



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odera v Credit Bank Plc & another (Environment and Land Case  
E022 of 2025) [2026] KEELC 568 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 568 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND CASE E022 OF 2025**

**AE DENA, J**

**FEBRUARY 6, 2026**

**BETWEEN**

**JAMES OUMA ODERA ..... PLAINTIFF**

**AND**

**CREDIT BANK PLC ..... 1<sup>ST</sup> DEFENDANT**

**FLORENCE AKINYI OHITO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Placed before me is a Notice of motion dated 11<sup>th</sup> June 2025. The application is brought under certificate of urgency and supported by an affidavit dated on even date. On the face of it the application seeks the following orders:
  - i. Spent
  - ii. That the 1<sup>st</sup> Defendant, its agents, servants and more specifically M/s Hegeon Auctioneers be restrained from selling, offering for sell or in any other manner whatsoever alienating the properties comprised of title No.s East Alego/Mur Ngiya/1634 &1698 pending the hearing and determination of the application inter partes.
  - iii. That the 1<sup>st</sup> Defendant, its agents, servants and more specifically M/s Hegeon Auctioneers be restrained from selling, offering for sell or in any other manner whatsoever alienating the properties comprised of title No.s East Alego/Mur Ngiya/1634 &1698 pending the hearing and determination of the suit herein.
  - iv. That any further or other order be granted as the court will deem fit in the circumstances of this case.
  - v. That costs of this application be borne by the 1<sup>st</sup> Defendant/Respondent.



2. The application is anchored on the grounds on the face of the application and in the supporting affidavit sworn by James Ouma Odera.
3. The application is opposed by the replying affidavit dated 7<sup>th</sup> July 2025 sworn by Francis Wainaina Ngaruiya.
4. In the affidavit in support of the application, the deponent avers that he is the registered owner of the suit properties, namely: Title No.s East Alego/Mur Ngiya/1634 &1698.
5. That the suit properties are developed title No. East Alego/Mur Ngiya/1634 being the family home, comprising of his house, his sons' houses, and other usual conveniences.
6. That on 2<sup>nd</sup> May 2025 while at his home a stranger came and after introducing himself as an auctioneer working for Hegeons Actioneers served him with a 'Notification Of Sale' which indicated that the 1<sup>st</sup> Defendant had instructed the said auctioneer to sell the two (2) parcels of land (the suit properties).
7. That the notification showed that the 1<sup>st</sup> defendant intended to recover from the sale an alleged loan arrears of Ksh 20,179,280.63 owed to the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant.
8. He further averred that the 2<sup>nd</sup> defendant was his estranged wife and he did not consent, nor execute any bank documents for purposes of securing the said loans stating further that the titles of the suit properties must have been stolen from his house.
9. That the use of his properties to secure the loans given to the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant was fraudulent because:
  - a. He did not sign any charge in favor of the 1<sup>st</sup> Defendant in respect of the suit properties or any of them.
  - b. That the titles to the suit properties must have been stolen by the 2<sup>nd</sup> defendant without his knowledge or consent
  - c. He did not appear before any bank official or advocate to execute any lending or charge documents.
  - d. The signature on any such charge documents must have been forged by the Defendants or one of them or their agents.
10. That his claim against the 1<sup>st</sup> Respondent is therefore for a permanent injunction restraining the 1<sup>st</sup> Defendant from selling or alienating the suit properties in purported exercise of its statutory power of sale; for a declaration that the charges registered against the suit properties on 25<sup>th</sup> September 2018 to secure loans advanced to the 2<sup>nd</sup> Respondent were fraudulent, unlawful null and void and an order for the discharge of the suit properties.
11. In opposition to the said application, the head of legal services of the 1<sup>st</sup> defendant deponed that from the records of the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent in or about June 2018 applied for and was granted credit facilities by way of a term loan by the 1<sup>st</sup> Respondent in the amount of ksh 22 000 000/= (Twenty two million Kenya shillings), under a loan agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents duly signed between the parties on 12/06/2018.
12. That the purpose of the loan was to take over the then existing facilities previously provided to the 2<sup>nd</sup> Respondent by Sidian Bank in the tune of Kenyan shillings fifteen million two hundred thousand (Ksh 15, 200,000/=) only, together with additional amounts lent by the 1<sup>st</sup> Respondent to complete



construction works being undertaken by the plaintiff and the 2<sup>nd</sup> Respondent on property title No. Kisumu/Manyatta/3495.

