



Mukavane v Co-operative Bank of Kenya Limited (Environment and Land Case E014 of 2025) [2025] KEELC 8235 (KLR) (27 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE E014 OF 2025
EC CHERONO, J
NOVEMBER 27, 2025**

BETWEEN

HASSAN FARSY MUKAVANE APPLICANT

AND

THE CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

RULING

1. For this court's determination is the Notice of Motion by the Applicant dated 20/06/2025 seeking inter alia for this court to exercise its inherent powers to order that the Plaintiff dated 16/05/ 2025 together with the accompanying pleadings and application for injunction be returned to the Plaintiff for presentation before the High Court at Bungoma, being the Court with jurisdiction to entertain disputes relating to charges.
2. The application is supported by the Applicant's affidavit sworn on even date where he stated that he instituted a suit for injunction orders against a threatened foreclosure and the Respondent filed a preliminary objection dated 14/08/2025 challenging this court's jurisdiction. He argued that he affirms that this court indeed lacks jurisdiction to hear and determine the said dispute and that he had paid Kshs. 71,000/= and urged the court to intervene in the interest of justice and fairness.
3. The Applicant filed submissions dated 27/08/2025 wherein he relied in the case of Co-operative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 others [2017] eKLR and Bank of Africa Kenya Ltd v TSS Investment Ltd Civil Appeal No. E055 of 2022 in affirming that disputes concerning enforcement of statutory charges fall within the jurisdiction of the High Court. He argued that the courts inherent jurisdiction dictates that this court can borrow jurisprudence from other jurisdictions to ensure substantive justice, access to justice and fair hearing. He referred to Sections 1A, 1B, 3A of the *Civil Procedure Act* and Articles 48, 50 and 159(2)(d) of *the Constitution*. He cited the case of Lemanken Aramat v Harun Meitamei Lempaka & 2 Others [2014] eKLR.



4. The Respondents filed submissions on his preliminary objection dated 14/08/2025 wherein he submitted that a suit filed without jurisdiction is incurably defective and must be struck out. he argued that jurisdiction is absent ab initio and that the only lawful course is for this court to down its tools and that the Applicant cannot rely on the error being a mere procedural technicality. They quoted inter alia the cases of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR and Equity Bank Limited v Bruce Mutie Mutuku ta Diani Tour Travel 2016KECA250(KLR).
5. The question before this court is whether it has jurisdiction to transfer this suit to the high court which is a court of equal status for purposes of hearing and determination. In Macharia & another vs Kenya Commercial Bank Limited & 2 others (2012) KESC 8 (KLR), the Supreme Court of Kenya held that a Court's jurisdiction flows from either the Constitution or legislation or both. Further, that a Court of law can only exercise the jurisdiction conferred to it by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. The jurisdiction of this court is derived from Article 162(2)(b) and Section 13 of the Environment and Land Act. In this instance, it is not in contention that this court lacks jurisdiction.
6. It is however not lost in the mind of this Court that the Oxygen principles under the Civil Procedure Act provide that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act. This Court therefore retains inherent and residual authority to rectify any situation that would otherwise result in, or amount to, an injustice. In the case of Rev. Madara Evans Okanga vs Housing Finance Company of Kenya, HCCC No. 262 of 2005 the court held that;

“ ... the jurisdiction of the Court which is comprised within the term “inherent”, is that which enables it to fulfill itself properly and effectively, as a court of law... in sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being reserve or fund of powers, a residual source of powers which the court may draw upon as necessary whenever it is just and equitable to do so, in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and secure a fair trial between them.”
7. Further, in the case of Prof Daniel Mugendi vs Kenyatta University & Others, Civil Appeals No. 6 of 2012 the Court of Appeal stated that;

“... In order to do justice in the event where the High Court, the Industrial Court or the Environmental Land Court Division comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar and equal status should in the spirit of harmonization effect the necessary transfers among themselves....”
8. It must be noted that an order for the transfer of a suit from one court to another cannot be made unless the suit was in the first instance commenced in a court which had jurisdiction to try it. If that suit was commenced in a court that had no jurisdiction to entertain the dispute, it would then mean that the said suit is a nullity in law and is incompetent. Consequently, the Court would not have jurisdiction to transfer the matter to any other court.
9. In Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs



and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] eKLR the Supreme Court stated as follows:

“However, as it was well elucidated in the case of *Kagenyi v Musiramo & Another* (1968) EALR 43, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It is therefore irrelevant as parties cannot consent to confer jurisdiction to a Court/tribunal where it is not provided by law.”

10. The above decisions emanate from the Court of Appeal and the Supreme court which are superior courts. While decisions of superior courts are binding on this Court, the Supreme Court’s ruling prevails, therefore where this Court lacks jurisdiction, it cannot assume authority to transfer the suit. The Notice of Motion dated 20/08/2025 is hereby dismissed while the preliminary objection dated 14/08/2025 is allowed. I proceed to strike out this suit for want of jurisdiction. No order is made as to costs, in view of the procedural nature of the objection.

11. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF NOVEMBER, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Kibet H/B for Kapten for the Applicant/Plaintiff.

M/S Jumba H/B for M/S Aluvale for the Respondent

Bett C/A.

