



Kamau v Standard Chartered Bank Limited & 2 others (Environment and Land Case 24 of 2015) [2025] KEELC 7861 (KLR) (12 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7861 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE 24 OF 2015
JM MUTUNGI, J
NOVEMBER 12, 2025**

BETWEEN

EZEKIEL KAMAU PLAINTIFF

AND

STANDARD CHARTERED BANK LIMITED 1ST DEFENDANT

GITCO AUCTIONEERS 2ND DEFENDANT

CYRUS MUCEBIU IRUNGU 3RD DEFENDANT

JUDGMENT

1. The Plaintiff instituted the present suit by way of a Plaint dated 27th February 2015. It was the Plaintiff's claim that they unlawfully caused his land parcel Ngariama Lower Ngariama 514 within Kirinyaga County ("herein after referred to as "the suit property") to be advertised and sold by public auction ostensibly to recover monies that the Plaintiff never owned to the 1st Defendant. The Plaintiff averred that the 1st, 2nd and 3rd Defendants acted fraudulently and or colluded to have the suit property sold by public auction and transferred to the 3rd Defendant.
2. The Plaintiff prayed for Judgment against the Defendants for:-
 - a. A declaration that the statutory notice dated 26th May 1993 was and is not a valid statutory notice and the same be struck off.
 - b. A declaration that the Plaintiff is the legal owner of the suit property.
 - c. Any title documents for the suit property purportedly issued to the 3rd Defendant or any other persons be nullified.



- d. Judgment against the 1st, 2nd and 3rd Defendants for the sum of Kshs 6,000,000.00 - plus interest calculated at current commercial Bank interest rate from the time of the public auction to 22nd September 2014.
 - e. General damages for loss of user of the land.
 - f. Costs of this suit.
 - g. Any other relief which this honourable Court deems fit to grant.
3. The 1st and 2nd Defendants vide their statement of defence dated 14th December 2015 denied the Plaintiff's averments in the Plaint. The Defendants averred the Plaintiff had breached the loan agreement between him and the 1st Defendant and asserted that the Plaintiff had an outstanding loan balance of Kshs 138,296.75 - and that entitled the 1st Defendant to exercise its statutory power of sale. The Defendants denied the allegations of fraud and the particulars of fraud pleaded. The Defendants contended the suit was incompetent as it offended the provisions of the *akn ke act 1968 21 Limitation of Actions Act*, Cap 22 Laws of Kenya.
 4. The 3rd Defendant filed a statement of defence dated 30th August 2021 where he denied the Plaintiffs allegations of fraud attributed to him. The 3rd Defendant denied the particulars of fraud and or that he colluded with the 1st and 2nd Defendants to have the suit property sold to him.
 5. The suit was part heard by Cheron, J who took the evidence of the Plaintiff and his witness (PW2) who was a valuer. The Judge also took evidence of DWI, one Evelyne Wanjiru Gachanja who testified for the 1st and 2nd Defendants. I took the evidence of the 3rd Defendant (DW2) and his wife, Hellen Wanjiru Irungu (DW3).

The Plaintiff's Case.

6. The Plaintiff testified that he was advanced an initial loan of Kshs 100,000 - by the 1st Defendant which he completed repayment of in 1991. He stated that in April, 1991 he sought a further loan of Kshs 100,000 - from the 1st Defendant which he was granted. He stated the loan amount was credited into his savings account at Karatina Branch on 18th April, 1991. On the same day the Plaintiff stated he withdrew a sum of Kshs 50,000 - leaving a credit balance of Kshs 50,516.15 - and on the next day 19th April, 1991 he deposited into the same account Kshs 50,463.85 - but which the 1st Defendant omitted to correctly record in their system as the account after the said deposit incorrectly showed the account balance of Kshs 50,463.85 - instead of Kshs 100,980 -. The Plaintiff stated he never utilized the money as he returned the money he had withdrawn. The Plaintiff explained that he was later informed by people that his property had been advertised for sale by public auction and confirmed with the Bank that they had indeed instructed Auctioneers (2nd Defendant) to sell his property and his efforts to have the Bank stop the auction were unsuccessful.
7. The Plaintiff contended that he had not been issued with the requisite statutory notice by the 1st Defendant before they advertised his land for sale and it was his position that he had no outstanding loan balance with the Bank to justify them to sell his property. The Plaintiff testified that the Bank had in fact acknowledged they made an error in their system arising from their omission to reflect the sum of Kshs 50,000 - in his account, and that they compensated by making a payment of Kshs 159,390 -. The Plaintiff maintained the sale of his land by the Bank was unlawful and that the Bank should pay him damages for his land which he stated had been valued in the sum of Kshs 6,000,000 -.
8. In Cross examination the Plaintiff stated he had initially borrowed Kshs 100,000 - which he was to repay over 3 years in monthly instalments of Kshs 2,800 -. He reiterated that he had not been served



