



**Edmund v Progressive Credit Limited & another (Land Case Appeal E038 of 2025) [2026] KEELC 2286 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2286 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
LAND CASE APPEAL E038 OF 2025**

**MD MWANGI, J  
APRIL 23, 2026**

**BETWEEN**

**KENNEDY OERI EDMUND ..... APPELLANT**

**AND**

**PROGRESSIVE CREDIT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CARNELIAN AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

***(BEING AN APPEAL AGAINST THE ENTIRE JUDGMENT OF HON. BERNARD KASAVULI (PM) IN NGONG CHIEF MAGISTRATE'S COURT ELC CASE NO. 89 OF 2018 DELIVERED ON 31ST OCTOBER 2019, AND THE RESULTANT DECREE AND ALL THE CONSEQUENTIAL ORDERS FLOWING THEREFROM)***

**RULING**

**Background**

1. The Appellant initiated proceedings against the Respondent through a plaint dated 11 April 2017, which was first lodged in this court as Kajiado ELC Suit No. 633 of 2017. Subsequently, on 17 July 2018, Lady Justice C. Ochieng ordered the transfer of the matter to the Ngong Chief Magistrates Court on the basis that the value of the subject property was below Kshs. 20 million. Upon transfer, the case was re-designated as Ngong Chief Magistrates Court ELC Case No. 89 of 2019.
2. In summary, the Appellant's claim is that on 4 December 2015, the 1st Respondent advanced him a loan of Kshs. 5,406,596. He contends that although he made prompt repayments, the 1st Respondent nonetheless instructed the 2nd Respondent to advertise his property, Ngong/Ngong/49522, for sale on the allegation that the outstanding balance was Kshs. 3,324,151.70. The Appellant further asserts that no prior demand for this amount was made and that the alleged arrears were inflated, which made it impossible for him to continue servicing the loan as agreed.



3. As a result, the Appellant sought judgment against the Respondents for, inter alia;
  - i. a permanent injunction restraining the 1st and 2nd Respondents from auctioning or selling Ngong/Ngong/49522;
  - ii. a mandatory injunction compelling the 1st Respondent to supply a certified copy of the loan agreement, repayment schedule, and a proper statement of the outstanding balance;
  - iii. a declaration that he is not in arrears;
  - iv. costs of the suit with interest at court rates; and
  - v. any other relief the court may deem fit to grant.
4. The 1st and 2nd Respondents filed a statement of defence and counterclaim dated 29 June 2018 in response to the Appellant's suit. They averred that the loan of Kshs. 5,406,596/= advanced to the Appellant was duly secured and guaranteed by business chattels, motor vehicle registration No. KBL 161E, a charge over title Ngong/Ngong/49522, and an informal charge over Kajiado/Loodariak/4617.
5. They further contended that the Appellant was repeatedly reprimanded for failing and refusing to service the loan through monthly instalments, despite being issued several notices and reminders. Owing to his continued default, the 1st Respondent instructed the 2nd Respondent to advertise Ngong/Ngong/49522 for sale in order to recover the outstanding amount, which they stated stood at Kshs. 8,219,107.15 as at 14 November 2017.
6. In their counterclaim, the Respondents reiterated that they advanced the Appellant Kshs. 5,406,596/= on the basis that he agreed to secure the facility using motor vehicle registration No. KBL 161E, a charge over title Ngong/Ngong/49522, and an informal charge over Kajiado/Loodariak/4617, as reflected in the offer letter dated 12 December 2015, which the Appellant accepted.
7. They further faulted the Appellant for failing to remit the agreed monthly instalment of Kshs. 298,858/= when due, despite being issued with several notices and reminders. Owing to this default, the 1st Respondent instructed the 2nd Respondent to advertise Ngong/Ngong/49522 for sale. The 1st Respondent further averred that since the proceeds from the intended sale of Ngong/Ngong/49522 would not fully satisfy the outstanding debt, it intended to realize the additional security, namely Kajiado/Loodariak/4617, in order to recover the balance of Kshs. 8,219,107.15/= outstanding as of 14 November 2017.
8. However, this intended recovery was impeded when an official search revealed that a caution had been registered against Kajiado/Loodariak/4617 by Belinda Korir, who claimed to be the Appellant's spouse. The 1st Respondent maintained that the caution was meant to frustrate the sale, asserting that it had advanced the loan in reliance on the Appellant's sworn affidavit declaring that he was a bachelor and not in any marital union recognized under Kenyan law.
9. Accordingly, the Respondents prayed for dismissal of the Appellant's suit and for judgment to be entered in their favour on the counterclaim. They sought, inter alia, payment of Kshs. 8,219,107.15 being the amount allegedly due and owing as at 14 November 2017, together with interest at the rate of 5.4% per month from the date of default until payment in full.
10. They further claimed general damages for breach of contract and an order for formalization of the informal charge over Kajiado/Loodariak/4617, with interest at court rates from the date of filing suit until payment in full. In addition, they sought the removal of the caution registered against Kajiado/Loodariak/4617 and, if necessary, authority to realize any other property belonging to the Appellant



