

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

ELRC CAUSE NO E400 OF 2020

IRENE NJERI

NJENGA.....CLAIMANT

VERSUS

DIB BANK KENYA

LIMITED.....RESPONDENT

RULING

Background

1. Before the court is the application dated 13th June 2025 filed by the Respondent through which it seeks the following orders:-
 - a) Spent.
 - b) That the court grants it (the Respondent), its agents, servants, auctioneers and or potential purchasers unrestricted access to the charged property to conduct inspection and any other actions necessary to facilitate the sale of the property.
 - c) That the court grants it (the Respondent) leave to sell the charged property at the best price reasonably obtainable at the time of sale notwithstanding that such price may be below the forced sale value if it (the Respondent) is unable to sell the property after two attempts at a sale by public auction at or above the forced sale value.

- d) That the officer commanding station of the nearest police station to the charged property be directed to provide all necessary assistance and security to it (the Respondent), its agents, servants, valuers, auctioneers and or potential purchasers in the execution of prayer two above to maintain peace and to protect and preserve human life and property.
 - e) That costs of the application be provided for.
 - f) That the court makes such further orders as it may deem just and expedient in the circumstances.
2. The application is supported by the grounds on the face thereof and affidavit of even date. The affiant avers that the parties to the action had an employment relationship pursuant to which the Respondent advanced the Claimant certain financial facilities. She avers that the facilities were secured by the property registered as LR. No. NAIROBI/BLOCK 110/379.
3. The Respondent contends that the Claimant moved this court in respect of the dispute which emanated from the employment relationship between the parties and simultaneous therewith sought orders to restrain it from levying charges, penalties or interest on the delayed payment on the financial facilities. She further contends that the Claimant also sought an order to bar the Respondent from altering the preferential terms under which the facilities were advanced or instituting recovery proceedings for the said facilities.

4. The affiant avers that on 23rd July 2021, this court (differently constituted) granted the Claimant an order to restrain the Respondent from changing the terms upon which the facilities were granted to her. The affiant further avers that the order was conditional on the Claimant continuing to service the facilities.
5. The affiant avers that the Claimant has failed to service the facilities in accordance with the aforesaid court order making it necessary for the Respondent to initiate forced recovery. However, she contends that the Claimant has frustrated the process by preventing potential buyers of the charged property from accessing it for purposes of inspection.
6. The affiant contends that notwithstanding the foregoing, the Respondent has continued to make attempts to recover the impugned facilities through sale of the charged property but all the bids it has received have been below the forced sale value for the property. As such, she contends that the court should issue the orders in the application to enable the realization process to progress.
7. The Claimant is opposed to the application. She has filed a replying affidavit dated 7th August 2025 to anchor her objection to the motion.
8. The Claimant avers that the application is premature as it is meant to pre-empt her application to declare the finance facilities between them as illegal, null and void. She contends that granting the Respondent's request will breach her rights to property and privacy.

9. The Claimant concedes that the law recognizes a chargee's rights over charged property. However, she contends that the chargee must exercise the rights in accordance with the applicable law.
10. The Claimant avers that if the court issues the orders sought, it will have pre-determined the dispute between the parties regarding the impugned financial facilities. As such, she urges the court to exercise restraint in granting the reliefs.
11. The Claimant avers that the law does not permit the Respondent to sell the charged property below 25% of its market value. Further, she contends that the Respondent has an obligation to act in good faith whilst exercising the statutory power of sale by obtaining the best price for the charged property which should not fall below the forced sale value of the property as determined by a registered valuer.
12. The Claimant contends that the Respondent is simply seeking a license to act outside the law. She contends that it will be improper for the court to sanction the sale of the charged property below the forced sale value.
13. The Claimant avers that the Respondent's request for police assistance is uncalled for. She contends that the Respondent has not provided evidence to suggest a possible breach of the peace to warrant issuance of the aforesaid orders.

Analysis

14. The prayers which the Respondent seeks in the application are substantive in nature and ought to be made in a substantive suit where the allegations which have been

made by either party can be subjected to scrutiny through the rigors of cross-examination. As such, they (the prayers) should not be the subject of interlocutory proceedings.

