

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC NO. E048 OF 2025**

**STEPHEN ANANDA AMWAYI-----**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**JAMES MWAURA KARUIGI-----1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**CO-OPERATIVE BANK OF KENYA  
LIMITED-----2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**LAND REGISTRAR TRANS-NZOIA----3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**AND**

**MARGARET EKUYI AMWAYI-----**  
**INTERESTED PARTY**

**RULING**

1. The plaintiff has raised a preliminary objection dated **23/10/2025**, that this court lacks jurisdiction to hear and determine the issues in the 1<sup>st</sup> defendant's counterclaim dated **16/10/2025**, since they relate to a charge over the suit property, and therefore the dispute is commercial in nature which does not fall within this court's jurisdiction under **Section 13** of the Environment

and Land Court Act, **2011**. Jurisdiction is everything. Without it, a court shuts its tools.

**2.** In the 1<sup>st</sup> defendant's defence and counterclaim dated **16/10/2025**, the 1<sup>st</sup> defendant is seeking;-

- a. *The plaintiffs' suit be dismissed with costs.*
- b. *A declaratory order to the effect that the plaintiff is obligated to liquidate his share of the loan proceeds, which he received from the 1<sup>st</sup> defendant, amounting to **Kshs. 6,600,000/=** at the rate of **Kshs. 240,264.50/=** per month, with effect from May **2025**, and to continue servicing the said loan for the rest of the loan term of thirty-six months.*
- c. *An order for the plaintiff to refund the 1<sup>st</sup> defendant the sum due and owing, amounting to **Kshs. 2,299,077/=** comprising the said **Kshs. 1,441,587.06/=** and **Kshs.769,090/=** above,*
- d. *An order for the plaintiff to remit to the 1<sup>st</sup> defendant the said monthly premiums of **Kshs. 240,264.50/=** in the account of the 1<sup>st</sup> defendant in the Cooperative Bank, Limuru branch, being account number **01192244178000** for onward transmission to the 2<sup>nd</sup> defendant with effect from **5/11/2025**.*

e. If the plaintiff is unable to refund and remit his share of the monthly loan premiums for the money he received from the 1<sup>st</sup> defendant amounting to **Kshs.6,600,000/=**, plus interest of **Kshs.2,049,522.52/=**, the 1<sup>st</sup> defendant prays that he be allowed to solely liquidate the entire loan plus interest within the loan term of thirty-six (36) months.

f. The 1<sup>st</sup> defendant prays that this court order that instead of transferring the entire parcel of the subject property back to the plaintiff after repaying the whole loan, the 1<sup>st</sup> defendant be allowed to retain a portion of the same equivalent to the sum of **Kshs.10,948,599.52/=** plus any other costs and/or interest, as per the variation that may have been made by the bank due and owing to the 1<sup>st</sup> defendant from the plaintiff, tabulated as: **Kshs.2,299,077/=**, **Kshs.8,649,522.52/=** (loan principle of **Kshs.6,600,000/=** plus interest of **Kshs.2,049,522.52/=**).

3. Through a reply to the defence and counterclaim dated **5/1/2026**, the plaintiff denies all the contents therein. He specifically denies being party to the transaction and the loan agreement between the 1<sup>st</sup> and the 2<sup>nd</sup>

defendants and states that he is not bound by the terms therein.

4. The plaintiff further states that the 1<sup>st</sup> defendant's claim for valuation fees, legal fees, transport costs, and property transfer costs is misinformed, since he was never a party to the transaction that gave rise to the alleged costs. The plaintiff states that the 1<sup>st</sup> defendant's demand for **Kshs.10,000,000/=** as compensation is malicious and misconceived, as the 1<sup>st</sup> defendant intends to avoid his obligations and liability under the loan agreement with the 2<sup>nd</sup> defendant.
5. In written submissions dated **3/2/2026**, the applicant submits that this court lacks jurisdiction to hear and or determine the 1<sup>st</sup> defendant's counterclaim, as the issues raised therein are purely commercial and contractual in nature, arising from a charge instrument or an alleged commercial agreement and or a loan facility, and are therefore improperly before the court.
6. The applicant further submits that this court is a specialized court established pursuant to **Article 162(2)(b)** of the Constitution, as read together with **Section 13** of the Environment and Land Court Act, to hear and determine disputes relating to the environment and the use, occupation, and title to land.