in satisfaction of the outstanding sums. They also prayed for costs of the suit and any other relief the court deemed fit and just to grant.

11. Having considered the entire case, the learned magistrate, Hon. Bernard Kasavuli, in a judgment delivered on 31 October 2019, allowed the Respondents' counterclaim in its entirety and awarded general damages of Kshs. 1,000,000 for breach of contract.
12. In arriving at that decision, the trial court held that the Appellant breached the loan agreement once he failed to honour his repayment obligations, notwithstanding attempts at negotiating the rescheduling of the facility. The court further dismissed the Appellant's claim with costs to the Respondents, finding that he had not discharged the burden of proof as required under Sections 107 and 108 of the *Evidence Act* (Cap. 80). The court also noted that the portion of the security that had been realized through auction did not generate sufficient proceeds to settle the outstanding loan balance.
13. Dissatisfied with the judgment of the learned magistrate, the Appellant filed a notice of motion dated 15 December 2023 in ELC Land Miscellaneous Application No. E004 of 2020 before this court. He sought leave to lodge an appeal out of time against the judgment and ensuing decree of the trial court, together with all consequential orders arising therefrom. He further indicated that, if granted leave, he would file the intended appeal within 14 days or such shorter period as the Court might deem appropriate.
14. In addition, the Appellant sought an order for stay of execution of the judgment, the resultant decree, and all consequential orders pending the hearing and determination of the intended appeal, as well as costs of the application to be in the cause.
15. Upon considering the application, L. Komingoi J allowed the application in its entirety in a ruling delivered on 5 May 2025. The Court ordered that the draft Memorandum of Appeal dated 14 December 2023 be deemed as duly filed upon payment of the requisite filing fees. The Appellant was further directed to file the record of appeal within forty-five (45) days and to deposit Kshs. 300,000/= as security for costs in a joint interest-earning account in the names of the parties' advocates within the same period, failing which the orders would lapse.
16. Pursuant to the said ruling, the Appellant proceeded to file the present appeal, namely ELCLA/E038/2026, through a Memorandum of Appeal dated 20 June 2026, in which he challenges the decision of the learned magistrate on the grounds that the Learned Magistrate:
  - a. misdirected himself on both the Law and Facts by finding that the sum of Kshs. 8,219,107.15 as the amount due and owing from the Appellant herein to the 1st Respondent as at November 2017 without any legal backing whatsoever.
  - b. misdirected himself on both the Law and Facts by ordering the Plaintiff to pay the 1st Respondent the sum of Kshs. 1,000,000/= as damages for breach of contract without any justifiable cause being shown.
  - c. misdirected himself on both the law and Facts in directing the 1st Respondent to formalize the informal charge over property title number Kajiado/Loodariak/4617 without any legal backing howsoever.
  - d. misdirected himself on both the Law and Facts by directing the removal of the caution placed against title number Kajiado/Loodariak/4617 by Belinda Jepkorir Rono who was never a party to the proceedings at the lower court.



