:
  - a. Spent.
  - b. That the Defendants/Respondents themselves, agents, representatives, persons working under their instructions and/or servants be restrained by an Order of the Court from interfering, disposing and/or selling by Public Auction land parcel number Juja/Kiura xxxx (xxxxxx) 4xx and 4xx pending the hearing and determination of this suit
  - c. That the Defendants/Respondents himself, agents, representatives and/or servants be restrained by an Order of the court from transferring or interfering land parcel number Kiambaa/Ruaka/xxxx pending the hearing and determination of this suit
  - d. That this Honorable Court be so pleased to issue any orders it deems fit in the circumstances.
  - e. That the cost of this application be provided for.



2. The Application is supported by the sworn Affidavit of JNG, the Plaintiff/Applicant herein sworn on 10/04/2025. The grounds on the face of the application and the Supporting Affidavit are that the Applicant is the lawful spouse to MK having been married under customary law on or about 2007 the registered owner of land parcels mentioned hereabove.
3. That the properties were part of matrimonial properties with the Applicant having matrimonial home in Ruaka and having matrimonial rights in Juja properties. The properties are valued at over 90 million with land parcels number Juja/Kiura xxxx (xxxxxx) 4xx and 4xx valued at over 60 million. While Kiambaa/Ruaka/xxxx is valued at over 60 million.
4. It is the Applicant's take that she risks suffering irreparable damage if the registration of the sale by public auction by the 1<sup>st</sup> Defendant by their agents and/or representatives is carried out, depriving the Plaintiff/Applicant of their property and shelter.
5. The Plaintiff/Applicant stated that she is currently living in fear and apprehension unknowing when and how the 1<sup>st</sup> and 2<sup>nd</sup> Defendants intend to enforce their sale aimed at kicking the Plaintiff/Applicant and her family out of their family homes.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a joint Replying Affidavit sworn on 17/04/2025 by the Manager Legal Services at Equity Bank (Kenya) Limited Kariuki King'ori the 2<sup>nd</sup> Defendant is an agent of the 1<sup>st</sup> Defendant who has authorized the 1<sup>st</sup> Defendant to swear the Affidavit.
7. They denied the averments in paragraphs 7,8,9,10,11,12,13,14,15,16,17, 18 and 19 of the Supporting Affidavit.
8. He averred that the bank advanced a loan facility to M.K through an Offer Letter dated 15/03/2018 for Kesh 50,000,000/- as shown through annexure 'EBKL-1' and 'EBKL-2'. The facility was to be used for construction of 5 - storey rental Block on property Title No. Kiambaa/Ruaka/xxxx, Construction of 5 - Storey rental Block on properties Title number Juja/Kiura xxxx (xxxxxx) 4xx and 4xx at Muigai-inn, Kenyatta Road
9. That the bank gave a 9 months moratorium on principal repayment but that during this period, interest would be payable monthly in arrears on the drawn balances and thereafter, the loan would be repaid by 111 instalments compromising of both principal and interest in sum of Kesh 402,832 each till the clearance of the facility.
10. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants averred that the Plaintiff offered the said properties as security and legal charges were registered against the security and legal charges were registered against the titles as evidenced by the copies of the legal charges annexure 'EBKL-3'.
11. It is the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's averment that the Plaintiff executed the Spousal Consent on 10/04/2018 where she stated that she had full knowledge of the security and she was not forced to execute the consent which is attached at page 25 and 22 showing the charge documents for the two properties in Ruaka and Juja.
12. According to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the Debtor was unable to service the loan as per the loan agreement and the facility fell into arrears which forced the 1<sup>st</sup> Defendant to exercise its Statutory Power of Sale and all Statutory Notices were issued and sent via Post at the last known address as per the Spousal Consent P.O. Box 1838-00200 Nairobi as depicted by annexure 'EBKL-5'.
13. At the same time the 1<sup>st</sup> Defendant caused a valuation to be undertaken and there are reports dated 3/12/2024 where the forced value for Ruaka property was Kesh 58,000,000 and the Juja Property was Kesh 40,350,000 as depicted vide the attached copies of valuation reports dated 3/12/2024 and marked



as 'EBKL-5'. That as a matter of fact before the recovery process commenced, the 1<sup>st</sup> Defendant had engaged the Debtor in negotiation at a meeting of 24/01/2025, where there was an agreed repayment formula which was that the rental income from Ruaka property of Kesh 541,000 and a further top up from other resources totaling Kesh 850,000 would pay towards resettling the loan. The Juja property being still under construction.

