



**Mukuru v NCBA Bank Limited & another (Environment and Land Case
E027 of 2025) [2026] KEELC 1331 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1331 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E027 OF 2025**

JA MOGENI, J

MARCH 5, 2026

BETWEEN

JUNIOR MUTHAMA MUKURU PLAINTIFF

AND

NCBA BANK LIMITED 1ST DEFENDANT

REGENT AUCTIONEERS 2ND DEFENDANT

RULING

1. Before the Court is an application dated 23/02/2025 brought under, Order 51 of the Civil Procedure Rules, Sections 3A of the [Civil Procedure Act](#) and any other enabling provisions of the law.
2. The prayers sought are:-
 - a. Spent.
 - b. That upon hearing and determination of this Application ex parte this Honorable Court does order that the notice dated 22nd January 2025 be declared unlawful and irregular
 - c. Spent.
 - d. That upon hearing this application ex parte, a restraining order be issued against the 1st and 2nd Respondents, its servants and agents or others howsoever from selling/auctioning the parcel of land reference LR No. 4953/29/IV junction of Commercial Street and Mama Ngina drive Thika Town, Kiambu County pending the hearing and determination of this application inter parte.
 - e. That OCS Thika Police Post/Station or any other requisite jurisdictional OCS enforce compliance of the order and that peace prevails.



- f. That upon hearing this application inter partes the Honorable Court be pleased to issue an Order of permanent injunction against the 1st and 2nd Respondents their servants and or agents against the illegal and irregular selling/auction of the parcel of land reference LR No. 4953/29/IV junction of Commercial Street and Mama Ngina drive Thika Town, Kiambu County.
- G. That cost of this application be provided for plus interest therein.
3. The application is supported by an Affidavit sworn on 23/02/2025 by Junior Muthama Mukuru the Plaintiff.
 4. The grounds upon which the application is brought are: the Applicant is a Director of Kendal Energy Solutions, which purchased the land (L.R NO. 4953/29/IV, located at the junction of Commercial Street and Mama Ngina Drive) from Hannah Wairimu Mutura via a written Sale Agreement.
 5. The Applicant was notified via WhatsApp on 19/02/2025 of a planned public auction. An advertisement subsequently appeared in the Daily Nation on 20/02/2025, scheduling the sale for 26/02/2025.
 6. The Applicant argues that the 1st Respondent gave unlawful instructions to the 2nd Respondent, the auctioneer, based on a defective notice dated 22/01/ 2025. The specific legal defects cited include; the fact that the notice failed to state the exact amount required to rectify the alleged default.
 7. Further the notice did not provide the mandatory three-month window to clear the default, nor the two-month period to rectify the specific breach as required by law.
 8. Thus, the Applicant claims the Respondents breached Section 90 of the Land Act, which mandates a 90-day statutory notice before a sale can proceed.
 9. The Applicant expresses a genuine apprehension that the property will be sold unlawfully unless the Court intervenes. And so, the Applicant is requesting an immediate halt (stay) of the auction scheduled for 26/02/2025. That the matter be heard on an extreme urgency basis to prevent further loss and serve the interests of justice.
 10. To support the application, the Applicant has attached a copy of the Notification of Sale by public auction dated 22/01/2025 and a copy of the newspaper advert dated 10/02/2025 as 'JMM-3' and '4' respectively.
 11. Further the Applicant states he is apprehensive and genuinely so that unless this Honorable Court protects the Applicant from the unlawful sale by public auction of the land parcel (L.R NO. 4953/29/IV, located at the junction of Commercial Street and Mama Ngina Drive) the Respondents will auction his land in violation of Section 90 (3) of the Land Act.
 12. The Notice of Motion Application is opposed by the 1st Respondent. In her Replying Affidavit sworn on 27/03/2025, Christine Wahome Senior Legal Counsel for the 1st Defendant's Bank presents a comprehensive rebuttal to the Applicant's case. She argues that the application is frivolous and vexatious attempt to frustrate a lawful debt recovery process.
 13. The 1st Respondent argues that the Environment and Land Court (ELC) is the wrong forum. Since the dispute is essentially a commercial disagreement over a loan contract and financial default rather than a dispute over land ownership or use it should be in the Commercial Court.
 14. It is her averment that the Applicant is suing in his personal capacity as a Director yet the 1st Respondent contends that the property is owned by Kendal Energy Solutions Limited, a separate legal entity. Therefore, only the Company (not an individual Director) has the legal right to sue.