13. That the said agreement was pursuant to the provisions of clause 7A thereof also being signed by the Plaintiff/Applicant as the guarantor. That the plaintiff signed and contracted as between himself and the 1<sup>st</sup> Respondent a contract of guarantee and indemnity, annexed as 'WFN-2'
14. That it was an express and/or implied term of the loan and guarantee agreement read together that the borrowing by the 2<sup>nd</sup> Respondent was to be secured by the registration of charges inter alia over title L.R No. East Alego/Mur Ngiya/1634 to secure ksh 4331250/= and L.R No. East Alego/Mur Ngiya/1698 to secure ksh 945,000/=.
15. That pursuant to the loan and guarantee agreements, the applicant provided, executed and obtained registration of the respective charge securities over the suit properties, including applying for, attending and obtaining from Boro Land Control Board consents to the charge transactions.
16. That the Applicant and 2<sup>nd</sup> Respondent provided spousal consents to each other.
17. He deponed further that the Applicant was present at every juncture and participated in the banking arrangements initiated by the 2<sup>nd</sup> Respondent, and thus his claims that the charge transactions and the original title documents were stolen or fraudulently obtained are untrue and dishonest.
18. In a nutshell, he averred that the Applicants dishonest conduct, misrepresentation, suppression of information and failure to disclose correct and true information should ipso facto be found to disentitle him to any orders already issued, and denial of any of the orders of injunction sought.
19. It is averred that the suit and the application are ultra vires the present courts monetary and substantive jurisdiction. That the same are subjudice Kisumu HCCC No. E/019/2025 Florence Akinyi Ohito, Vs Credit Bank & Hegeons Auctioneers relating to the same loan transaction and land titles herein which is active and pending for determination. There is a danger of the two courts reaching discordant determinations on the same subject matter.
20. The pleadings in Kisumu Court reveal that Florence Akinyi Ohito the applicants wife alleges she is the owner of the subject properties. That she learnt of the sale from her husband, which corroborates service of the intended notice of sale. She also confirms her husband participated in the acquisition of the loan facilities. It is stated therefore the applicants suit and application is full of falsehoods.

### **Grounds of opposition**

21. The 1<sup>st</sup> respondent also filed grounds of opposition which largely reiterate the averments on monetary and substantive jurisdiction and the plea of subjudice and that there is no prima facie satisfactory and or valid grounds for grant of the application.
22. The 2<sup>nd</sup> defendant did not enter appearance despite service.

### **Submissions**

23. The application was canvassed by way of written submissions. The 1st defendants submissions are dated 5/12/2025. The plaintiffs applicants submissions are dated 25/10/25.

### **Analysis And Determination**

24. I have considered the application, supporting affidavit, replying affidavit and submissions of the parties. The issues that arise are



1. Whether this court has jurisdiction to hear and determine the present suit
  2. If the answer to the above is yes whether the application has met the threshold of grant of the orders of injunction.
  3. Who should bear the costs.
25. It is noteworthy that a discussion of the 2<sup>nd</sup> issue is dependent upon the outcome of issue number 1.
  26. The jurisdiction of this court to determine this matter has been questioned by the 1<sup>st</sup> defendant. The court in the case of Owners of Motor Vessel Lilian S Vs. Caltex Oil(Kenya) Ltd (1989) held that jurisdiction is everything and without it the court has no power to make one more step in a matter.
  27. The main contention is that matters related to charge transactions and realization of securities in lending transactions fall not within the purview of the Environment and Land Court, but that of the High in its exercise of commercial jurisdiction.
  28. The Plaintiff in the Plaint dated 11<sup>th</sup> June 2025 seeks a permanent injunction restraining the 1<sup>st</sup> defendant from selling or alienating titles Nos. East Alego/Mur Ngija/1634 and 1698 in purported exercise of its statutory power of sale. He also seeks a declaration that the charges registered against the said titles on 25/9/2018 in favor of the 1<sup>st</sup> defendant to secure loans advanced to the 2<sup>nd</sup> defendant were fraudulently procured and are null and void and should consequently be discharged. The reliefs sought in the application have been set out at the beginning of this ruling.
  29. The Plaintiff case is infact confirmed in paragraphs 2 and 3 of the submissions filed on behalf of the Plaintiffs thus;-
 

The Plaintiff has pleaded that he did not guarantee the loans advanced to the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant and he never signed or executed the letters of offer, guarantee and indemnity and the charges which are alleged by the Defendants to have been signed by him.

It is the Plaintiff's case that the signatures appearing on the letters of offer, guarantee and indemnity and the charges which are purported to be his signatures are not actually his signatures but forgeries, with the consequence that the impugned charges are invalid, unlawful, null and void.
  29. The Environment and Land Court (ELC) is established under section 4 of the [Environment and Land Court Act](#). Section 13 of the Act provides that ELC has powers 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, chooses in action or other instruments granting any enforceable interests in land; and
    - (e) any other dispute relating to environment and land.
  30. The above provisions are read together with the provisions of Article 162 of [the Constitution](#) of Kenya 2010.
  31. The matter of jurisdiction of the ELC to handle disputes surrounding the statutory power of sale has been a subject of many decisions with the locus classicus being Cooperative Bank of Kenya Limited Vs.



Patrick Kang'ethe Njuguna & 5 Others (2017) eKLR cited by the 1<sup>st</sup> defendant. The Court of Appeal outlining the jurisdiction of the ELC as stipulated in Article 162 of *the Constitution*, Section 13 of the ELC Act and Section 150 of the *Land Act* had this to state;-

- ‘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. ....’
30. The above is a binding authority to this court. I have already set out the substratum of the Plaintiffs claim based on the pleadings. The existence of the charges is not denied. It is submitted on behalf of the Plaintiff that what is in serious controversy is Whether the Plaintiff executed the letters of offer, guarantees and indemnities and charge documents in respect of the suit properties in favor of the 1st Defendant and Whether the Plaintiff was served with the requisite redemption notices under Section 90 of the *Land Act*, 2012. The Plaintiff claims there was fraud. Clearly there is nothing barring the High Court from interrogating the allegations made by the Plaintiff.
31. Arising from the foregoing it is the finding of this court that this court is not the competent court to handle this dispute and it must down its tools.
32. Further a disclosure has been made that the 2<sup>nd</sup> Defendant whom the Plaintiff has indicated to this court is his estranged wife filed a case being Kisumu HCCC No. E019 of 2025 involving the same parties and the same subject as the present suit which is active and pending before the Kisumu Court.
33. I have seen a Plaint, Notice of Motion dated 29/06/2025 and a supporting affidavit sworn by Florence Akinyi Ohito. The case involves Florence Akinyi Ohito (Plaintiff) and Credit Bank (1st Defendant) and Hegeons Auctioneers (2nd Defendant). The issues surround the exercise of the statutory powers of sale of the 1<sup>st</sup> defendant. The title No. s East Alego/Mur Ngiya/1634 & 1698 herein form part of the properties for sale as seen in paragraph 9 thereof. The Plaintiff therein seeks a permanent injunction restraining the defendants from interalia advertising or issuing the property for sale prior to the year 2029.
34. While I note that the parties are substantively the same except that the Plaintiff in the current proceedings is not a party thereto, for me the danger of the two courts issuing conflicting decisions on the exercise of the Banks statutory powers of sale is real. I have been invited to stay the current proceedings pending the determination of the suit pending in the High Court at Kisumu.
35. I think having made a finding that jurisdiction to determine this matter lies with the High in its exercise of commercial jurisdiction I will down my tools. The orders that therefore commend is that for this reason the suit is strike out for want of jurisdiction.
36. The Plaintiff shall bear the costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 6<sup>TH</sup> DAY OF FEBRUARY 2026**

**HON. LADY JUSTICE A.E. DENA**

**JUDGE**

**6/02/2026**



**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr. Amunga for the Plaintiff/Applicant

Mr. Nyachonga for 1<sup>st</sup> Respondent

Ms Lumumba for 2<sup>nd</sup> Respondent.

Court Assistant: Elisha Mboya

