



REPUBLIC OF KENYA



Wangari v ABSA Bank Kenya Plc (Environment and Land Case E453 of 2025) [2026] KEELC 437 (KLR) (30 January 2026) (Ruling)

Neutral citation: [2026] KEELC 437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E453 OF 2025**

**TW MURIGI, J
JANUARY 30, 2026**

BETWEEN

MONICA WANGARI PLAINTIFF

AND

ABSA BANK KENYA PLC DEFENDANT

RULING

1. By a Notice of Motion application dated 10th September 2025, the Applicant seeks the following orders:
 - a. Spent.
 - b. That pending the hearing and determination of this suit, an injunction do issue restraining the Defendant, whether by itself, its agents, servants, auctioneers, or any other person acting under its authority, from advertising for sale, selling, transferring, leasing, alienating, taking possession of, or otherwise interfering with the Plaintiff's quiet possession of the property known as Villa Number 13 Court B (Edenville Estate), erected on L.R. No. 21103/1 Kiambu.
 - c. That the Defendant be and is hereby ordered to supply a full statement of account from the inception of the facility to date, showing disbursements, repayments, how each payment was amortized or applied; that is, what portion was applied to reduce the principal and what portion was applied toward interest (loan amortization), interest rates applied, penalties, and the computation of the alleged outstanding sum claimed in Section 90(1) Notice dated 12th June 2025.
 - d. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Monicah Wangari, sworn on even date.



The Respondent's Case

3. In response, the Defendant filed a Notice of Preliminary Objection dated 12th September 2025, arguing that the court lacks jurisdiction to hear and determine this suit. The Respondent contends that Article 162(2)(b) of the *Constitution* and Section 13 of the *Environment and Land Court Act* prohibit this court from determining the dispute, as it falls within the jurisdiction of the High Court.
4. The preliminary objection was canvassed by way of written submissions.

The Defendant's Submissions

The Defendant filed its submissions dated 1st October 2025.

5. On behalf of the Defendant, Counsel submitted that this court lacks jurisdiction to hear and determine this matter. Counsel further submitted that the suit is based on the Defendant's statutory power of sale, not on a dispute concerning the environment, use, occupation, or title to land. To support this argument, Counsel relied on the Applicant's supporting affidavit.
6. It was submitted that the dispute between the parties is contractual and commercial in nature and centers on loan account computation, interest, repayment schedules, and consent to sell land, which fall within the jurisdiction of the High Court. Counsel relied on the following cases in support of his submissions; *Co-operative Bank of Kenya Limited v Patrick Kangethe & 5 others* (2017) KECA 79 (KLR), *Dismas Wambola v Cabinet Secretary Treasury & 5 others* (2017) KEHC 8777 (KLR), *Owners of the Motor Vessel "Lillian S" v Caltex Oil (K) Ltd* (1989) KECA 48 (KLR), *Macharia & another v Kenya Commercial Bank Limited & 2 others* (2012) KESC (KLR) and *Thomas Mutuku Kasue v Housing Finance Company Ltd (HFC) & another* (2021) KEELC 4524 (KLR)
7. In conclusion, Counsel urged the court to strike out the suit with costs to the Defendant.

The Plaintiff's Submissions

8. The Plaintiff filed her submissions dated 30th October 2025.
9. On behalf of the Plaintiff, Counsel outlined the following issues for the court's determination:
 - i) Whether this court has jurisdiction to hear and determine the application;
 - ii) Whether the predominance issue or the primary subject matter is discernible in this dispute;
 - iii) Whether this case is distinguishable from that of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna*;
 - iv) Whether the preliminary objection is sustainable in law;
 - v) Whether the application satisfies the conditions for the grant of an interlocutory injunction;
10. Regarding the first issue, Counsel relied on Section 150 of the *Land Act*, Article 162(2)(b) of the *Constitution*, and Sections 13, 88(1) (g), 89(1) and 128 of the *Land Act* to assert that this court has jurisdiction to hear and determine this matter. Further reliance was placed on the cases of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* (2012) eKLR, *EG & 7 others v Attorney General: DKM & 9 others (Interested Parties)*, *Katiba Institute & another (Amicus Curiae) Petition 150 & 234 of 2016*, and *R v Karisa Chengo & 2 others* (2017) eKLR.