14. Since the Debtor negated on the commitment the 1<sup>st</sup> Defendant instructed the 2<sup>nd</sup> Defendant to sell the two properties via public auction. A subsequent meeting held on 21/03/2025 at the Debtor's office mutually agreed that the Debtor would pay:
  - i. Kesh 6,466,000 by 28/03/2025;
  - ii. Kesh 5,000,000 by 15/04/2025 and final instalment of;
  - iii. Kesh 11,535,629.000 by 30/04/2025 this was to settle accrued arrears and thereafter the debtor was to pay Kesh 850,000 monthly instalments. With this agreed the 1<sup>st</sup> Defendant will stop the auction slated for 8/04/2025;
  - iv. It was also agreed the debtor would pay the auctioneers fees and the 1<sup>st</sup> Defendant was to negotiate for a rebate on it. The 1<sup>st</sup> Defendant was to proceed with recovery process with no further recourse if the debtor negate the agreed actions;
  - v. That prior to the meeting of March the debtor filed a suit seeking injunctive reliefs dated 20/03/2025 and the 1<sup>st</sup> Defendant wrote to the Counsel and sought an out of Court settlement on the terms hereinabove which the debtor was agreeable to and evidenced by annexures 'EBKL-6' and '7' and a consent was shared it is marked as 'EBKL-8'.
  - vi. The parties seemed not keen to record a consent and Justice Visram Aleem dismissed through a Ruling dated 7/04/2025 the injunctive prayers sought vide the application filed of the case HCCoMM No. E217 of 2025. In particular the Judge stated at paragraphs 17-18 that:
    - “ 17. I am satisfied, in light of the above that the relevant statutory notices were duly served on the Applicant, and that the Bank's statutory power of the sale have crystalized in accordance with the law
    18. While I empathized with the Applicant noting that he suffered from health challenges and was hospitalized for a period of time between 2020 and 2021, unfortunately the same is not a legal ground for the grant of injunctive orders in circumstances such as the present.
    19. This is especially because, the Bank has carried out the process of recovery in accordance with the law, the debt is expressly admitted, remains due, and has been outstanding for a prolonged period of time. Further, it is evident that all efforts to renegotiate the terms of repayment and to compromise the matter in an amicable manner have failed. There is therefore no valid ground upon which the Bank ought to be restrained from exercising its statutory power of sale.”
  - vii. Given the foregoing the public auction slated for 8/04/2025 proceeded and the proceeds obtained from selling the Ruaka property was enough to clear the outstanding loan of Kesh 54 million and therefore there is no need to sell the Juja properties.



- ix. Despite the dismissal of the application the substantive suit is still pending in the High Court at Milimani as evidence vide the Causelist attached as 'EBKL-10'. Thus, the instant suit is sub judice but also that this Court lacks jurisdiction since the matter at hand is commercial in nature and not a land transaction per se. That therefore the application of the Plaintiff lacks merit and is frivolous and vexatious and ought to be dismissed in limine with costs.
15. The Plaintiff/Applicant duly complied with the directions of the Court and filed their respective submissions. The Plaintiff's submissions are dated 10/04/2025 at the time of writing this Ruling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not filed their submissions. I have duly considered the Plaintiff's submissions in arriving at my decision.
16. In their pleadings, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their Replying Affidavit raised the issue of subjudice and the issue of jurisdiction. Now jurisdiction is everything and our jurisprudence on disposal of questions relating to jurisdiction is well settled. In the locus classicus case of Owners of Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Ltd (1989) 1 KLR, Nyarangi JA outlined the relevant principle on disposal of jurisdictional questions 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. A Court of law downs its tools in respect of the matter before it at the moment it holds the opinion that it is without Jurisdiction.”
17. I will, in the circumstances, first dispose the issue of jurisdiction since it has the potential to settle all other issues in this application. Thus, a Court must first and foremost address an issue of jurisdiction first whenever it is raised in a suit or an application because jurisdiction is a fundamental, threshold question that goes to the very power and authority of the Court to hear and determine a case.
18. In R v Karisa Chengo (2017) eKLR, the Supreme Court of Kenya defined jurisdiction as follows:-
- “By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics... where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”
19. In Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR, the Supreme Court of Kenya outlined the following jurisprudential principle on the source and scope of jurisdiction of a Court:
- “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.”



20. The broad jurisdiction of the Environment and Land Court of Kenya is spelt out in Article 162(2)(b) of *the Constitution* in the following words:

“ 162

- (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.”

21. Additionally, Section 13 of the *Environment and Land Court Act* outlines the Environment and Land Court’s jurisdiction 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 [the ELC] 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.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*.”