- e. misdirected himself on both the Law and Facts by declaring that the 1st Respondent is at liberty to repossess and sell property title number Kajiado/Loodariak/4617 and if need be any other property belonging to the plaintiff to recover the above sums.
  - f. misdirected himself on both the Law and Facts in awarding costs of the suit and interest to the defendants by failing to appreciate and/or consider the weight and totality of the evidence adduced by the plaintiff and thus arriving at an erroneous and unjust decision in the circumstances.
  - g. erred on both the law and facts by considering extraneous matters and failed to exercise his judicial discretion judiciously to ensure that the ends of justice are met and thus arrived at a flawed decision.
17. Premised on the above arguments and grounds, the Appellant sought the following substantive prayers:
- a. That this instant Appeal be and is hereby allowed in its entirety.
  - b. That the Judgment delivered by Hon. Bernard Kasavuli (PM) on the 31st October 2019 in Ngong chief Magistrate’s Court ELC Case No. 89 OF 2018 and the resultant decree together with the consequential orders flowing therefrom be set aside in their entirety.
  - c. That this Honourable Court be pleased to direct a re-trial of Ngong chief Magistrate’s Court ELC Case No. 89 OF 2018 de novo to grant the Appellant an opportunity to be heard.
  - d. That the Respondents bear costs of this Appeal

**Court’s directions**

18. When the appeal came up for mention on 24 November 2025, the court raised the issue whether it is properly clothed with jurisdiction to determine the appeal. Accordingly, parties were invited to file their respective submissions addressing the court solely on whether it has jurisdiction to determine this appeal. Both sides complied and filed their respective submissions.

**Analysis of Submissions**

19. In his submissions dated 2 March 2025, the Appellant contends that Article 162(2)(b) of *the Constitution*, which establishes courts of equal status to the High Court to hear and determine disputes relating to the environment and the use, occupation of, and title to land, was operationalized through the enactment of the *Environment and Land Court Act* (Cap. 8D). He relies on Sections 13(1) and (2) of the Act to argue that the Environment and Land Court is vested with jurisdiction to determine disputes arising from contracts or instruments creating enforceable interests in land, including charges and securities over registered land. He further notes that the jurisdiction of the Magistrates’ Courts in land and environmental matters is limited by the pecuniary threshold set out under Section 9 of the *Magistrates’ Courts Act* (Cap. 10).
20. These arguments are reinforced by reliance on the decisions in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR) and *Muli v Mbuli & another* (Civil Case E135 of 2024) [2025] KEHC 3745 (KLR). The Appellant maintains that this Court is properly clothed with appellate jurisdiction to hear and determine the matter, as the issues before the Chief Magistrate’s Court—namely the formalization and enforcement of a charge over land, discharge of caution, and the right to sell charged property to recover alleged dues—are intrinsically connected to interests in land. He therefore prays that the appeal be heard on a priority basis, with costs in the cause.



21. On the other hand, the Respondents, in submissions dated 11 March 2026, argue that the Environment and Land Court lacks jurisdiction to determine disputes between banks and customers arising from banking transactions or allegations concerning the discharge of contractual and statutory obligations relating to such accounts. They rely on *Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others* (Civil Appeal E055 of 2022) [2024] and *Joel Kytha Mbaluka t/a Mbaluka & Associates v Daniel Ochieng Ogola t/a Ogola Okello & Company Advocates* (2019) eKLR.
22. The Respondents submit that the pleadings and memorandum of appeal clearly show that the dispute arises from the Appellant's failure to repay a loan, which prompted the 1st Respondent to exercise its statutory power of sale over the securities after issuing the requisite statutory notices and granting him the right of redemption. They contend that the core issue is whether the learned Magistrate erred in allowing the realisation of Ngong/Ngong/49522 and Kajiado/Loodariak/4617.
23. Relying on Article 162(2)(b) of *the Constitution*, Section 13(2) of the *Environment and Land Court Act*, and the decisions in *Bank of Africa (K) Ltd and Co-operative Bank of Kenya Limited* (supra), the Respondents maintain that the appeal does not relate to environment, land use, occupation, or title. They therefore urge that the Court lacks jurisdiction and that the appeal ought to be dismissed with costs.

