



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
COMMERCIAL CASE NO. E002 OF 2025

BETWEEN

CHRISPO NJOROGE MURAGURI.....1ST PLAINTIFF/RESPONDENT

MOPPAX LINK ENTERPRISES LTD..... 2ND PLAINTIFF/RESPONDENT

AND

CO-OPERATIVE BANK OF KENYA LTD..... DEFENDANT/APPLICANT

RULING

1. The defendant/applicant moved the court through a Notice of preliminary objection dated the 12th day of January 2026, based on the following grounds:
 - a) Section 103 of the Land Registration Act, as amended, confers substantive rights and remedies, not jurisdiction.
 - b) Jurisdiction can only be conferred by the constitution or clear statutory language, and in this case, article 162 (2) (b) vests Land Disputes in the Environment and Land Court.
 - c) Article 165(5) (b) expressly removes such matters from the High Court. Once a dispute concerns a charge over land, or the exercise of the statutory power of sale, it becomes a land dispute.
 - d) Section 13 (2) of the ELC Act expressly covers charges and mortgages. Section 13(7) of the same empowers ELC to award damages, compensation and restitution, which fully covers remedies provided under section 103 of the Land Registration Act.
 - e) The Commercial Division is not a separate Constitutional Court. It's an Administrative Division of the High Court, and the Court assumes jurisdiction over it.
 - f) Where the prayers are omnibus (as the suit herein) but the dominant substantive prayer challenges a bank's exercise of its power of sale over the sale of land, and the proper court is the ELC jurisdiction, the principle relief sought follows.
 - g) Under the constitution, statutory law, case law and precedents, this court lacks jurisdiction to entertain the suit herein and must do so.

2. The preliminary objection was contested on the basis that this court has jurisdiction over the dispute.
3. A preliminary objection raises purely issues of law. The Court of Appeal in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited (1969) EA. 696** (Sir Charles Newbold P) observed as follows:

... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse issues. This improper practice should stop.

4. The defendant has contended that this court lacks jurisdiction to entertain this case. Jurisdiction is an issue of law. The Court of Appeal for Eastern Africa in **Salim vs Shariff Mohamed Shary [1938] KLR 9** stated:

If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders, however precisely certain and technically correct, are made nullities and not only voidable, they are void and may not only be set aside at any time by the court in which they are rendered but be declared void by every court in which they may be presented. It is well established that jurisdiction cannot be conferred on a court by consent of parties, and any waiver on their part cannot make up for the lack or deficit of jurisdiction.

5. The dispute between the parties revolves around a legal charge over land. Section 13 (2) of the Environment and Land Court Act creates the jurisdiction of the ELC and provides:

In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court 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.*
6. In **Co-operative Bank of Kenya Ltd vs Patrick Kangethe Njuguna &5 others [2017] KECA 79 (KLR)**, the Court of Appeal on the issue of the jurisdiction of ELC stated:

41. 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.

7. The interpretation of section 13 of the Environment and Land Court Act and the Court of Appeal's decision clearly indicate that the ELC lacks jurisdiction in this case. The preliminary objection is therefore dismissed with costs.

Delivered and signed at Nyandarua, this 21st day of January 2026.

KIARIE WAWERU KIARIE
JUDGE