with a statutory notice by the 1st Defendant. He however, affirmed he had sought the intervention of the D.O Mwea to have the auction stopped. The Plaintiff affirmed that he deposited the sum of Kshs 50,463.85 - on 19th April 1991 he never indicated it was to pay the loan and further that he never instructed the bank to transfer the money from his account to pay the loan. The Plaintiff further stated as the bank acknowledged their mistake, they refunded him the money that was not reflected in their system together with interest in the sum of Kshs 159,390 -. He nonetheless said his interest was not money but land.

9. PW2 James Muhia Kamita, a registered Valuer on the instructions of the Plaintiff, testified that he inspected the land which he stated was approximately 10 acres and that he valued the land at Kshs 6,000,000 - as per the Valuation report produced in evidence. PW2 explained he had arrived at the Valuation by comparing recently sold parcels of land within the area through the particulars of such land were not included in the report.

1st Defendant's Case.

10. DW1 Evelyne Wanjiru Karanja testified on behalf of the 1st Defendant. She relied on her recorded witness statement dated 16th March 2021 and the filed list and bundle of documents dated 14th December 2015 comprising a total of 17 documents. The witness affirmed that the Plaintiff held a Savings Account with the Bank. She stated a loan the Plaintiff had been advanced of Kshs 100,000 - was disbursed and credited into the Plaintiffs' Savings account at the Bank's Karatina Branch. The witness further affirmed the withdrawal of Kshs 50,000 - made by the Plaintiff on 18th April 1991 after the Bank on the same day credited the loan of Kshs 100,000 - into the account. After the Plaintiff's withdrawal the balance in the account was Kshs 50,516.15 -. DW1 further affirmed the Plaintiff the next day 19th April 1991 deposited Kshs 50,463.85 - and after the deposit, the balance that was noted in the pass book was Kshs 50,463.85 -. She stated it was in 2011 that the Plaintiff wrote to the Bank indicating he was not able to account for Kshs 50,516.15 - and after investigations the bank confirmed there was a system error leading to the Plaintiff being compensated and he was paid Kshs 159,390 - being the sum of Kshs 50,516.15 - and interest over the years on the amount. The witness explained the system error discovery and the compensation to the Plaintiff came about after internal investigations were carried out by the Bank. The investigation by the Bank was made after the Plaintiff wrote a letter to the Bank dated 28th October 2011 (PEX10).
11. DW1 in her evidence stated the Plaintiff did not repay the loan made to him in accordance with the terms and the Bank accordingly exercised its statutory power of sale after the requisite notices were issued to the Plaintiff. The witness testified the Plaintiff had notice that the Bank intended to realise the security as the Plaintiff even sought the intervention of the DO MWEA who wrote to the Auctioneer on 17th November 1991 requesting for the suspension of the intended sale of the security by public auction. In the said letter, the D.O Mwea indicated the Plaintiff had at the time made arrangements with an organization by the name Green Africa Society International to clear the outstanding amount of Kshs 165,606.25 - on the Plaintiff's account to the Bank. According to the witness the amount was never paid to the Bank. The witness therefore asserted the Plaintiff had defaulted in the repayment of the loan and that the security realization was lawfully carried. She affirmed the public auction took place in 1993 and that the Plaintiff came to Court in 2015 to challenge the same. She denied the Bank acted fraudulently in realizing the security.

