

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION – MILIMANI
HCCOMM MISC. E646 OF 2025

LILIAN WANJIRU CHEGE.....APPLICANT

VERSUS

MY CREDIT LIMITED.....RESPONDENT

RULING

Introduction

1. Before this Court is a Notice of Motion dated 30th June 2025 by the Applicant, Lilian Wanjiru Chege, seeking, inter alia, interim injunctive orders restraining the Respondent from auctioning motor vehicle registration number KCW 380A, and an order compelling the repossession and restoration of the said motor vehicle pending the hearing and determination of the application.

2. The Respondent raised a Notice of Preliminary Objection dated 11th July 2025 challenging the jurisdiction of this Court on two principal grounds:

- i. That the proceedings are incompetent for having been instituted by way of a miscellaneous application seeking substantive reliefs, contrary to Section 19 of the Civil Procedure Act and Order 3 Rule 1 of the Civil Procedure Rules; and
 - ii. That the Court lacks pecuniary jurisdiction, the value of the subject matter being within the jurisdiction of the Magistrates' Court.
3. The factual background is largely uncontested. The Applicant obtained a loan facility of Kshs. 1,650,000/- from the Respondent, secured by motor vehicle KCW 380A. Following an alleged default, the Respondent repossessed the vehicle and issued a 14-day redemption notice preceding sale.
4. The Applicant contends that the parties were engaged in restructuring discussions and that she had made payments amounting to Kshs. 700,000/- towards arrears. She asserts that the repossession was premature and unlawful, hence the present application.

Analysis and Determination

5. Having considered the pleadings and the submissions on record, the Court distils two issues for determination:

- i. Whether substantive reliefs can be competently sought through a miscellaneous application in the absence of a substantive suit;
 - ii. Whether this Court has pecuniary jurisdiction to entertain the dispute.
6. The law on preliminary objections is settled. In **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**, it was held that a preliminary objection must raise a pure point of law capable of disposing of the matter without the need for factual inquiry.
7. The objection before Court raises jurisdictional questions, both procedural and pecuniary, which go to the root of the matter. The Court therefore finds that the objection meets the requisite threshold and is therefore properly taken. Consequently, the Court will therefore proceed to determine whether it is meritorious.

Whether substantive reliefs can be sought via a miscellaneous application

8. From the record, it is evident that the Applicant has invoked this Court's jurisdiction through a miscellaneous application seeking injunctive and restorative reliefs concerning the repossession of the charged property – motor vehicle KCW 380A.
9. The law is unequivocal that substantive civil claims must be instituted in the manner prescribed by statute. Section 19 of the Civil Procedure

Act, read together with Order 3 Rule 1 of the Civil Procedure Rules, provides that every suit shall be instituted by a plaint or in such other manner as may be prescribed.

10. A miscellaneous application is not one of the recognized modes for instituting a substantive civil claim where contested rights are to be adjudicated.

11. The jurisprudence on this point is consistent. In **Tatecoh Housing & Co-operative SACCO Ltd v Qwetu SACCO Ltd (2021) eKLR**, the Court held that substantive reliefs, particularly those affecting proprietary rights, cannot be granted in a miscellaneous cause absent a properly instituted suit. The Court held that:

“The applicant cannot seek the orders sought in its miscellaneous application without going through the process of filing suit. It will be observed that among the orders sought in the motion are orders of eviction. One will ordinarily only obtain an order of eviction after full hearing of a case. What the applicant needed to do was therefore to file a substantive suit for eviction through a plaint. It is upon hearing of such suit and if successful, that an order of eviction would issue.”

12. Similarly, in **Buigut & another (suing as legal representatives of the Estate of the Late Joel Kiprono Kipkoti) v Komen [2023] KEELC 19206**

(KLR), the Court emphasized that where the orders sought would determine substantive rights, such claims must be anchored on a competent suit.

13. In the present matter, the orders sought are not merely preservative. They go to the heart of the parties' contractual and proprietary rights, including the legality of repossession and enforcement of security. Such matters require pleadings, evidence, and a full hearing.

14. To permit such reliefs to be granted through a miscellaneous application would, in the view of the Court, be to circumvent the procedural safeguards embedded in the Civil Procedure framework.

15. The Court therefore finds that the present proceedings are fatally defective for want of a proper originating suit.

Whether this Court has pecuniary jurisdiction

16. The Respondent further contended that the value of the subject matter, being Kshs. 1,650,000/-, falls within the pecuniary jurisdiction of the Magistrates' Court.

17. Section 7 of the Magistrates' Courts Act vests jurisdiction in subordinate courts to hear and determine civil claims within prescribed

pecuniary limits, which presently extend up to Kshs. 20,000,000/- in the case of a Chief Magistrate.

18. Further, Section 11 of the Civil Procedure Act mandates that every suit shall be instituted in the court of the lowest grade competent to try it.

19. While the High Court enjoys unlimited original jurisdiction under Article 165(3) of the Constitution, that jurisdiction is not to be invoked in disregard of statutory provisions governing forum and hierarchy, unless the justice of the matter clearly demands.

20. The dispute herein arises from a loan transaction of Kshs. 1,650,000/-. There is no complexity or special circumstance disclosed that would warrant bypassing the Magistrates' Court.

21. This Court is therefore persuaded that the appropriate forum for this dispute is the Magistrates' Court.

22. Jurisdiction is the lifeblood of judicial authority. As was stated in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, a court without jurisdiction must down its tools.

23. Accordingly, the Respondent's Preliminary Objection dated 11th July 2025 is hereby upheld. Consequently:

- i. The Applicant's Notice of Motion dated 30th June 2025 and the entire Miscellaneous Application are hereby struck out;
- ii. The Applicant is at liberty to institute a proper suit before a court of competent jurisdiction;
- iii. Costs of the Preliminary Objection and the struck-out application are awarded to the Respondent.

24. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI
THIS 10TH DAY OF APRIL 2026



HON. MR. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A – Moses

Ms. Kimani..... for the Applicant

N/A..... for the Respondents