### Determination

24. The Environment and Land Court is a specialized court established under Article 162(1)(b) of *the Constitution* to hear disputes relating to the environment, use and occupation of, and title to, land. To implement the provisions of this article, Parliament enacted the Environment and *Land Act* CAP 8D. The Act, whose provisions came into force on 30 August 2011, elaborates jurisdictional functions and powers of the Court. Section 13 of the Act provides that the Court has appellate and original jurisdiction to hear disputes relating to:
  - (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.
25. A court's jurisdiction is strictly confined to what is conferred by *the Constitution* and or statute. It cannot be assumed or extended beyond those limits. This issue of jurisdiction was authoritatively addressed by the Supreme Court in *Macharia & another v Kenya Commercial Bank Ltd & 2 others* [2012] KESC 8 (KLR) 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. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt



with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. 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. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

26. Further, jurisdiction is determined from the pleadings, which disclose the legal foundation of the claim and the substratum of the dispute as was specified by the Court of Appeal in *Smith & another v Kenya Deposit Insurance Corporation (As receiver of Chase Bank Limited) & another* [2025] KECA 294 (KLR). The court emphasised the importance of pleadings by stating as follows:

“It is trite that the guiding principle in determining whether a court has jurisdiction to determine a matter is derived from the pleadings filed since they contain the legal basis of the claim under which the plaintiff had chosen to invoke the court’s competence. It is also critical that, when a court is determining whether it has jurisdiction, where its jurisdiction is in contestation, a critical guiding factor is the substratum on which the pleading is hinged.”

27. Further, the “predominant issue” school of thought is another criterion relied upon to establish whether the court is vested with jurisdiction, as deliberated by Munyao, J (as he then was), in *Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & another* [2018] KEELC 1599 (KLR). While making his findings in this matter, the learned judge stated as follows:

“On my part, I would modify the above test, and hold the position that 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. Let us take the transaction of a charge as an example. The predominant purpose of creating a charge is for one to be advanced some financial facilities. However, when it comes to litigation, the predominant issue may not necessary be the money, but the manner in which the chargee, is exercising its statutory power of sale. Here, I trust that you will see the distinction between the predominant purpose of the transaction and the predominant issue before court. That is why I hold the view, that in making a choice of which court to appear before, one needs to find out what the predominant issue in his case is, and not necessarily, the predominant purpose of the transaction. If the litigant’s predominant issue will touch on the use of land, or occupation of land, or a matter that affects in one or another, title to land, then such issue would fall for determination before the ELC.”

28. The Appellant argues that because the dispute arises from a charge over land, it falls within Section 13(2) of the Act and therefore this Court has jurisdiction. He relies on Article 162(2)(b), Section 13 of the Act, and Section 9 of the *Magistrates’ Courts Act*, and further contends that denying jurisdiction would amount to shutting out his access to justice.
29. Although the existence of a charge over Ngong/Ngong/49522 and Kajiado/Loodariak/4617 is not disputed, the core issue in the dispute is the alleged outstanding loan balance and enforcement of repayment obligations following default. The ownership and title to the subject properties are not in contention.



30. The Court of Appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR), addressed this precise issue of whether disputes involving charges fall within the ambit of "land use." The Court of Appeal clarified that charging land does not constitute "use" of land within the meaning of Article 162(2)(b) of *the Constitution*. The Court held that:

"Neither the *cujus* doctrine nor Article 262 whether expressly or by implication recognizes charging land as connoting land use... To the law therefore, land use entails the application or employment of the surface of the land and/or the air above it and/or ground below it according to the purpose for which that land is adapted."

31. The Court of Appeal further distinguished between a "disposition" and "land use," noting that:

"A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land... Saying that creation of an interest or disposition amounts to use of the land, is akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use."

32. Applying the principles in *Co-operative Bank of Kenya Limited* (supra), the charge in this case merely served as security for repayment of a loan and does not, in itself, convert the dispute into one relating to land use, occupation, or title. The predominant issue is therefore the recovery of a contested loan balance arising from a banker–customer relationship, rather than any dispute relating to land within the meaning of Article 162(2)(b). This court therefore finds that the dispute at hand is rooted in enforcement of a loan agreement and not land use, occupation, or title.

33. . Indeed, as was emphasized by the Supreme Court in *Republic v Karisa Chengo & 2 Others* (2017) eKLR:

"The jurisdiction of the specialized courts is limited to the matters provided for in Article 162(2)... and cannot be expanded by judicial craft."

34. Accordingly, the appeal is struck out for want of jurisdiction but with no orders as to costs considering that the appeal had not been set down for hearing and the issue of jurisdiction was actually raised by the court *suo moto*.

Ordered accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Orina for the Appellant

N/A by the Respondent

Court Assistant: Peninah