3rd Defendant's Case.

12. The 3rd Defendant testified as DW2 and he adopted his witness statement and relied on the documents he had exhibited in his bundle of documents. The gist of DW2's evidence was that he came across an



advertisement of the property in the Newspaper for sale by public auction and he became interested. His bid at the auction of Kshs 310,000 - was accepted at the auction. He paid the full purchase price and had title processed in his name. He took occupation and possession of the land and carries on farming activities on the land.

13. DW3 Hellen Wanjiru Irungu was DW2's wife and she represented DW2 at the public auction where she placed the bid of Kshs 310,000 - which was accepted. She paid a deposit of Kshs 100,000 - on the fall of the hammer and her husband subsequently paid the balance of the purchase price.

Submissions of the Parties.

14. The parties filed final closing submissions following the conclusion of the trial. The Plaintiffs' submissions are dated 16th May 2025, those of the 1st and 2nd Defendants are dated 9th June, 2025 and those of the 3rd Defendant are equally dated 9th June 2025.

15. The Plaintiff in his submissions reiterated the facts and evidence that he adduced through his witness statements and the document he produced as exhibits. It was the Plaintiff's assertion that owing to what the 1st Defendant admitted was a system error in not crediting his account with the sum of Kshs 50,516.15 as on 19th April, 1991, the 1st Defendant had his property sold by public auction because he had allegedly defaulted on the repayment of his loan. The Plaintiff submitted the sale by public auction was unlawful because he had money in his account which ought to have been applied to pay the loan. The Plaintiff argued that had the 1st Defendant not miscasted the credit to his account, there would have been enough funds to draw against to service the loan. He submitted the 1st Defendant had admitted the system error resulting in his account not being credited with the sum of Kshs 50,516.25 -. The Plaintiff contended that though he had made insistent demands to be supplied by the 1st Defendant with Bank statements, it was not until 2011 that the Bank came clean and admitted to there having been a system error whereby his account was not credited with the sum of Kshs 50,516.25 - as from 19th April 1991. The Plaintiff submitted that it was not until 5th October 2012 ("PEX 34") while responding to the Plaintiff's Advocates demand letter that the 1st Defendant reluctantly admitted to the error while denying they were aware of any illegal sale. In the letter the 1st Defendant stated:-

“ We are not aware of illegal sale of land cited in your letter dated 12th September 2012. What we are aware of is that there was an arithmetical error on Mr. Kamau's account dating back to 19th April 1991. This was corrected in our letter of 28th October 2011. We do not view this as an admission of liability as you had suggested.”

16. The Plaintiff submitted there was no wrong without a remedy and for this proposition relied on the case of Peter Mathenge Gitonga –vs- Kenya Commercial Bank Ltd (2017) eKLR where Odunga, J (as he then was) stated as follows:-

“ 95. In this case, it is clear that the Defendant arm-twisted the Plaintiff unto settling the sum in question by threatening the Plaintiff with the unlawful exercise of statutory power. That action was clearly unlawful. Whereas the Plaintiff has failed to prove that he is entitled to Kshs 1,529,919.30, as was held in Maroa Wambura Gatimwa –vs- Sabina Nyanokwe Gatimwa Civil Appeal No. 331 of 2003, the only question is the remedy to which the Plaintiff is entitled but a remedy there must be, because equity does not suffer a wrong to be without remedy. In this case, there is a clear admission from the Defendant vide the letter dated 19th February, 2008 that the Defendant's subsidiary Company, Savings and Loans acted in an unprofessional manner vis-à-vis the operation



of the Plaintiff's account. The Law is that there cannot be a wrong without a remedy unless there is an express prohibition by statute or otherwise.”