7. The applicant submits that the 1<sup>st</sup> defendant's counterclaim seeks to determine whether there exists a valid and enforceable commercial contract between the plaintiff and the 1<sup>st</sup> defendant; whether the plaintiff was privy to, or a party to, the charge instrument executed between the 1<sup>st</sup> and 2<sup>nd</sup> defendants; whether the plaintiff received any monies from the 1<sup>st</sup> defendant as alleged, and if so, the nature and quantum of such funds; whether the plaintiff can be compelled to refund any monies to the 1<sup>st</sup> defendant, if at all, together with interest allegedly accruing pursuant to the terms of a charge instrument to which the plaintiff is not a party.

8. Reliance is placed on **Bank of Africa Kenya Limited & another -vs- TSS Investment Limited & 2 others [2024] KECA 410 (KLR)**, that disputes arising from loan facilities and charge instruments are commercial disputes that fall within the jurisdiction of the High Court and not this court. It is submitted that, therefore, a court without jurisdiction must down its tools, as held in **Owners of the Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd [1989] eKLR**.

9. The 1<sup>st</sup> respondent relies on written submissions dated **6/2/2026**. He submits that the preliminary objection is an abuse of the court process to delay the hearing and

determination of this suit. The 1<sup>st</sup> defendant submits that a counterclaim is a suit within a suit, in which a defendant claims against a plaintiff, to avoid the costs and delays of multiple suits by resolving all disputes between the parties at the same time, since it arises from the same set of facts, events, or transactions that form the basis of the plaintiff's original suit.

**10.** The 1<sup>st</sup> respondent submits that the counterclaim does not raise issues which are independent of the plaintiff's suit and is properly before this court as per **Order 7 Rule 7** of the Civil Procedure Rules. The 1<sup>st</sup> defendant submits that if this court lacks the jurisdiction to hear and determine the counterclaim, it lacks the jurisdiction to hear and determine the plaintiff's suit, and the interim orders the plaintiff is enjoying are illegal and should be discharged.

**11.** Further, the 1<sup>st</sup> respondent submits that this court has the power to hear and determine disputes relating to public, private, and community land and contracts, choses in action, or other instruments granting any enforceable interests in land. The sole issue for determination is whether the preliminary objection is merited. A court bereft of jurisdiction must lay down its tools and cannot take any further steps. See **Owners of**

**the Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Ltd** (*supra*).

**12.** Following **Article 162(2)(3)** of the Constitution, the Environment and Land Court Act, No. **19 of 2011**, establishing the Environment and Land Court was enacted. The court has exclusive original and appellate jurisdiction to determine all matters referred to it relating to the environment and land. Section 13 of the said Act sets out the jurisdiction of the court, which includes the power to determine any disputes “ relating to public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land.

**13.** The counterclaim is mainly based on the loan amount, payment of the premiums, and default of the loan agreement. It also focuses on money lent, due, and owing, to whom and by whom.

**14.** In **Mbuki -vs- Waweru & 3 others (Environment & Land Case E030 of 2025) [2025] KEELC 2932 (KLR) (25 March 2025) (Ruling)**, the court held that **Section 13** of the Environment and Land Court Act exclusively defines the Environment and Land Court’s jurisdiction. In **Co-operative Bank of Kenya Limited - vs- Patrick Kangethe Njuguna & 5 others [2017]**

**KECA 79 (KLR)**, the Court of Appeal determined that the Environment and Land Court is not vested with the jurisdiction to entertain disputes relating to charges, mortgages, or the statutory power of sale. See also **Bank of Africa Kenya Limited & Another -vs- TSS Investment Limited** (*supra*).

**15.** From the foregoing, it is evident that the predominant issue in the counterclaim is the enforcement of the charge. It therefore falls under the Commercial Division of the High Court and not this court. Therefore, the preliminary objection is upheld; this court lacks the jurisdiction to hear and determine the 1<sup>st</sup> defendants counterclaim. It being an independent suit, it is struck out with costs.

**16.** Orders accordingly.

**Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale, this 24<sup>th</sup> day of March 2026.**

**In the presence of:**

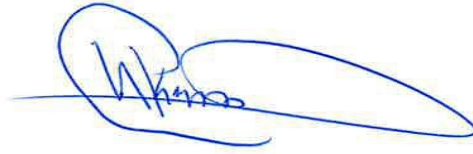
Court Assistant - Dennis

Obayi for the plaintiff present

Nabwile for the 2<sup>nd</sup> defendant present

Chilaka for the 3<sup>rd</sup> defendant absent

Wanjiku Mwaura for the 1<sup>st</sup> defendant absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

ORIGINAL COPY