



**REPUBLIC OF KENYA**

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

**ELCL APPEAL CASE NO. E040 OF 2026**

**REMMY GIKUNDA**

**MAARU.....APPELLANT**

**-VERSUS-**

**CAPITAL SACCO LIMITED.....1ST**

**RESPONDENT**

**UPSTATE AUCTIONEERS.....2ND**

**RESPONDENT**

**RULING**

**(EX-TEMPORE)**

1. This appeal challenges the judgment of the Principal Magistrate Court at Nkubu, rendered on 8/4/2026 in **Nkubu PMC E & L Case No E022 of 2026** (*sic*). It does emerge from the materials placed before this court at this stage and from the submissions of counsel that, at all material times, the appellant was a borrower and the 1st respondent was a lender. Secondly, the appellant used his title as a collateral.

Thirdly, the suit in the lower court challenged the chargee's right to exercise the statutory power of sale under a charge. Fourthly, it does emerge that the suit in the lower court was erroneously uploaded as an environment and land case instead of a civil/commercial case. There is no doubt that what was before the lower court was a mortgage/charge dispute.

2. The Court of Appeal has, in numerous decisions, stated that mortgage disputes are outside the mandate of the Environment and Land Court. Those decisions are binding on this court. The Court of Appeal stated the following in ***Co-operative Bank of Kenya Ltd Vs Patrick Kangethe Njuguna & 5 Others; Civil Appeal No. 83 of 2016:***

***“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 herein above. 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”.***

3. The Court of Appeal repeated the same pronouncement in ***Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others (Civil Appeal E055 of 2022) [2024] KECA 410 (KLR) (26 April 2024)*** in the following words:

***“ We form this view taking to mind this Court’s decision in the afore-cited case of Co-***

***operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others (supra) where it was held that the ELC only has jurisdiction to deal with disputes connected to “use” of land and contracts incidental to the “use” of land, which do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. Moreover, a charge is a disposition that has no direct contractual relation to “use” (by a tenant or licensee) as in this case, of a chargor’s land. In view of the foregoing, we agree with learned counsel for the appellants that the learned Judge had no jurisdiction to entertain the respondents’ suit as pleaded”.***

4. For the above reason, it is clear to this court that this appeal was filed in the wrong court. The court emphasizes that uploading a civil/commercial dispute as a land dispute in the lower court does not confer appellate jurisdiction upon the Environment and Land Court. The proper court to deal with this appeal is the High Court, notwithstanding the error that was committed at the stage of filing the case in the lower court. It is also noted from the memorandum of appeal that there may be an error relating to the case number of the lower court case. The memorandum of appeal reads **“E022 of 2026”** but counsel for the appellant states that it should read **“E022 of 2024”**.
5. For the above reasons, this appeal is struck out and the court hereby downs its tools in tandem with the principle in ***Owners of Motor Vessels “Lillian S” v Caltex Oil (K) Ltd (Civil***

**Appeal 50 of 1989) [1989] KECA 48 (KLR).** There will be no order as to costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF APRIL, 2026.**

**B M EBOSO [MR]  
ELC JUDGE**

**In the presence of:**

Mr Otieno C for the Appellant.

Court Assistant – Mr. E. Tupet

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