17. The Plaintiff submitted that the 1st Defendant vide their letter of 28th October 2011 (“PEX 31”) admitted there was a system error in omitting to credit the Plaintiff's account with the sum of Kshs 50,516.15 - which was carried through from 19th April 1991 upto the time the bank determined to make a refund of Kshs 159,390 - as compensation in September October 2011. It is the Plaintiff's contention that as a consequence of the error admitted by the 1st Defendant his property was unlawfully and irregularly sold when there ought to have been funds to repay the loan if the bank had not committed the error. The Plaintiff submitted he was entitled to an award of damages as consequence of the Bank's wrong doing and prayed for an award of Kshs 6,000,000 - which was the value of the land that he lost. He relied on the case of *Meya Agri Traders –vs- Eco Bank Kenya Ltd (2020) KECA 614 (KLR)* where the Court of Appeal found the Bank culpable for negligence in failing to notify a customer of dishonor of cheques deposited in his account. The customer was awarded Kshs 10,486,000 - which was the loss suffered by the customer owing to the bank's failure to notify the customer of the dishonor of the cheques deposited into his account.
18. The Plaintiff further cited the Case of *Absa Bank Plc –vs- Mochache (2024) KEHC 9039 (KLR)* to support his submission that where a bank breaches the fiduciary relationship with its customer, the bank is liable in damages. In the case the Respondent sued the Appellant Bank claiming that his prepaid debit card was declined whilst he was in the USA and wanted to purchase an air ticket the payment was declined yet the card was funded and was in credit. All transactions the Respondent wanted to make using the card were declined. He missed the flight he intended to use and was stranded. He sued the bank for negligent and breach of duty of care. The trial Magistrate awarded him Kshs 3,000,000 - damages for breach of contract. On Appeal the High Court upheld the Magistrate's decision of liability but reduced the award of damages to Kshs 1,800,000 -. The Plaintiff thus submitted the 1st Defendant was culpable for the error they admitted and should pay damages for the loss of his land.
19. The 1st and 2nd Defendants in their submissions reiterated the evidence as captured in the witness statement and the documents exhibited by the 1st and 2nd Defendants and at the oral hearing. The 1st and 2nd Defendants identified the issues for determination as follows:-
 - a. Whether the Defendant had the statutory notice dated 26th May 1993 was lawfully issued.
 - b. Whether the 1st Defendant connived with the 2nd Defendant to illegally sell the Plaintiff's suit property.
 - c. Whether the 1st and 2nd Defendants are liable for fraud.
 - d. Whether the Plaintiff is entitled to any remedy arising from the error in his account.
 - e. Whether the Plaintiff's suit is statute barred; and
 - f. Whether the Plaintiff is entitled to the reliefs sought.
20. The 1st and 2nd Defendants submitted that a statutory notice dated 26th May, 1993 was issued to the Plaintiff and that the Plaintiff in his evidence confirmed the fact as he even approached the D.O Mwea to seek a suspension of the scheduled public auction. The 1st and 2nd Defendant contended the Plaintiff through the letter by the D.O Mwea dated 17th November 1993 had admitted a loan balance of Kshs 165,606.25 - was outstanding and therefore the loan had not been repaid as the Plaintiff averred. The Plaintiff further had given no instructions to have money for the repayment of the loan transferred from his savings A c No. 01200108256012 that he held with the Bank.



21. As to whether there was connivance by the 1st and 2nd Defendant to sell the Plaintiff's charged property no proof was adduced. The 1st and 2nd Defendants submitted that allegations of fraud must not only be specifically pleaded but must also be specifically proved by evidence. The 1st and 2nd Defendants in support of this submission placed reliance on the case of Charles Lutta Kasamani T a Kasamani & Company Advocates –vs- United Insurance Co. Ltd (2017) KEHC 1779 (KLR) and Gladys Wanjiru Ngacha –vs- Treresia Chepsaat & 4 Others (2013) KECA 29(KLR). In the latter case the Court of Appeal stated as follows:-

“In R. G. Patel –vs- Lalji Makani (1957) EA 314, the predecessor of this Court at Pg 317 held;
“Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

It is not enough for the Appellant to have pleaded fraud; she ought to have tendered evidence that proved the particulars of fraud to the satisfaction of the trial Court.”

