



**Kisiara v Co-operative Bank of Kenya Limited (Environment and Land Appeal E003 of 2025) [2025] KEELC 8099 (KLR) (18 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8099 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND APPEAL E003 OF 2025**

**AY KOROSS, J**

**NOVEMBER 18, 2025**

**BETWEEN**

**ANTHONY PARYSAYO KISIARA ..... APPELLANT**

**AND**

**CO-OPERATIVE BANK OF KENYA LIMITED ..... RESPONDENT**

*(Appeal from the ruling of Hon. Barbara Ojoo, CM, delivered on 18/12/2024 in Mavoko Magistrate's Court ELC Case No. ELC/E064/2024 Anthony Parysayo Kisiara versus Co-Operative Bank of Kenya Limited)*

**JUDGMENT**

**Background**

1. To provide context for the impugned ruling of 18 12 2024 and the appeal, it is essential to identify the subject matter of the dispute that was before the trial court and is now before this court.
2. From the plaint dated 15 08 2024, it appears that the appellant was an employee of the respondent and, in that capacity, borrowed a loan from his employer, with his parcel of land L.R. No. 12715 6063 IR 113840 ("suit property") used as security. It seems he fell out with the respondent and was dismissed from employment. As a result, he filed a matter before the Employment and Labour Relations Court ("ELRC"), being Nairobi ELRC Case E978 2021. It appears that, while the case was ongoing, the respondent proceeded to exercise its statutory power of sale with the aim of foreclosing. Thus, he filed the plaint before the trial court seeking various reliefs, including a declaration that the process of realizing the security was flawed and a recalculation of the loan be made.
3. Contemporaneously accompanying the plaint, the appellant filed a notice of motion dated 15 08 2023, which was challenged by the affidavit of 11 09 2024 by one of the respondent's staff. Of particular interest, he averred that the court lacked the requisite jurisdiction to entertain the suit, as the case was a commercial dispute and not one concerning the environment and land.



4. Thus, upon hearing the parties, the trial court found that the suit before it was sub judice and contravened Section 6 of the *Kenya Civil Procedure Act* (“CPA”) and accordingly stayed the proceedings pending the outcome of Nairobi ELRC Case E978 2021. The trial court also vacated all interim orders previously enjoyed by the appellant.

### **Appeal to this court and the hearing**

5. This decision did not sit well with the appellant and aggrieved, and in exercise of his right to appeal, he invoked this court’s jurisdiction by filing a memorandum of appeal dated 17 01 2025 and filed on the same date. This appeal raised four grounds, which were consolidated into a single ground: whether the trial court erred by misinterpreting provisions of Section 6 of the CPA, by holding that the issues for determination and reliefs sought in Nairobi ELRC Cause E978 of 2021 and Mavoko MC. ELC No. E064 of 2024 were wholly and substantially similar.
6. Accordingly, the appellant urged this court to vacate and set aside the impugned decision and substitute it with an order of injunction restraining the respondent, whether by itself, servants or agents, from advertising, selling, auctioning, disposing of, foreclosing, transferring ownership, or dealing in any other manner whatsoever with the suit property located at Syokimau within Machakos County pending the hearing and determination of the trial court suit. He also sought the costs of the appeal.
7. The appellant also filed a motion dated 17 01 2025, which is now rendered moot as this court is making a final decision on the appeal.
8. This matter was brought before this court for hearing, and as directed by the court, it was canvassed through well-argued written submissions received from the law firm of Ms. Masaviru & Ketoo Advocates for the appellant, dated 4 07 2025. However, despite clear directions on the limitation of the page numbers of the submissions, the law firm of Ms. MMW Advocates LLP for the respondent ignored these directions and lodged very lengthy submissions dated 18 06 2025. On this basis, this court is inclined not to consider the latter set of submissions.

### **Issues for Determination, Analysis, and Determination**

9. As this is a first appeal, the court’s duty is outlined in Order 42 Rule 32 of the Civil Procedure Rules, which requires it to re-examine the evidence and make factual inferences to arrive at an independent decision. This duty has been affirmed in several court decisions, including *Abok James Odera T A A.J Odera & Associates v John Patrick Machira T A Machira & Co. Advocates* [2013] KECA 208 (KLR), where it was held that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

10. Accordingly, this court has reviewed the memorandum of appeal, the record of appeal, the appellant’s submissions, the relevant legal provisions, and the authorities cited therein. Therefore, in this court’s humble opinion, this appeal shall be decided by considering two issues: -
  - a. Whether the case before the trial court was on the environment and the use and occupation of, and title to, land.
  - b. If (a) is in the affirmative, whether the trial court erred in finding the matter before it was sub judice.



These issues will be tackled one by one shortly.

**a .Whether the case before the trial court was on the environment and the use and occupation of, and title to, land.**

11. The jurisdiction of the High Court and this court is respectively established under Articles 165 and 162(2)(b) of *akn ke act 2010 constitution the Constitution* of Kenya. In these legal provisions, the jurisdiction of the High Court is extensive, and Article 165 (5) thereof explicitly states the limitations to its jurisdiction as follows:

“The High Court shall not have jurisdiction in respect of matters—(a)reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”

12. Regarding Article 162(2)(b), the parliament established this court, which is of equal standing to the High Court, with jurisdiction to hear and resolve disputes related to the environment and the use and occupation of, and title to, land. When these two provisions of *akn ke act 2010 constitution the Constitution* are read together, it indicates that the High Court has no jurisdiction whatsoever over matters within the jurisdiction of the Environment and Land Court (“ELC”), or vice versa, as each has exclusive authority over the matters for which those courts were established.

13. Now, respecting the subject matter before the trial court which concerned charges, loan interest rates, statutory power of sale, and foreclosure, and in establishing which court has jurisdiction to hear and resolve these issues, this court has drawn upon the wisdom of the Judges of the Court of Appeal, who in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR) expressed the following on the tests to be applied in making such a determination;

“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.”

14. It suffices to state from this decision that, although the ELC has jurisdiction over disputes concerning contracts, its authority in such matters is limited to issues related to the environment, as well as the use, occupation, and title to land. In other words, this court and, for that matter, the trial court that handled the suit as an ELC case, lack jurisdiction to hear the subject matter of the dispute, which was on charges. It follows that such cases must be filed before a commercial court.

15. Since it is settled law that jurisdiction is everything, and without it a court has no power to take one more step, this court hereby downs its tools. It also finds that the suit before the trial court was incompetent, and the appropriate remedy is to substitute the order to stay the proceedings with an order to strike it out. It is well-established law that costs follow the event, and the respondent shall be awarded costs. In conclusion, it issues the following final orders:

- a. The entire suit before the trial court is hereby struck out with costs to the respondent.
- b. The respondent shall have the costs of this appeal.

Judgment accordingly.



**DELIVERED AND DATED AT MACHAKOS THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

11.2025

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant.

Mr. Munene for the Respondent.

Mr. Masaviru for the Appellant.