15. The court notes that the Claimant has no Counter Claim to anchor the instant application. Absent this, it (the court) cannot entertain the proposed prayers on the basis of the bare interlocutory application.
16. The court is alive to the fact that the High Court expressed the view that the finance dispute between the parties should be handled by this court since it arose from the employment relationship between them (see ***Njenga & another v DIB Bank Kenya Limited [2023] KEHC 21772 (KLR)***). Whilst it is true that this court is entitled to adjudicate on certain aspects of the finance agreements between the parties, this is limited to those aspects of the agreements which are linked to the employment contract between them.
17. In this regard, the court has in mind aspects of the finance contracts which touch on the preferential loan terms which were anchored on and tied to the employment relationship between the parties. This court is entitled to pronounce itself on the enforceability of such terms (***Sati v Barclays Bank of Kenya Limited [2022] KEELRC 13223 (KLR)***).
18. However, that is as far as it (the court) may go in addressing disputes based on the finance agreements between the parties. I do not think that it (the court) is entitled to take this limited window as a license to interrogate the legality or otherwise of the finance contracts and to purport to

adjudicate on the realization of the charged properties. This, in the court's view, is a matter which falls within the jurisdictional domain of the Environment and Land Court.

19. In reaching this conclusion, the court has in mind the dominant jurisdiction test which is applicable to determine the question of jurisdiction in cases which raise mixed grill disputes. Applying this test, the court should ask itself what the dominant issue in dispute is in order to determine whether it should adjudicate on the matter.
20. Speaking to the issue in the case of **Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another [2018] eKLR**, Munyao J as he then was stated as follows:-

“But then, one may ask, what if I have a matter which brings forth various issues, some of which fall within the jurisdiction of the High Court or Employment and Labour Relations Court (ELRC) and some falling within the jurisdiction of the ELC, and yet such dispute cannot be severed for the different issues to be heard in different courts? That is a case with mixed issues, some falling within the jurisdiction of the ELC and some falling within the jurisdiction of the High Court or ELRC, the three superior courts with equal status. In such instance one needs to find out what the predominant issue in the case is, and file suit in the court which has jurisdiction to hear the predominant issue.....

.... what is important when determining whether the court has jurisdiction, is not so much the purpose of the transaction, but the subject matter or issue before court, for I think that the purpose of the transaction, may at times be different from the issue or subject matter before court.”

21. In the instant application, the dominant issue between the parties relates to the exercise of the statutory power of sale by the Respondent. As mentioned earlier in the decision, the Respondent seeks the court’s assistance to enforce the aforesaid powers in respect of the charged property. On the other hand, the Claimant contests this request on the ground that the securities in dispute were improperly used to secure illegal finance contracts.
22. The powers of sale which the Respondent proposes to exercise are donated to it by the various land statutes. Indeed, the charge instrument pursuant to which it (the Respondent) proposes to enforce the sale is registered under *the Land Act* and *the Land Registration Act*.
23. The jurisdiction of the Employment and Labour Relations Court to adjudicate on the enforceability of the preferential interest rate terms in the in the finance contracts between the parties does not extend to determining the dominant issue that is raised in the application. The issue belongs to the Environment and Land Court.
24. This reality was affirmed by the learned Judge in the aforesaid decision of ***Lydia Nyambura Mbugua v***

Diamond Trust Bank Kenya Limited & Another (supra) when he stated as follows:-

“.....it is the ELC and the empowered subordinate courts, which have jurisdiction to hear disputes relating to matters in the Land Act and Land Registration Act. This jurisdiction will inevitably cover all instruments created within these statutes, which must also encompass charges, and generally all proprietary transactions. The process of sale by chargee, which is what is questioned in this case, is a process that is laid down in the Land Act and Land Registration Act, (formerly in the Registered Land Act now repealed) and these statutes provide that the court with jurisdiction is the ELC.”

25. It is important for parties with mixed grill disputes to always bear in mind that a court will not handle the disputes under one roof if they are severable. Where the causes can be severed from each other, it is advisable to present them separately to the court with the appropriate jurisdiction (***Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another*** (supra)).
26. In the instant dispute, the employment dispute between the parties is capable of detachment from the disputes surrounding the legality and enforceability of the impugned financial facilities. As such, save for aspects of the finance contracts which are intricately linked to the employment relation (such as the question of enforcement of the

preferential loan terms), the parties ought to have moved the right court with respect to other disputes associated with the finance contracts.

27. The court reiterates that the only issue it is entitled to entertain in the finance contracts relates to whether the preferential interest rate terms which are tied to the employment relationship between the parties are enforceable (see for example in ***Evans Oliver Olwali v Standard Chartered Bank Limited [2018] eKLR & Odek v Co-operative Bank Limited (K) [2022] KEELRC 1430 (KLR)*** where the Employment and Labour Relations Court considered the question of preferential rates). Beyond this, issues touching on the validity or legality of the finance contracts must be presented to the right forum which is the Environment and Land Court (***Elias Maundu Makau v I&M Bank Limited [2021] KEELRC 80 (KLR)***).

Determination

28. The upshot is that the court declines to entertain the prayers sought in the application dated 13th June 2025.
29. As such, the application is dismissed.
30. Costs of the application to be in the cause.

Dated, signed and delivered on the 17th day of February, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI