

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO E026 OF 2021

CATHERINE WAMBUI DUNCAN1ST
PLAINTIFF

MIKE WARABA KINUTHIA2ND
PLAINTIFF

MONICA WANJIKU KINUTHIA3RD PLAINTIFF

VERSUS

FAMILY BANK LIMITED1ST
DEFENDANT

TA AUCTIONEERS2ND
DEFENDANT

RULING

(On whether or not the court has the jurisdiction to entertain and determine this matter.)

Background.

1. This suit was initiated by the Plaintiffs vide a plaint dated 28th April 2021 seeking Two (2) main orders, namely;

- a) A permanent injunction restraining the Defendants from auctioning the substratum of this suit by themselves, their agents, workmen and or any other person acting on their instructions or advertising the same for sale either by way of public auction or by private treaty and or restraining them from in any way interfering with the quiet occupation and enjoyment by the Plaintiffs of the substratum of this suit i.e. L.R No. Ngong/Ngong/59915 whatsoever.
- b) A declaration that title No. L.R Ngong/Ngong/59915, the substratum of this suit is not a good title which can pass an interest and hence null and void for all purposes and intents as it was irregularly and fraudulently obtained before petitioning for a grant to the deceased registered owner.
2. The basis of the Plaintiffs' claim is that the suit property is matrimonial property and they (Plaintiffs) were not privy to the transactions between one Erick Wakaba Kinuthia (chargor) and the 1st Defendant (chargee). The Plaintiffs further allege that they subsequently came to discover that even the subdivision of L.R Ngong/Ngong/6316 which gave rise to the suit property L.R No. Ngong/Ngong/59915 was

irregularly and fraudulently done before petitioning for a grant of administration of the estate of Monica Njeri Wakaba (deceased) who was the previous registered owner of the mother title, L.R No Ngong/Ngong/6316 and who had passed on, on 21st September 2010 yet the subdivision took place in the year 2011 purportedly on her instructions.

3. In response to the Plaintiff's case, the 1st Defendant filed a statement of Defence dated 21st May 2021, asserting that it advanced a loan facility of Kshs. 10,000,000/= to one Erick Wakaba in the year 2014 which was secured by a charge over the suit property Ngong/Ngong/59915. The chargor duly executed the charge alongside his spouse, one Faith Wanjiku Ndegwa, who executed the spousal consent form.
4. According to the loan agreement, the chargor was required to repay the loan facility in sixty (60) equal monthly installments of Kshs. 253,934.27/= each, but failed to and his loan account fell into arrears. This is what necessitated the chargee to instruct Antique auctioneers to advertise the subject property for sale having issued the chargor with requisite statutory notices to rectify the default.

5. The 1st Defendant discloses that the chargor moved to court filing two suits being Kajiado ELCC 562 of 2017 and ELCC 566 of 2017 which were consolidated, with ELC 566 of 2017 being the lead file. The chargor's application for an injunction to stop the 1st Defendant from exercising its statutory right of sale of the charged property was dismissed by the court whereas the consolidated suits were dismissed for want of prosecution on 8th October 2018.
6. The Plaintiffs in this suit filed it in the year 2021 in spite of the dismissal of the previous suits and without joining the chargor as a party. The 1st Defendant reads mischief in this suit suspecting a conspiracy with the chargor to frustrate and prevent the 1st Defendant from exercising its rights in spite of the default in loan repayment. The 1st Defendant prays for the dismissal of the Plaintiff's suit with costs.
7. The gravamen of the Plaintiff's case is a challenge of the 1st Defendant's exercise of its statutory right of sale of the suit property as chargee. The 1st Defendant's right arises out of the Bank - Customer relationship for purposes of lending money secured by a charge over the suit property.

8. Article 162(2)(b) limits the jurisdiction of this Court to disputes relating to,

“the environment and the use and occupation of, and title to, land.”

9. Section 13(5) of the Environment and Land Court Act elaborates this mandate but does not expand it beyond those constitutional confines. 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.”

10. The Court of Appeal in the case of **Co-operative Bank of Kenya Ltd -vs- Patrick Kangethe Njuguna & 5 others (2017) KECA 79 (KLR),** had this to say on the jurisdiction of this court in relation to charges and mortgages;

“By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfilment of any condition (see Section 2 of the Land Act). As such, it give rise to a relationship where one person acquires rights over the land of another as security in exchange for money or money’s worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the Land Act). The creation of that relationship therefore has nothing to do with use of the land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced the chargor.

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

hereinabove. 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.”

11. The issues in contention in this suit and the purpose for which the Plaintiffs moved this court for injunctive reliefs sought was to forestall the 1st Defendant’s exercise of its statutory power of sale over the suit property arising out of a charge.

12. In **Suzanne Butler & 4 Others v Redhill Heights Investments Ltd & Another (2016) eKLR**, the Court rightly held that:

“The mere fact that land is involved does not automatically confer jurisdiction upon the Environment and Land Court.”

13. This court finds and holds that it lacks the jurisdiction to entertain this matter as filed. This court can do nothing else

but to down its tools. The suit is hereby struck out with costs to the Defendants.

Ordered accordingly.

Dated, Signed and Delivered Virtually this 28th Day of April, 2026.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

N/A by the Parties

Court Assistant: Alex

**M.D. MWANGI
JUDGE**