22. As to whether the Plaintiff would be entitled to any remedy arising from the error in his account the 1st and 2nd Defendant submitted that the Plaintiff had been remedied as he was paid the sum of Kshs 159,390 - which was compensation for the uncredited amount and interest at 7% p.a from 19th April 1991 to September 2011. The 1st and 2nd Defendants submitted the system error had no correlation with the repayment of the loan and therefore had no bearing with the sale of the property for non-payment of the loan advanced to the Plaintiff. At any rate the 1st and 2nd Defendants asserted the Plaintiff had not pleaded negligence and argued the Court was precluded from determining an issue that had not been pleaded.
23. The 1st and 2nd Defendants further submitted the Plaintiff was raising the issue of banking error as an afterthought and in any event they contended any action founded on the system error would be statute barred as the Plaintiff was furnished Bank statements vide the 1st Defendants letter dated 25th May 1999 following his request. The 1st and 2nd Defendants additionally submitted that the ELC lacked jurisdiction to hear and determine disputes between banks and their customers arising from the operation of the customers' bank account and or whether the Banks discharged their statutory and contractual obligations in relation to the accounts.
24. The 1st and 2nd Defendants further submitted that the Plaintiffs suit was statute barred arguing that the impugned Public Auction sale took place on 18th November, 1993 and that in his evidence the Plaintiff affirmed the auction and was thus aware of the sale. The sale was made pursuant to Section 77 of the Registered *akn ke act 2012 6 Land Act* Cap 300 (repealed) and under the charge and thereof was pursuant to a contract and the suit under Section 4 (1) (a) & (e) ought to have been filed within six (6) years of the date of the public auction. The 1st and 2nd Defendants further submitted even if the suit was deemed to be one for the recovery of land the same should have been brought before the expiry of 12 years from the date of the public auction sale.
25. The 1st and 2nd Defendants in responding to the Plaintiffs contention that the issue whether or not the suit was statute barred was determined by Justice Olao in his Ruling of 21st April 2017, asserted that the Court was not bound by that Ruling which was rendered in an interlocutory application where it was sought to strike out the suit on inter alia that the suit was statute barred. In dismissing the application, the Judge stated that the suit was raising serious issues which could only be determined in a full trial, and further that having discovered the system error in 2011, the Plaintiff was entitled to institute suit



in 2015. In support of their argument the 1st and 2nd Defendants relied on a decision from the High Court of Singapore in the case of *Wah –vs- Wag & Another* (2022) SGHCF9 where the Court stated:-

“Interim and interlocutory orders do not bind the trial Judge and the trial Judge may make orders at the trial varying the earlier orders. The fundamental purpose of interim and interlocutory orders is, therefore, to ensure a smoother, quicker trial and to keep each party’s position evenly balanced until the trial. That purpose is lost if the justice system is clogged with unmeritorious appeals against interlocutory orders.”

26. Finally, the 1st and 2nd Defendants submitted the Plaintiff was not entitled to the orders sought. In regard to the claim for damages for loss of user the 1st and 2nd Defendants submitted loss of use constitutes special damages which must not only be specifically pleaded but also specifically proved. In support of the submission they placed reliance on the Court of Appeal decision in the case of *David Bagine –vs- Martin Bundi* (1997) KECA 54 (KLR).
27. The 3rd Defendant in his written submissions asserted he was the registered owner of land parcel title number Ngariama Lower Ngariama 514 having purchased the same at a public auction held on 18th November, 1993. As such registered he contended his title is absolute and is indefeasible under the provisions of Section 26(1) of the *akn ke act 2012 3 Land Registration Act*, 2012 which provides as follows:-
26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
28. The 3rd Defendant submitted that the Plaintiff never adduced any evidence to prove any fraud or connivance on the part of the 3rd Defendant as alleged. The 3rd Defendant contended there was no such proof and hence the title he held could not be impeached on account of misrepresentation or fraud. The 3rd Defendant place reliance on the case of *Nicholas Kioko Muoki & Another –vs- Omar Fezal Mohammed* (2021) eKLR and *Nairobi City Council –vs- Kenya Airports Authority* (2022) KEELC 2720 (KLR) on the question of the standard proof where fraud is alleged where the Courts held the standard of proof has to be higher than on a balance of probabilities.
29. . The 3rd Defendant submitted he was a buyer of the suit property at a public auction following advertisement by the 1st Defendant in exercise of its statutory power of sale and that he was a bonafide purchaser for value without any notice of any defect and or impropriety on the part of the 1st Defendant. Black’s Law Dictionary (8th Edition) defines a “bona fide purchaser” as:-

“One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice prior adverse claims.”