22. It is therefore apparent from the pleadings and from other materials presented to the Court at this stage that the Plaintiff/Applicant asserts that the suit property is matrimonial property and that the 1<sup>st</sup> Defendant ought to deal with it in tandem with the law relating to matrimonial property. Although, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants deposed in the Replying Affidavit that the suit property was acquired for construction of commercial premises for rental purposes. It is therefore apparent that the gist of the dispute in this suit revolves around the rights of the wife over what she terms as matrimonial property.

23. Since this is the case for matrimonial property then, Is the Environment and Land Court the proper Court vested with jurisdiction to deal with this kind of dispute?



24. I am persuaded that the Environment and Land Court is then not the right forum to deal with this kind of dispute because the Plaintiff/Applicant has come to this Court asserting that the suit property is both a matrimonial property and a matrimonial home and that the Defendant can only deal with it as such. The procedure for affirming or rejecting that contention is the one envisaged under the *Matrimonial Property Act* 2013. Although the Act does not expressly define the Court envisaged to exercise jurisdiction under that framework, Section 17 of the Act does contain the following provisions on how a spouse is supposed to seek redress relating to a right over matrimonial property:

“ 17. Action for declaration of rights to property (1) A person may apply to a Court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person. (2) An application under subsection (1)—

- (a) shall be made in accordance with such procedure as may be prescribed;
- (b) may be made as part of a petition in a matrimonial cause; and
- (c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.”

25. Now, given that the *Matrimonial Property Act* contemplates exercise of jurisdiction by a Court but does not define that Court, the fallback position, in my view, is Article 165(3)(a) of *the Constitution* which vests in the High Court unlimited original jurisdiction in criminal and civil matters, subject only to the disputes excluded under Article 165(5) of *the Constitution*.

26. It is therefore my finding that the present dispute relates to what is alleged to be matrimonial property. The procedure of redress for a dispute of this nature is provided under Section 17 of the *Matrimonial Property Act*. The Court vested with jurisdiction to adjudicate the dispute, in the absence of express definition of the Court contemplated under the Act, is the High Court, by dint of the provisions of Article 165(3)(a) of *the Constitution*. Consequently, my finding is that the Environment and Land Court lacks jurisdiction to adjudicate this dispute.

27. Should this Court, in the circumstances, strike out this suit? That would have been the fate of this suit until recently. However, the Supreme Court of Kenya in *Benson Ambuti Atega & 2 Others v Kibos Distillers Limited & 5 Others* (2020) eKLR emphasized the centrality of Article 50 of *the Constitution* and emphasized that in a scenario such as this one, the proper recourse is to remit the dispute to the appropriate Court/Tribunal as opposed to shutting the litigant out of the seat of justice completely. The Supreme Court of Kenya rendered itself thus:

“The Court of Appeal, in our view, gave quite an elaborate and definitive definition pertaining to the jurisdiction of the trial Court in hearing and determining the Petition. However, once it had established that the ELC did not have the jurisdiction to hear and determine the Petition, the appellate Court should have at that juncture issued appropriate remedies, which could have included, but not limited to, remitting back the matter to the appropriate institutions for deliberation and determination. Also, once it had determined that the ELC did not have the jurisdiction to hear and determine the issues before it, it should have held that any determination made was void ab initio, and that the appellate Court therefore and with respect failed to properly exercise its discretion and supervisory mandate in this instance.”



- 28. At the same time, the decision in Co-operative Bank of Kenya Ltd and Patrick Kaneohe Njuguna and Five Others (2017) eKLR, the Court of Appeal found that the jurisdiction of the Environment and Land Court to determine disputes connected to ‘use’ of land within the meaning of Article 162(2) (b) of *the Constitution* of Kenya, 2010 does not include mortgages, charges, collection of dues and rents and that these are within the civil jurisdiction of the High Court. In the present suit the issues are not just about the mortgage and charges but also the focus is on matrimonial property.
- 29. Having come to the conclusion that the Environment and Land Court is not the proper Court vested with jurisdiction to adjudicate the dispute in this suit, I will not delve into the merits of the application dated 10/04/2025. The said application will be disposed by the appropriate Court.
- 30. In the end, I make the following disposal orders relating to the Preliminary Objection dated 19/4/2021 and the Notice of Motion dated 10/04/2025:
  - i. This suit is hereby transferred to the Family Division of the High Court at Thika.
  - ii. The application dated 10/04/2025 shall be disposed by the said Division of the High Court.It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J  
JUDGE**

In the presence of:

Plaintiff – Absent

Mr. Mbaji for the 1<sup>st</sup> Defendant

2<sup>nd</sup> and 3<sup>rd</sup> Defendants – Absent

Mr. Wanjehia holding brief for Mr. Kibue for the Proposed Interested Party

Mr. Melita – Court Assistant

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**MOGENI J  
JUDGE**

