

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 71 OF 2018

PANNA DILIP CHAURHAN.....PLAINTIFF/APPLICANT

VERSUS

BANK OF AFRICA KENYA LIMITED.....1ST DEFENDANT/RESPONDENT

GARAM INVESTMENTS AUCTIONEERS.....2ND DEFENDANT/RESPONDENT

RULING

This matter came up for hearing on the 4.5.2018 when the issue of jurisdiction was raised, in view of the decision of the Court of Appeal sitting at Mombasa in civil Appeal No. 83 of 2016.

In the case before me, the subject matter is an overdraft facility approximately Kshs.540,000,000 and a charge on properties registered in the names of the plaintiff. The plaintiff questions the process of realization of security by the chargee.

I do find that the issues for determination are substantially revolving on a charge, and, whether the plaintiff has satisfied the overdraft facility. There is no challenge on use of land, occupation or title.

In the case of *Co-operative Bank of Kenya Vs Patrick Kangethe Njuguna & 5 Others (2017) eKLR*, the Court of Appeal held in a nutshell that a charge does not constitute use of land within the meaning of Article 162(2) (b) of the Constitution of Kenya 2010. The question herein is not validity of the charge but whether the money has been paid and whether the right procedure of exercising statutory power of sale is being followed. In conclusion, I do find that this is a matter to be tried by the High Court. I do order that the same be transferred to the High Court of Kenya at Eldoret.

Dated and delivered at Eldoret this 20th day of December, 2018.

A. OMBWAYO

JUDGE