30. The 3rd Defendant in support of his submission that he was a bonafide purchaser whose title could not be impeached relied on the Court of Appeal decision in the case of *Martevé Guest House Ltd – vs- Njenga & 3 Others* (2022) KECA 539 (KLR) W. Karanja JA – dissenting where the considering Section 99 of the *akn ke act 2012 6 Land Act*, 2012 which gives immunity to an innocent purchaser under subsection (3) held thus:-

“This Section seems quite clear that a purchaser of property sold in the exercise of a chargee’s statutory power of sale is protected even in cases where the person had actual notice that the charge had not properly exercised that statutory power of sale in terms of procedure. In this case, there is no evidence to show that the Appellant had any notice of any irregularities in the planned sale and evidence suggests that there were none anyway. The point is that the Appellant is then inoculated by Section 99(supra) from any action to recover the suit property from it.”

31. The 3rd Defendant further placed reliance on the case of *Beatrice Atieno Onyango –vs- Housing Finance Co. Ltd & 3 Others* (2020) eKLR and the case of *Simon Njoroge Mburu –vs- Consolidated Bank of Kenya Ltd* (2014) eKLR which equally restated the position in the *Martevé Guest House Ltd Case* (supra) on that basis the 3rd Defendant prayed for the dismissal of the Plaintiffs case against him.

32. Having reviewed and considered the pleadings, the evidence and the submissions made on behalf of the parties the issues that arise for determination are as follows:-

1. Whether the Court has jurisdiction to determine the matter?
2. Whether the Plaintiffs suit is statute barred under the *akn ke act 1968 21 Limitation of Actions Act*?
3. Whether the 1st Defendant fraudulently and unlawfully sold the Plaintiffs property in connivance with the 2nd & 3rd Defendants?
4. Whether the 3rd Defendant was a bonafide purchaser?
5. What reliefs, if any should the Court grant?

Whether the Court has Jurisdiction?

33. The issue of jurisdiction was not pleaded by the parties in their pleadings. However the 1st and 2nd Defendants in their submissions at paragraph 48 raised the issues thus:-

“In any event, the Honourable Court, being the Environment and Land Court is vested with jurisdiction to hear and determine disputes relating to the environment and land. It is not vested with the jurisdiction to hear and determine disputes between banks and their customers arising from the operation of the customers’ bank accounts and the question whether the banks discharged their statutory and contractual obligations in relation to those accounts.”

34. A jurisdictional issue can be raised by any party at any stage of the proceedings in a matter and or the Court may on its own motion raise the issue. This is because jurisdiction is the pedestal upon which Judicial authority is exercised by the Court and without jurisdiction a Court can only act in vain as



anything done by the Court would be null and void. The Court of Appeal in the case of Owners of the Motor Vessel “Lilian S” –vs- Caltex Oil (Kenya) Ltd (1989) eKLR stated thus as per Nyarang’e JA:-

“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 the 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. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

