



**Colour Code Limited v Equity Bank (Kenya) Limited (Environment and Land Appeal E024 of 2023) [2024] KEELC 5002 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5002 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E024 OF 2023**

**JG KEMEI, J  
JUNE 24, 2024**

**BETWEEN**

**COLOUR CODE LIMITED ..... APPELLANT**

**AND**

**EQUITY BANK (KENYA) LIMITED ..... RESPONDENT**

**RULING**

1. The Appellant lodged its appeal vide a Memorandum of Appeal dated 3/4/2023. The Appellant is aggrieved by the trial Court Ruling delivered on 8/3/2023 in Kiambu MC ELC No. E60 of 2022. In its Memorandum of Appeal the Appellant impugns the said Judgment on grounds That; -
  - a. That the Learned Trial Magistrate erred in law and fact in finding that the mandatory Statutory Notices stipulated under Section 90, Section 96 of the *Land Act* and Rule 15 of the *Auctioneers rules*, 1997 had been duly served upon the Applicant who is the chargor.
  - b. That the Learned Magistrate erred in law and fact in failing to find that the Plaintiff/Applicant had established a prima facie case when in fact the Defendant/Respondent had not adduced evidence to show that indeed the Statutory Notices were duly served upon the Plaintiff/Applicant.
  - c. That the Learned Magistrate erred in fact and law by failing to consider evidence of the Plaintiff/Applicant demonstrating that the Defendant/Respondent had failed and or ignored to issue Statutory Notices before exercising statutory power of sale.
  - d. That the Learned Magistrate erred in law and in fact in failing to evaluate the evidence by the Plaintiff/Applicant and/or consider it's elaborate and detailed written submissions.
  - e. That the Learned Magistrate erred and misdirected himself in law by basing his finding on facts which had neither been pleaded nor proved by evidence.



- f. That the Learned Magistrate erred and misdirected himself when he failed to apply the well-known principles of law in arriving at his decision.
  - g. That the Learned Magistrate exhibited bias by selectively evaluating the evidence by the Respondent and failing to consider the totality of the Applicant/Plaintiff's case.
2. The Appellant prays for Orders that; -
- a. That the appeal be allowed.
  - b. That the Ruling and orders made by the Learned Magistrate (Hon. Kibet Sambu) and dated 8<sup>th</sup> March, 2023 be set aside.
  - c. That costs of the Appeal be awarded to the Appellant.
3. On 24/4/2023 the Appellant through Mr. Mingo Advocate urged this Court to transfer the Appeal to Kiambu High Court. The Respondent's Counsel Ms. Wamuyu opposed the request stating that if this Court lacks jurisdiction then there is no appeal capable of transfer. The Court invited the parties to address it on the question of Jurisdiction, the subject of this Ruling.
4. The Appellant through its firm of Advocates Conrad Law Advocates LLP filed submissions dated 9/5/2023. Two issues were drawn for determination to wit; whether this Court has the jurisdiction to entertain the Appeal and whether this Court has inherent power to transfer the Appeal to the High Court.
5. Answering both issues in the affirmative, the Appellant posited that the appeal is properly filed before this Court by dint of Article 162 (20) (b) of the Constitution of Kenya, Section 13 of the Environment and Land Court Act and Section 150 of the Land Act. That in the trial Court, the suit was determined as MC ELC pursuant to Section 150 of the Land Act and as such the appeal herein is properly invoked before this Court.
6. Secondly the Appellant relied on the Court of Appeal decision in Prof Daniel Mugendi Vs. Kenyatta University & Others, Civil Appeal No 6 of 2012 on the shared powers of High Court, Employment and Labour Relations Court and Environment and Land Court to transfer matters among themselves in the event that a Court comes across a matter that ought not be before it, the Court can transfer the matter to the appropriate Court for hearing and termination. Accordingly, the Appellant submitted that if this Court is inclined to find that it lacks jurisdiction, then it should exercise inherent powers under Section 3A of CPA and transfer the appeal to Kiambu HC for hearing and determination.
7. The firm of Igeria & Ngugi Advocates filed submissions dated 6/6/2022 on behalf of the Respondent. Denying this Court's jurisdiction to entertain the appeal which in the Respondent's view is purely a commercial dispute, the cases of Owners of Motor Vessel "Lillian S" Vs. Caltex Oil (Kenya) Ltd (1989) and CoA decision in Co-operative Bank of Kenya Limited Vs. Patrick Kang'ethe Njuguna & 5 Others [2017] eKLR. The Respondent contended that the trial Court determination of the matter as MC ELC was proper since Magistrates exercise jurisdiction in such matters subject to pecuniary limits. Lastly the Respondent maintained that a suit filed in Court without jurisdiction is a nullity ab initio incapable of being transferred to the proper Court. Reliance was placed on the cases of Wamathu Gichoya Vs. Mary Wainoi Magu [2015] eKLR and Boniface Waweru Mbiyu Vs. Mary Njeri & Another [2005] eKLR.
8. A glean of the grounds in the Memorandum of Appeal dated 13/4/2023 reveal that the Appeal revolves around the exercise of the Respondent's statutory power of sale specifically with the issue of service of Statutory Notices upon the Appellant.



9. The Court of Appeal in the case of *Co-operative Bank of Kenya Limited Vs. Patrick Kangethe Njuguna & 5 Others* [2017] eKLR emphasized that the Environment and Land Court lacks jurisdiction in commercial matters in the foregoing terms;

“41. 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 ...”

10. The above position was reiterated by the same Court in its subsequent decision in the case of *Diamond Trust Bank Ltd Vs. Fatma Hassan Hadi* [2022] eKLR.
11. The upshot of the foregoing binding precedents is that this Court lacks jurisdiction to entertain the instant appeal as filed. The Preliminary Objection is thus merited and it is upheld with costs. Consequently the Appeal be and is hereby struck out.
12. Costs shall be in favour of the Respondent.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24<sup>TH</sup> DAY OF JUNE 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Nduati HB Mingo for Appellant

Ms. Obimbo HB Wamuyu for Respondent

Court Assistants – Phyllis/Oliver