15. In her Affidavit she accuses the Applicant of active concealment and that he is approaching the Court with unclean hands by failing to disclose the full history of the loan and previous legal attempts to stop the sale.
16. According to her, the Company was advanced over Kshs. 237 Million and as of late 2024, the debt had ballooned to approximately Kshs 269 Million. That the 1st Respondent (hereinafter ‘The Bank’) issued all mandatory notices, contradicting the Applicant’s claims as follows:
 - i. 30-Day Notice: Issued on 12/04/2021.
 - ii. 90-Day Statutory Notice: Issued on 29/05/2023.
 - iii. 40-Day Notice: Issued on 30/05/2024.
 - iv. 45-Day Redemption Notice: Served by auctioneers on 3/10/2024.All these are produced as annexures “CW-4a, 5, 5a, and 6a” all attached to the Replying Affidavit.
17. She further avers that a professional valuation was conducted in September 2024, placing the Market Value at Kshs 325 Million and Forced Sale Value at Kshs 243.75 Million and it is annexed as ‘CW-7’.
18. The Bank reveals the Applicant has engaged the bank in delay tactics and states that the auction originally set for December 2024 was previously stopped by the Business Premises Rent Tribunal (BPRT) through applications filed by the Company’s tenants. Those cases were dismissed as evidenced by annexure ‘CW-12b’ and the Bank views this current application as a continuation of those bad faith delay tactics.
19. The Bank argues that the Applicant fails the legal test for an injunction as set in *Giella vs. Cassman Brown* [1973] EA because, the default is not denied. Further that the Bank and the banking industry will suffer greater hardship if debtors are allowed to use the Court to avoid paying just debts. That in fact the Applicant will not suffer irreparable injury as the matter is purely financial and can be settled through damages if necessary.
20. The Bank requests that the Court dismiss the application with costs, arguing that the Court should not be a “safe haven for loan defaulters.”
21. Before the Notice of Motion Application could be canvassed the 1st Respondent (The Bank) additionally filed a Preliminary Objection opposing the Notice of Motion dated 27/03/2025 on the following grounds:-
 - a. THAT this Honourable Court lacks jurisdiction to hear and determine this matter pursuant to the Court of Appeal Judgment delivered in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others* [2017] eKLR.
 - b. THAT the dispute before this Honourable Court is not one of land, but of a commercial nature whose determination is not within the jurisdiction of the Environment and Land Court.
22. By a Plaint dated 23/02/2025, the Plaintiff outlines the formal legal case against the 1st Defendant (The Bank) and the 2nd Defendant (Regent Auctioneers). It seeks to permanently stop the auction of the Thika property based on significant procedural and statutory failures.
23. In brief, the Plaintiff argues that the intended sale scheduled for 26/02/2025, is illegal and premature because the Defendants skipped mandatory legal steps required by the *Land Act* and the Auctioneers



- Rules. That the Notice dated 22/01/ 2025, is legally and fatally flawed because it failed to state the specific amount required to rectify the default, to provide the mandatory three-month (90-day) period for repayment, and to specify the exact actions the Plaintiff needed to take to stop the foreclosure.
24. The Plaintiff claims they were never served with a Proclamation Notice or the mandatory 45-day Notification of Sale, which are strict requirements under the Auctioneers Rules before a property can be advertised. Further, the Plaintiff asserts that the law requires a 90-day Notice to rectify a default, followed by a separate 40-day Notification of Sale. That these timelines were completely ignored.
 25. A critical point raised is that the Defendants failed to conduct a current valuation of the property within the last six (6) months. Yet under Kenyan law, this is required to ensure the property is not sold at an undervalue where the price may be significantly lower than its true worth.
 26. In the Plaintiff asks for Judgment against the Defendants including:
 - a. Permanent Injunction to stop the Defendants from advertising, offering for sale, or selling the suit property L.R NO. 4953/29/IV.
 - b. An order to stop the Defendants from fencing, sub-dividing or interfering with the Plaintiff's right to occupy and use the land.
 - c. Costs of the suit and interest at Court rates.
 27. Despite the Court issuing directions on filing of responses and written submissions to both the Notice of Motion and the Preliminary Objection, the Plaintiff did not file any response to the Preliminary Objection except for the written submissions dated 16/06/2025 and the 1st Defendant filed a Replying Affidavit to the Notice of Motion and written submissions dated 23/04/2025 to both the Notice of Motion and the Preliminary Objection.
 28. What constitutes a Preliminary Objection was set out in the case of Mukisa Biscuits Manufacturing Biscuits Co. Ltd -vs- West End Distributors Ltd [1969] E.A 797 as a point of law which has been pleaded or which arises by clear implication out of pleadings which if argued may dispose of the suit.
 29. The Defendants' Preliminary Objection is based on two grounds. The 1st ground is that the Court lacks the requisite jurisdiction while the 2nd ground is that the dispute before this Honorable Court is not one of land but of a commercial nature and so its jurisdiction is not within the Environment and Land Court.
 30. Both 1st Defendant and the Plaintiff filed their submissions as stated at paragraph 27.

Submissions

31. The gist of the 1st Defendant's submissions focuses on the nature of the dispute to disqualify the Environment and Land Court (ELC) from hearing the matter. The 1st Defendant contends that while the dispute involves land, the predominant purpose of the suit is the enforcement of a commercial contract specifically, a loan facility and a charge instrument.
32. Further that the recovery of advanced monies and the exercise of the Statutory Power of Sale are commercial activities. They cite the landmark Court of Appeal decision in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017] KECA 79 (KLR) to assert that such matters belong exclusively to the High Court Commercial Division.



33. Additionally, it is their submissions that under Article 162(2)(b) of *the Constitution* and Section 13 of the ELC Act, the Environment and Land Court is limited to disputes concerning title, tenure, use and occupation of land.
34. According to the 1st Defendant the dispute arises from a loan advanced to Kendal Energy Solutions Ltd. Therefore, the core issue is the alleged default and the subsequent enforcement of a financial instrument (the Charge).
35. In the circumstances the 1st Defendant maintains that since the Plaintiff is not challenging the validity of the title or the physical use of the land, but rather the debt recovery process, the ELC is not the constitutionally or statutorily empowered forum.
36. On the other hand, the gist of the Plaintiff's submissions is that the dispute is not merely a commercial debt but an issue fundamentally tied to an interest in land and the legal validity of a charge, which falls squarely within the mandate of the Environment and Land Court (ELC).
37. The Plaintiff points out that the statutory interpretation under Section 150 of the *Land Act* specifically grants the ELC jurisdiction to hear and determine all disputes, actions, and proceedings concerning land under the Act. He cites Article 260 of *the Constitution* and argues that any legal interaction affecting the surface or interest in that land falls under the specialized Court's oversight.
38. According to the Plaintiff's submission, the classification of the charge under Section 2 of the *Land Act* defines a charge as an interest in land. Additionally, he submits that Section 13(2)(d) of the ELC Act explicitly states that the ELC has the power to determine disputes relating to contracts, choses in action or the instruments granting any enforceable interest in land.
39. Therefore, the Plaintiff submits, that since the 1st Defendant is attempting to exercise a Power of Sale based on a Charge (a land instrument), the Plaintiff contends that the ELC is the only Court with the specialized mandate to oversee the regularity of that process.
40. The Plaintiff has in his submissions elevated the dispute from a loan default to a matter of legality and land policy. He submits that under Section 157 of the *Land Act*, the registration of the charge was fraudulent. Therefore, the ELC is the proper forum to investigate dispositions or transactions affecting land that involve false statements or fraud.
41. The Plaintiff refers to the National Land Use Policy, arguing that land use includes economic activities and returns. Since the charge is a financial activity tied to the land's economic value, it constitutes a land use issue.
42. Thus, the Plaintiff characterizes the 1st Defendant's objection as an attempt to mislead and misguide the Court. He urges the Court to dismiss the Preliminary Objection as being unmeritorious, and to maintain the suit in the ELC to protect the Plaintiff's interests from an allegedly fraudulent and procedurally flawed auction.

Analysis and Determination

43. At this stage, the issue before this Court for determination is whether the Court has the requisite jurisdiction to entertain the application and subsequent suit by the Applicant. It is trite that what constitutes a Preliminary Objection is well captured in the case of *Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors* (supra) where it was observed that;

“.... 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 a contract giving rise to the suit to refer the dispute to arbitration.”

44. An objection on jurisdiction of a Court is a question of law. The locus classicus case of Owners of the Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Ltd (1989) KLR 1 has this to state on jurisdiction:-

“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 pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

45. Article 162 (2)(b) of *the Constitution* provides:-

“

“(2) Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land

Section 13 of the Environment and *Land Act* provides:-

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

2. 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.”

46. Further, the decision of the Supreme Court in the case of Republic -vs- Karisa Chengo & 2 Others (Supreme Court Petition No.5 of 2015) 2017 eKLR, the Supreme Court pronounced itself as follows:

“Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court’s operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from *the Constitution* or legislation



In addition to the above, we note that pursuant to Article 162(3) of *the Constitution*, Parliament enacted the *Environment and Land Court Act* and the Employment and *Labour Relations Act* and respectively outlined the separate jurisdictions of the ELC and ELRC as stated above. From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of Courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

47. The threshold for a Preliminary Objection was definitively established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [supra]. It must consist of a pure point of law which, if decided, may dispose of the entire suit. Jurisdiction is the first test of any Court’s power, as famously articulated in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [supra]; without it, the Court must down tools.
48. The 1st Defendant relies heavily on the Predominant Purpose test. In *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna* (Supra), the Court of Appeal clarified that the ELC’s jurisdiction is specialized. Where a dispute is primarily a debt-collection exercise involving a charge over land as collateral, the matter belongs in the High Court the Commercial Division, not the ELC.
49. The Plaintiff argues that Section 150 of the *Land Act* and Section 13(2)(d) of the ELC Act grant this Court power over contracts or instruments granting an enforceable interest in land. The Plaintiff further contends that a Charge is an interest in land under Section 2 of the *Land Act*.
50. However, the jurisprudence has evolved to distinguish between a challenge to the validity of the interest (ELC) and a challenge to the process of debt recovery (High Court). The Plaintiff’s grievances failure to state the exact default amount, lack of 90-day notice, and failure to serve a 45-day redemption notice are procedural challenges to the Statutory Power of Sale. These are matters of commercial law and the law of securities.
51. Upon review of the pleadings and the rival submissions, the Court finds as follows:
 - a. The Plaintiff does not deny the existence of the charge or the underlying debt. The dispute is triggered by the Bank’s attempt to recover Kshs 269 Million. This is a commercial transaction.
 - b. Following the *Kangethe Njuguna* precedent, the fact that land is the security for a loan does not automatically transform a commercial default into a land dispute for ELC purposes. The ELC is a Court of limited specialized jurisdiction under Article 162(2)(b).
 - c. The Court notes the Bank’s submission that the property is owned by a Limited Company, while the suit is brought by a Director in his personal capacity. While this is a matter of merit, it underscores the commercial nature of the corporate borrowing involved.

Disposal Orders

52. The Preliminary Objection is well-founded. This Court lacks the subject-matter jurisdiction to adjudicate what is essentially a commercial dispute over the enforcement of a financial charge.
53. Accordingly, I make the following orders:



- a. The Preliminary Objection dated 27/03/2025 is hereby found to be merited.
- b. The Plaintiff's Notice of Motion dated 23/02/2025 and the Plaintiff's Notice of Motion dated 23/02/2025 and the Plaintiff's Notice of Motion dated 23/02/2025 are hereby transferred to the Thika High Court Commercial Division.
- c. Costs of the Preliminary Objection and the Application are awarded to the 1st Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 5TH DAY OF MARCH 2026.

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MOGENI J

JUDGE

In the virtual presence of:

.....Plaintiff

.....1st Defendant

.....2nd Defendant

Melita..... Court Assistant

