

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC APPEAL NO. E023 OF 2025**

**CREDIT BANK LIMITED.....APPELLANT**

**VERSUS**

**HANNAH NYAMBURA MAINA.....RESPONDENT**

*(Being an appeal against the Ruling of the Chief Magistrates' Court at Kajiado delivered by the Honourable Edgar Kagoni, SPM, on the 15th day of April, 2025, in CM ELC No. E178 of 2024)*

**JUDGEMENT**

**Introduction and Background**

1. The instant appeal is preferred by Credit Bank Limited against the Ruling of the Chief Magistrate's Court at Kajiado, delivered by Hon. Edgar Kagoni, SPM, on 15th April, 2025, in CMC ELC No. E178 of 2024. The Appellant, being aggrieved by the whole of the said ruling, has moved this Honourable Court by way of a Memorandum of appeal dated 28th April 2025 seeking to have the decision set aside and substituted with an order dismissing the Respondent's application dated 6th December, 2024.
2. The grounds of appeal as set out verbatim in the Memorandum of Appeal are as follows:
  - a. The learned Trial Magistrate erred in both law and fact and also misdirected himself in finding that the Respondent's (Plaintiff's) application dated 6th December, 2024 was not res judicata whereas a similar application dated 19th January, 2023, filed at the Chief Magistrate's Court at Milimani in MCCC NO. E121 of 2023 seeking for similar orders had been heard on merit and by a Ruling

delivered on 31st August, 2023, the same was dismissed with no orders as to costs.

- b. The Learned Trial Magistrate erred in both law and fact in applying the wrong test and/or principle on whether the Respondent's said application was res judicata contrary to the well-settled principles enacted under the provisions of Section 7 of the Civil Procedure Act and as a result of which he arrived at a wrong decision.
- c. The learned Trial Magistrate erred in both law and fact by granting the respondent an injunction restraining the Appellant from exercising its statutory power of sale whereas the Respondent had not met the principles expounded in the well-established case of *Giella vs Cassman Brown* [1973] EA 358.
- d. The Learned Trial Magistrate erred in both law and fact in that in spite of making a finding that the Respondent were litigating under the same title and seeking orders over the same properties as in the said earlier application, he made a finding that the contracts relied on were different although the said contracts were in respect of the same properties contrary to the submissions and the affidavit evidence adduced before him.
- e. The Learned Trial Magistrate failed to consider judiciously both the Appellant's evidence and its submissions vis-à-vis the Respondent's evidence and submissions and thus arriving at an erroneous and wrong decision.
- f. The Learned Trial Magistrate erred in law in delivering a ruling that was wrong with respect to injunctions.

3. The genesis of this appeal lies in a Notice of Motion dated 6th December 2024, through which the Respondent sought temporary injunctive relief to restrain the Appellant from

interfering with or selling properties identified as L.R. Nos. KAJIADO/KITENGELA 53837, 53838, 53839, 53840, 53841, and 53844. This application was anchored on the Respondent's contention that, as the registered owner, she owed no outstanding debt to the Bank because her loan obligations were reportedly covered by disability insurance, making any attempted sale a violation of the Land Act.

#### **Analysis of Submissions**

4. The Appellant's primary contention is anchored on **Section 7 of the Civil Procedure Act**, which codifies the doctrine of *res judicata*. The Appellant submits that the Trial Magistrate erred by not finding that the Respondent's application dated 6th December 2024 was barred by a previous determination in **MCCC No. E121 of 2023** at the Milimani Law Courts.
5. The Respondent, conversely, relies on the conjunctive elements set out in ***Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR***, arguing that the bar of *res judicata* was not effectively met. The Respondent emphasizes that for the doctrine to apply, the former suit must have been "heard and finally determined". The Respondent submits that the dismissal of an interlocutory application does not, as a blanket rule, amount to a final determination of the rights of the parties.
6. Furthermore, the Respondent draws support from ***John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)***, asserting that the doctrine should not be applied mechanically where it would result in "real injustice," particularly when founded on a distinct factual matrix involving different insurance arrangements.

7. The second limb of the dispute concerns whether the Respondent met the "triple requirements" for an injunction. The Appellant maintains that the Respondent failed to establish a *prima facie* case with a probability of success as required by the *locus classicus* of ***Giella vs Cassman Brown [1973] EA 358***.
8. In response, the Respondent argues that the Trial Magistrate judiciously exercised his discretion to preserve the subject matter. The Respondent maintains that the suit property (L.R. Nos. KAJIADO/KITENGELA 53837 through 53844) required protection as her loan obligations were reportedly covered by disability insurance—a fact she contends distinguishes this matter from previous litigation.
9. The Appellant counters this by citing ***Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR***, arguing that these legal hurdles must be satisfied "sequentially". The Appellant asserts that the Trial Court misdirected itself by granting the injunction despite what the Appellant views as a failure to prove irreparable injury that could not be compensated by damages.
10. Finally, the parties differ on the standard this Court should apply when reviewing the lower court's discretion. The Respondent relies on the principles in ***Mbogo & Another v Shah [1968] EA 93***, submitting that an appellate court should not interfere with the exercise of judicial discretion unless it is shown that the court "misdirected itself in some matter and as a result arrived at a wrong decision". The Respondent concludes that the Trial Magistrate stayed within these "perimeters" and that the Appellant has failed to demonstrate any demonstrable error of law.