35. In the matter before the Court the dispute arises and touches on a loan facility extended to the Plaintiff by the 1st Defendant against the security of land parcel No. Ngariama Lower Ngariama 514 against which a charge was registered by the Plaintiff in favour of the 1st Defendant. The 1st Defendant contends the Plaintiff defaulted in the repayment of the loan and that as a consequence it procedurally exercised its power of sale conferred under the charge and the property was sold by public auction on 18th November, 1993. For his part the Plaintiff claimed that he was not indebted to the 1st Defendant at the time his property was sold by public auction. The Plaintiff denied having been served with the requisite statutory notice and further contended the 1st Defendant mismanaged his account as it failed to reflect a credit of Kshs 50,463 - that he had deposited on 18th April 1991 and that the error persisted upto September 2011 when the 1st Defendant admitted there had been a “system error”. The Plaintiff took the position that had it not been for the mistake, he would not have been in default in regard to the loan repayment. He thus contended his property was fraudulently and unlawfully sold. Given that background the Court has to determine whether it has jurisdiction to determine the dispute.
36. The jurisdiction of this Court is derived from Article 162(2)(b) of *akn ke act 2010 constitution the Constitution* and Section 13 of the *akn ke act 2011 19 Environment and Land Court Act, 2011*. Section 13(2) of the *akn ke act 2011 19 Environment and Land Court Act* vests this Court with jurisdiction over disputes relating to the environment, use, occupation and title to land. The High Court, on the other hand, has jurisdiction over Commercial (Civil) matters including enforcement of securities which include charges and mortgages over land. In the matter before the Court, the real contest is whether the 1st Defendant exercised its power of sale lawfully and or whether the acknowledged “system error” in the 1st Defendant’s operation of the Plaintiff’s bank account resulted in the alleged fraudulent sale of the Plaintiff’s charged property. The Court in the premises has to determine whether the dispute is within the categories that it has jurisdiction to determine.
37. The Court of Appeal in the case of Bank of Africa (k) Ltd –v-s TSS Investment (2024) KECA 410(KLR) and in the case of Co-operative Bank Ltd –vs- Patrick Kangethe Njuguna & Others (2017) KECA 79 (KLR) has emphatically stated that where a dispute arises and touches on the enforcement of a charge created over land as security, such dispute is of a commercial nature arising out of a commercial transaction and does not constitute “use of land” so as to fall within the jurisdiction of the ELC. The Court of Appeal held it was the High Court that had jurisdiction to deal with such matter as a commercial dispute.
38. In the case of Co-operative Bank Ltd –vs- Patrick Kangethe Njuguna (supra) the Court at paragraph 36 of its Judgment stated:-
 36. By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfillment of any condition (see Section 2 of the *akn ke act 2012 6 Land Act*). As such, it gives rise to a relationship where one person acquires rights over land of another as security in exchange for money or money’s worth. The rights so acquired are limited to realization of



the security so advanced (see section 80 of the *akn ke act 2012 6 Land Act*). The creation of that relationship thereof, has nothing to do with use of the land as defined above). Indeed that relationship is simply limited to ensuring the charge is assured of the repayment of the money he has advanced to the chargor.”

39. In the instant case, there is no dispute that the Plaintiff was advanced a loan by the 1st Defendant (chargee) and that the Plaintiff offered land parcel No. Ngariama Lower Ngariama 514 as security and the same was charged in favour of the 1st Defendant. It is admitted that the property was sold by public auction and that the 3rd Defendant bought the property at the public auction. The dispute is whether the 1st Defendant’s exercise of its power of sale under the charge was lawful.
40. The Court of Appeal in the Bank of Africa –vs- TSS Investment case (supra) in considering the jurisdiction of the ELC relied on its own decisions in the case of Co-operative Bank Ltd –vs- Patrick Kangethe (supra); the case of Joel Kytha Mbaluka T a Mbaluka & Associates –vs- Daniel Ochieng Ogola t a Ogola Okello & Company Advocates (2019) eKLR where the Court at Paragraph 12 of its Judgment stated:-
- “ 12. We reiterate the position taken in the Co-operative Bank of Kenya Ltd – vs- Patrick Kangethe Njuguna (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and use and occupation of and title to land.”
41. Without doubt the issues that arise in this matter do not relate to the environment, use, occupation of, and title to land. The issues revolve and relate to the charge that was created over the Plaintiff’s land; the operation of the Plaintiff’s bank account with the 1st Defendant, and whether the 1st Defendant lawfully exercised its power of sale in realizing its security. On the basis of the Court of Appeal decisions that I have referred to, it is crystal clear that this Court has no jurisdiction to entertain this matter. It is unfortunate that the Court has to rule on its jurisdiction so late in the day but then it would be futile for the Court to pronounce itself on the other issues. It would be an exercise in futility. I have held. I have no jurisdiction, and accordingly I must down my tools in the words of Nyarangi JA in the Owners of the Motor Vessel “Lillian S” –vs- Caltex Oil(k) Ltd Case (supra).
42. The Plaintiff’s suit is hereby ordered struck out with no order as to costs. Each party to bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

