



**Mugwe v Imara Capital Limited & another (Environment and Land
Appeal E074 of 2024) [2026] KEELC 2787 (KLR) (12 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E074 OF 2024**

AY KOROSS, J

MAY 12, 2026

BETWEEN

MONICA GATHONI MUGWE APPELLANT

AND

IMARA CAPITAL LIMITED 1ST RESPONDENT

DANIEL KINYANJUI MUTURI 2ND RESPONDENT

*(Appeal from the judgment of Hon. D.N SURE (PM), delivered on
25 November 2024 in Kangundo CM’s Court, ELC Case No. 13 of
2020 (Monicah Gathoni Mugwe v Imara Capital Limited & 2 others))*

RULING

1. This matter was scheduled for judgment today; however, after considering the nature of the dispute in the lower court, this court is of the opinion that it must first determine whether it has jurisdiction to hear the appeal.
2. In relation to the legal framework on jurisdiction, the jurisdiction of the High Court and this court is respectively established under Articles 165 and 162(2)(b) of *the Constitution* of Kenya. In these legal provisions, the jurisdiction of the High Court is broad, and Article 165 (5) explicitly states the limits to its jurisdiction as follows:

“The High Court shall not have jurisdiction in respect of matters—(a)reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b)falling within the jurisdiction of the courts contemplated in Article 162(2).”



3. Regarding Article 162(2)(b), parliament established this court, which is of equal status to the High Court, with jurisdiction to hear and decide disputes related to the environment and the use and occupation, and title to land.
4. When these two provisions of *the Constitution* are read together, it implies that the High Court has no jurisdiction whatsoever over matters within the jurisdiction of the Environment and Land Court (ELC), or vice versa, since each has exclusive authority over the matters for which those courts were established.
5. Regarding the determination of jurisdiction over contracts and the appropriate court to hear and adjudicate such matters, this court has duly taken guidance from the esteemed judges of the Court of Appeal judges in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] KECA 79 (KLR), who articulated the criteria to be considered in making such determinations thus:-

“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.”

6. It suffices from this decision that, although the ELC has jurisdiction to handle disputes over contracts, its authority in such matters is limited to issues related to the environment and the use, occupation, and title to land.
7. In the circumstances of this case, this court has had the opportunity to review the entire record of the lower court, the submissions that have been filed herein, and it emerges that the central issue in dispute between the parties concerns an alleged charge over Mavoko Block 3/26860 and whether the process of using it as security was fraudulent. In this case, the 1st respondent had commenced exercising its statutory power of sale over this property. Therefore, this court finds that this dispute does not fall within its jurisdiction and in arriving at this, it is guided by *Co-operative Bank (Supra)*, which held:-

“36. By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfillment of any condition (see Section 2 of the *Land Act*). As such, it gives 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.”

8. Guided by the law and jurisprudence, and since it is settled law that jurisdiction is everything, and without it a court has no power to take any further steps, this court hereby downs its tools. Nevertheless, to serve the ends of justice, it is prudent to have this matter transferred to the High Court, Machakos, for determination.
9. In the end, this court hereby issues the following final disposal orders: -
 - a. This file is hereby transferred to the Machakos High Court.



- b. The deputy registrar of this court is directed to transmit this file to the deputy registrar of the High Court, Machakos, for onward placement before the Presiding Judge, High Court, on an appropriate date for directions.

Orders shall be issued accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 12TH DAY OF MAY, 2026.

HON. A. Y. KOROSS

JUDGE

12.05.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Mr. Moriasi for appellant.

Mr. Mwai Muthoni for Mr. Kubai for 1st respondent.

No appearance for 2nd respondent.