#### **Issues for Determination**

11. Having carefully perused the Memorandum of Appeal, the impugned application, and the pleadings from the primary suit, I am of the considered view that before delving into the substantive grounds of the appeal, a foundational issue commends itself for determination *in limine*: **whether the Environment and Land Court (ELC) has the requisite jurisdiction to entertain this appeal.**

## **12. Analysis and Determination**

13. Jurisdiction is everything. It is the lifeblood of any judicial proceeding, without which a court acts in vain. As was famously held in the celebrated case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, jurisdiction flows from the law, and where a court lacks it, it must down its tools.

14. To ascertain whether this Court possesses the jurisdiction to hear this appeal, one must first distill the true nature of the dispute from the pleadings before the trial court. An evaluation of the Respondent's Complaint dated 6th December 2024 reveals that the primary suit revolves around a borrower-lender relationship. The Respondent avers that she procured loans from the Appellant bank, secured by charges over her properties (L.R. Nos. KAJIADO/KITENGELA 53837 to 53841, and 53844), and concomitantly took out a "Credit Life Insurance Cover." Her core contention is that having suffered a 5% permanent disability, her loan obligations ceased under the terms of the insurance policy, thereby robbing the Appellant of the right to exercise its statutory power of sale. The reliefs sought are declaratory and injunctive, stemming directly from the loan agreement and the insurance policy.

15. The matter was filed and an application heard in the Chief Magistrate's Court at Kajiado, under file number MC ELC No. E178 of 2024. It is imperative to clarify that the trial

court possessed the jurisdiction to hear this matter in the first instance. Under Article 169 of the Constitution of Kenya, 2010, read together with the Magistrates' Courts Act, subordinate courts have general jurisdiction to hear civil and commercial disputes subject to their pecuniary limits. The departmental designations within the magistrates' courts, such as the "Environment and Land Court (ELC) division" or "Commercial division", are purely administrative constructs designed for internal case management and the efficient dispatch of judicial business. They do not denote constitutional specialization or a fragmentation of the magistrate's statutory jurisdiction. Therefore, the Chief Magistrate was acting well within the general civil jurisdiction conferred upon subordinate courts when entertaining the commercial dispute between the Bank and its customer.

16. While the magistrate's court enjoys general jurisdiction, the same cannot be said of this Court. The Environment and Land Court is a specialized court created by **Article 162(2) (b)** of the Constitution, which restricts its purview strictly to disputes relating to *"the environment and the use and occupation of, and title to, land."*

17. The Supreme Court of Kenya, in the landmark decision of ***Republic v Karisa Chengo & 2 others [2017] eKLR***, definitively settled the architecture of court jurisdiction in Kenya, stating:

***"By Article 162(2) of the Constitution, the Environment and Land Court and the Employment and Labour Relations Court are specialized courts with the same status as the High Court. However, their jurisdiction is limited to the specific areas prescribed by the Constitution and the respective statutes establishing them... They are ring-fenced to deal only with the specific matters allocated to them."***

18. Because this Court's jurisdiction is ring-fenced, it cannot sit as an appellate court over a magistrate's decision simply because the underlying security for a commercial contract happens to be land. The crux of the Respondent's suit is the interpretation of a Credit Life Insurance contract, the computation of loan balances, and the discharge of a debt due to alleged physical disability. These are strictly commercial and contractual issues.

19. The Court of Appeal conclusively addressed this specific intersection of commercial lending and land security in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] eKLR*. Putting to rest the misconception that any dispute involving a title deed belongs in the ELC, the apex court pronounced itself verbatim as follows:

***"...we are of the concurring opinion that a dispute between a bank and its customer regarding a loan facility secured by a charge or mortgage, is not a dispute relating to the use and occupation of, and title to, land."***

20. The Court further observed that it is a fallacy to argue that because the security provided for a loan facility is land, any dispute arising from the loan agreement becomes a land dispute under the jurisdiction of the ELC. The realization of security through a statutory power of sale is a consequence of a breach of a commercial contract.

21. Applying the binding jurisprudence of *Patrick Kangethe Njuguna* and *Karisa Chengo* to the instant appeal, it is unmistakably clear that the dispute between the Appellant (Credit Bank Limited) and the Respondent (Hannah Nyambura Maina) is fundamentally a commercial dispute revolving around a loan facility and an insurance contract. The fact that the loan is secured by properties in Kitengela is merely incidental to the primary commercial relationship.

22. Consequently, the appellate jurisdiction to hear an appeal arising from this commercial/civil dispute from the Magistrate's Court lies squarely with the High Court of Kenya (Civil or Commercial Division), and **not** the Environment and Land Court. This Court is not clothed with the constitutional or statutory jurisdiction to determine an appeal on a banking and or insurance dispute.

23. Having found that this Court lacks the requisite jurisdiction to entertain this appeal, any further inquiry into the merits of the Memorandum of Appeal, including the questions of *res judicata* or the principles of granting an injunction, would be an exercise in futility and a usurpation of the High Court's mandate.

24. Accordingly, I make the following orders:

- A. **THAT** this appeal is hereby struck out and dismissed in its entirety for want of jurisdiction.
- B. **THAT** as the appeal fails on a threshold issue of law, each party shall bear their own costs for this appeal.

It is so ordered.

**Dated, Signed and Delivered Virtually this 30<sup>th</sup> Day of April, 2026.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Ms. Mwangi h/b for Mr. Kimondo Mubea for the Appellant

Ms. Gichuru h/b for Ms. Matoke for the Respondent

Court Assistant: Alex

**M.D. MWANGI**  
**JUDGE**

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