

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC LAND CASE NO. E031 OF 2025 (O.S)

ECOBANK KENYA LIMITED 1ST
APPLICANT
TRADE & DEVELOPMENT BANK LIMITED 2ND
APPLICANT

VERSUS

FOSSIL SUPPLIES LIMITED INTERESTED
PARTY

JUDGMENT:

1. The Applicants herein filed the present suit vide Originating Summons dated 6th October, 2025, seeking the determination of the following questions: -
 - i. Whether the Applicant as the Chargee of ELDORET MUNICIPALITY BLOCK 3/35 can be authorized to invoke its contractual rights to apply for extension of the lease following the registered proprietor's failure to apply for extension of the lease and the extinguishing of his proprietary rights in the subject property at the fall of the hammer.
2. The application is supported by the Affidavit of John Mwonga, the Head of Remedial Management Department of the 1st Applicant, sworn on even date.
3. He deponed that vide a Third Party Charge dated 04.03.2015, the title of the suit land herein known as ELDORET MUNICIPALITY/ BLOCK 3/35 was charged by the

applicant to secure the repayment of a facility of USD 30,000,000/= granted to Hashi Energy Limited.

4. However, following default in the repayment of the facility, the property was sold by way of public auction to the highest bidder, the Interested Party herein, for Kshs. 104,000,000/= and a Memorandum of Sale to that effect duly executed.
5. It is his contention that the transfer of the suit property to the Interested Party is yet to be completed owing to the fact that the applicant pursuant to the Memorandum of Sale is obligated to extend the lease that is set to lapse on 28.02.2026.
6. It is his claim that the applicant is not in a position to apply for the said extension of the lease through the registered proprietor, whose proprietary rights over the suit land ceased to exist at the fall of the hammer.
7. He thus contends that the applicant is invoking Clause 7 of the Charge, that grants it the right to execute any and all documents that are required for the full exercise of its rights to sale, dispose and realize the charged property. He thus sought to invoke the provisions of Rule 2 of the Land (Extension and Renewal of Leases) Rules following the failure by the registered owner to apply for the extension of the lease despite the 5-year notification.
8. He maintained that unless the orders sought are granted, the parties shall lose their interest in the property and loose the suit land to the government. That it is therefore in the interest of justice that the orders sought be granted.

9. The applicant urged the court to invoke the authority vested under Order 37 Rule 4 of the Civil Procedure Rules, which allows the court to grant specific relief to a mortgagee/chargee.
10. Despite being served with the Originating Summons and the accompanying documents and an Affidavit of Service dated 06.11.2025 filed to that effect, the Interested Party has neither entered appearance nor filed any response thereto. The suit is therefore deemed unopposed and the documentary evidence deemed uncontroverted.

Analysis and Determination:

11. I have carefully considered the originating summons, the supporting affidavit and the annexures thereto in totality and it is this court's considered opinion that the sole issue arising for determination is whether the order sought should be granted.
12. The applicants herein seek an order of this court, allowing them to apply for the extension of the lease. Their claim is anchored on Clause 7 of the Third-Party Charge dated 04.03.2015 as well as Rule 2 of the Land (Extension and Renewal of Leases) Rules.
13. On a perusal of the annexures in the Supporting Affidavit, it is evident that the suit land herein was registered in the name of Ahmed Hashi Aden on 14.12.1999 and a Certificate of Lease duly issued.

14. Entry No. 6 on the Encumbrance section shows a Charge registered in favor of the 1st Applicant herein on 06.07.2015. I have also seen the said Third Party Charge dated 04.03.2015 and the terms and conditions therein, particularly Clause 7 on the rights of the chargor.
15. The Land (Extension and Renewal of Leases) Rules provides an elaborate process for the extension of a lease under Rule 2. The said Rule 2 places the obligation and duty of applying for such extension on the lease.
16. The Certificate of lease annexed herein shows that the lessee of the suit property herein is one Ahmed Hashi Aden. However, from the applicants' evidence contained in the supporting affidavit, the suit property was charged in favor of the applicants as security for a loan facility advanced to the lessee.
17. Due to non-repayment of the said facility, the suit property was sold by way of public auction. Consequently, therefore, the rights of the registered lessee of the suit property were extinguished upon the fall of the hammer. The registered lessee is therefore not in a position to apply for the extension of the lease.
18. Conversely, the highest bidder is not also in a position to apply for such extension since it is yet to be registered as the lessee of the suit property thereto since the transfer is yet to be completed.

19. It is important to note that the averments and documents by the applicants have neither been challenged nor controverted.
20. In view of the foregoing, it is the finding of this court that the applicants herein are under a duty to apply for the extension of the lease.
21. The originating summons is therefore merited and the applicants are entitled to the orders sought therein.

Who shall bear the Costs of the suit;

22. The general rule is that costs follow the event unless the court directs otherwise.
23. However, in this case, it is my considered opinion that no costs should be awarded to the applicants owing to the circumstances of the case.

Conclusion:

24. In view of the foregoing, it is the finding of this court that the Originating Summons dated 6th October, 2025 is **merited** and is hereby **allowed** on the following terms: -
 - i. **An order be and is hereby issued, authorizing the Applicants as the Chargee of ELDORET MUNICIPALITY BLOCK 3/35 to apply for the extension of the lease in respect to the suit property known as ELDORET MUNICIPALITY BLOCK 3/35.**
 - ii. **There shall be no orders as to costs.**
25. It is so ordered.

DATED, SIGNED and virtually **DELIVERED** at **ELDORET** this
11th day of **DECEMBER, 2025.**

HON. C. K. YANO
JUDGE

Judgment delivered in the virtual presence of: -

Mr. Mayiga for Applicants.

No appearance for Interested Party

Court Assistant - Edwin

ORIGINAL