



**Ichwara v United National Savings & Credit Co-operative  
Society Limited & another (Environment and Land Appeal  
E041 of 2023) [2024] KEELC 1818 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1818 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E041 OF 2023  
EK WABWOTO, J  
MARCH 20, 2024**

**BETWEEN**

**JARED MASINI ICHWARA ..... APPLICANT**

**AND**

**UNITED NATIONAL SAVINGS & CREDIT CO-OPERATIVE SOCIETY  
LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PHILLIPS INTERNATIONAL AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to the 1<sup>st</sup> Respondent’s notice of preliminary objection dated 17<sup>th</sup> November 2023. In the objection, the 1st Respondent contended that the Court had no jurisdiction. The Notice of the Preliminary objection was premised on the following grounds:
  - i. The application arises from the ruling of the Co-operative Tribunal made on 31<sup>st</sup> August 2023 and from which if a party is aggrieved he/she can only appeal to the High Court of Kenya in accordance with Section 81 of the *Co-operative Societies Act*.
  - ii. The dispute between the Applicant and the 1<sup>st</sup> Respondent arises from a secured defaulted loan, and the Sacco’s right to realize its security simply repayment of a debt owed to a Co-operative Society.
2. The 1<sup>st</sup> Respondent filed submissions dated 23<sup>rd</sup> November 2023, in which it was submitted that there is a clear distinction between the High Court of Kenya and Courts established under Article 162 (2) of *the Constitution*, being specialized Courts. Referring to Paragraph 3,4 and 9 of the Applicant’s supporting affidavit, it was submitted that the Applicant’s claim was a purely commercial transaction where the Applicant obtained a loan security from the 1<sup>st</sup> Respondent and consequently established a charge over the land being Nairobi/Block/139/99 situated in Marurui.



3. The Applicant filed submissions dated 29<sup>th</sup> November 2023, in which it was submitted that the Applicant was not served with all mandatory statutory notices and as such the suit property is under great risk of being auctioned off. It was further argued that the Environment and Land Court had jurisdiction to hear matters relating to occupation and title to land. Relying on Section 21(1) of the ELC Act and the case involving *Ufundi Savings & Credit Co-operative Society Limited v Francis Gitari Ndirangu & 99 others [2015]* eKLR, it was argued that the ELC Court was properly constituted and rightly placed to sit as an appellate Court.
4. Pursuant to the directions issued by this court on 20<sup>th</sup> November 2023, the preliminary objection was canvassed by way of written submissions. The parties filed written submissions which the court has considered.
5. I have considered the rival submissions and determined that the sole issue for determination herein is whether this Court has jurisdiction to entertain the proceedings filed herein.
6. It is now a well-founded principle that jurisdiction is the most crucial component of a suit. The Supreme Court in the case of Samuel Kamau Macharia -vs- Kenya Commercial Bank & 2 Others, Civil Appl. No. 2 of 2011, observed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”[Emphasis Mine]

7. There is a clear tug of war on which Court the matter should be placed whether it is the High Court or the Environment and Land Court. I have considered that as per my interpretation of the Court of Appeal case of *Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others [2017]* eKLR the High Court’s jurisdiction is triggered only where accounting issues have been raised in connection to the disposition of land.
8. In this instance, it is undisputed that the dispute stems from a loan facility of Kshs 10,000,000/- issued to the Applicant in 2017 by which the 1st Respondent registered a Charge over suit property being Nairobi/block 139/99. In default of the loan repayment, the Applicant was on 10th August, 2021 issued with a 45 days Redemption Notice to pay the accrued loan of Kshs 12,025,038/- plus interest failure to which the same would be auctioned.
9. The enforcement of the 1<sup>st</sup> Respondent’s rights would also undoubtedly trigger all processes outlined within Section 90,96,97 and 98 of the *Land Act* and upon which as per Section 128 and 150 of the said Act is within the Environment and Land Court’s jurisdiction.
10. Bearing in mind the above, the Section 81 of Cooperative Tribunal Act does specifically refers appeal matters to the High Court. How then would the incongruence of jurisdiction be cured? In the case of *Kennedy Kimani Ndarwa v Methi & Swani Farmers’ Cooperative Society Limited & another [2016]* eKLR, the Court facing a similar dilemma pronounced itself as follows;

“...the jurisdiction of the tribunal is to hear disputes concerning the business of a cooperative society if such a dispute arises among members, past members, deceased members or persons claiming through members. Section 76(2) specifies what a dispute is for the purposes of section 76. There is no mention of the Tribunal being given jurisdiction to hear land disputes



in the said section....In my view the said tribunal had no jurisdiction to revoke the applicant's title to the land in question. At the moment such matters ought to be dealt with by the Land and Environment Court. Previously such disputes were the preserve of the High Court and the Resident Magistrate's Court where the latter had pecuniary jurisdiction..."[Emphasis Mine]

11. The Environment and Land Court is one of the salient creations of *the Constitution* of Kenya, 2010. Article 162 (2) of *the Constitution* mandated Parliament to establish courts of equal status to that of the High Court to deal with disputes relating to employment and labour; and environment and the use, occupation of and title to land. It is pursuant to this constitutional imperative that Parliament enacted the *Environment and Land Court Act*, 2011 and provided for the expanded jurisdiction. As already stated, *the Constitution* at Article 162 (1) provides that the superior courts are the Supreme Court, the Court of Appeal, the High Court and the Courts referred to in Clause 2. It is therefore clear from the aforesaid provision of *the Constitution* that this court, just like the other four superior courts, is not only a creature of a statute, but also a creature of *the Constitution*. Indeed, in addition to the *Environment and Land Court Act*, *the Constitution* itself confers on the ELC the jurisdiction to determine disputes relating to the environment and the use and occupation of, and title to land. This position was affirmed by the Court of Appeal in *Chimweli Jangaa Mangale & 3 Others vs Hamisi Mobamed Mwawasaa & 15 others*, [2016] eKLR.
12. Article 259 of *the Constitution* demands that *the Constitution* should be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and human rights and fundamental freedoms in the Bill of Rights; permits the development of the law and contributes to good governance. It also demands that every provision of *the Constitution* "shall be construed according to the doctrine of interpretation that the law is always speaking." As a superior Court, this Court has appellate jurisdiction over the Magistrates who have been gazetted to handle land matters as well as multiple Tribunals including the National Environment Tribunal, the Business Premises and Rents Tribunal, Water Tribunal and the Cooperatives Tribunal.
13. In view of the foregoing and being guided by the aforementioned decisions it is the finding of this Court that the Preliminary Objection dated 17<sup>th</sup> November 2023 is devoid of merit and the same is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF MARCH 2024.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Owiti h/b for Ms. Wamukore for the Applicant.

Ms. Wachira for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> Respondent.

Court Assistant; Caroline Nafuna.