11. Regarding the second issue, Counsel submitted that the application is based on the Plaintiff's right of equity of redemption, which entitles her to use, occupy, and hold title to the land. To support this point, Counsel relied on Sections 88(1)(g) and 89(1) of the Land Act. Counsel argued that an offer to purchase the Plaintiff's property was annexed, and that for the sale to crystallize, the Defendant's consent was required. The Defendant withheld that consent, thereby violating the law and infringing the Plaintiff's equity of redemption.
12. Counsel contended that the ancillary prayers sought in the plaint are consequent upon the frustrated sale or the right of redemption.
13. Regarding the third issue, Counsel submitted that the cause of action is triggered by the Defendant's unlawful withholding of consent to the sale, thereby clogging the Plaintiff's equity of redemption. Counsel further submitted that this case is distinguishable from Co-operative Bank of Kenya Limited v Patrick Kang'ethe, as the predominant issue is the Defendant's unlawful withholding of consent to the sale. Counsel submitted that Section 128 of the Land Act grants this court exclusive jurisdiction to hear and determine disputes arising from breaches or violations of the Land Act. In addition, Article 165(5)(b) bars the High Court from hearing matters that fall within this court's jurisdiction.
14. Regarding the fourth issue, Counsel argued that the preliminary objection is intertwined with contentious factual issues that will invoke the court's discretion and require the resolution of the primary issue, thereby rendering it untenable. To support this argument, reliance was placed on the cases of Mukisa Biscuits Manufacturing Co Ltd v West End Distributors (1969) EA 696, Mwangangi v Mutua & another (2022) KEELC 2208 (KLR), Attorney General and another v Andrew Maina Githinji & another (2016) eKLR, and Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 others (2015) eKLR.
15. In conclusion, Counsel submitted that the Applicant has met the threshold set out in the case of Giella vs Cassman Brown & Co. Ltd (1973) EA. Counsel urged the court to dismiss the preliminary objection with costs.

Analysis and Determination

16. Having considered the preliminary objection and the rival submissions, the only issue for determination is whether the preliminary objection is merited.
17. The law on preliminary objections is well settled. A preliminary objection must be based on a pure point of law. In Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd (1969) EA 696, Law JA stated:

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

18. In ORARO vs MBAJA 2005 eKLR OJWANG J (as he then was) described it as follows:

“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual



aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

19. The issue of jurisdiction is a pure point of law that can determine the matter without considering the merits of the case. This Court is therefore satisfied that the Preliminary Objection is based on a pure point of law. Having considered the preliminary objections and the rival submissions, the only issue that arises for determination is whether this court has jurisdiction to hear and determine this suit.
20. It is trite law that jurisdiction is everything, and without it, the court cannot take one more step in the case. The locus classicus on jurisdiction is the celebrated case of Owners of Motor Vessel ‘Lillian S’ vs Caltex Oil (Kenya) Limited (1989) eKLR, in which the Court held that:

“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...”
21. Similarly, in Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR, the Supreme Court stated as follows;

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation....”
22. A court derives its jurisdiction from the Constitution, legislation, or both. The jurisdiction of this court is derived from Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act.
23. The Defendant challenged the jurisdiction of this court on the basis that the dispute between the parties is commercial in nature and therefore falls within the jurisdiction of the High Court.
24. The Defendant argues that the dispute is commercial in nature, arising from its statutory power of sale under a charge, and therefore falls within the High Court’s jurisdiction.
25. The Plaintiff contends that its claim is based on the alleged clogging of the equity of redemption resulting from the Defendant’s refusal to consent to the sale.
26. Equity of redemption is a primary interest in land, encompassing the right to redeem, use, occupy, and dispose of the charged property subject to the law. In Mbuthia v. Jimba Credit Finance Corporation & another (1988) KLR, the court held that a chargor’s equity of redemption is an interest in land that the court must jealously guard. The record shows that the Plaintiff’s claim rests on the Defendant’s refusal to consent to the sale, which allegedly clogged the equity of redemption.
27. When a charger alleges unlawful interference with that right, the dispute shifts from a purely commercial matter to a land dispute under Section 13 of the Environment and Land Court Act. The Applicant challenges the Defendant’s unlawful withholding of consent, which impairs the Applicant’s right of redemption.
28. In the end, I find that the preliminary objection is without merit and hereby dismiss it with costs to the Plaintiff.



RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF JANUARY, 2026.

.....

HON. T. MURIGI

JUDGE

In the presence of

Ndungo for the Plaintiff

Wameyo holding brief for Ndeya for the Defendant

Ahmed – Court assistant

