



Meru Greens Horticulture EPZ Ltd & another v Equity Bank (Kenya) Ltd (Environment & Land Case E014 of 2023) [2024] KEELC 13598 (KLR) (29 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E014 OF 2023
A KANIARU, J
NOVEMBER 29, 2024**

BETWEEN

MERU GREENS HORTICULTURE EPZ LTD 1ST PLAINTIFF

MOUNT KENYA GRADENS LTD 2ND PLAINTIFF

AND

EQUITY BANK (KENYA) LTD DEFENDANT

RULING

1. Before me for determination is a Preliminary objection dated 03.11.2023 and filed on 07.11.2023 by the Defendant – Equity Bank (kenya) Ltd – to the effect that:
 - a. This court lacks jurisdiction to adjudicate this matter as the dispute as set out in the plaint is not a dispute relating to the environment or the use and occupation of, and title to land.
 - b. This suit seeks to restrain the defendant from exercising its statutory power of sale, to compel the defendant to re-structure the plaintiff's loan repayment and an order to have the plaintiff's name removed from the credit reference bureau. These are commercial matters for adjudication before the High court.
2. The objection was canvassed through written submissions. The Defendants submissions were filed on 24.01.2024. It was submitted that a court's jurisdiction flows from either *the constitution* or legislation or both as was observed in the Supreme Court case of Samuel Kamau Macharia & Anor v Kenya Commercial Bank Ltd & 2 others (2012) Eklr. That the jurisdiction of the Environment and land Court is provided for in Article 162(2) and section 13(2) of the *Environment and Land Court Act*. That the plaintiff's claim according to his complaints and prayers in the plaint are solely of a commercial nature over moneys owed by the 1st plaintiff and how the same should be repaid.



3. That it is settled by the court of appeal that the Environment and land court does not have the jurisdiction to hear and determine disputes where the plaintiffs seek to restrain the defendant from exercising their power of sale. That it is the High court that has jurisdiction to deal with such disputes. The defendant referred the court to the cases of Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 others (2017), Civil Appeal No. 18 of 2020, Diamond Trust Bank Kenya Ltd v Fatma Hassan Hadi Eklr where the courts are said to have faced similar circumstances as herein. Further cases that were made reference to in support of the submissions were the cases of: Republic v Karisa Chengo & 2 others (2017) Eklr, Dodhia v National & Grindlays Bank Ltd & Anor (1970) EA 195, Machakos ELC E009 of 2023 Meru Greens Horticulture EPZ Ltd V Equity Bank (Kenya) Ltd.
4. It is not clear when the plaintiffs filed their submissions. However the same are dated 04.04.2024. They submitted that the case of Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 others (2017) Eklr as cited by the defendant is not a blanket decision of the jurisdiction of the ELC court. That in their view, considering that charges are regulated under both the Land Act, 2012 and the Land Registration Act, 2012 which provide for the appropriate court to deal with disputes concerning land falling under the said Acts, it would follow that the ELC as the designated court would have jurisdiction to deal with such disputes. That the plaintiff's dominant issue in the suit is on non-compliance with the provisions of Section 90(2), 96(2) and 97(3) of the Land Act.
5. I have considered the objection and the rival submissions. The issue for determination is whether the preliminary objection is sustainable.
6. The circumstances in which a preliminary objection may be raised are well settled in the celebrated case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696, as follows:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

The effect of a preliminary objection if upheld, renders any further proceedings before the court impossible or unnecessary. Thus a preliminary objection may only be raised on a pure question of law. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.
7. The objection herein rests squarely on the jurisdiction of this court and as was held in Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
8. This suit was brought via plaint dated 24.04.2023 and amended on 21.05.2023 where the plaintiffs were seeking prayers for: An order of injunction restraining the defendants from advertising, alienating and interfering with the quiet enjoyment of land titles Mbeti/Gachuriri/441,442,444 and 554; an order that the defendants failed to follow the provisions of Section 90 and 96(2) and 97(3) of the Land Act; court order to declare the purported sale process void; injunction and declaratory orders declaring the entire process of sale pursuant to section 90,96 and 97 of the Land Act as non-compliant and void.



Notably, the plaintiffs want to stop the defendants from exercising their statutory power of sale which has been occasioned by the plaintiff's default on a loan facility advanced to them. The suit lands had been given as the security for the repayment of the loan.

9. According to the defendants, a dispute such as this one falls within the jurisdiction of the High Court and not the Environment and Land Court. They are of the view that by virtue of judicial precedents, this court has no powers to deal with commercial disputes which is what the instant suit is all about. The plaintiffs are of a contrary view, they say that the plaintiff's dominant issue in the suit is on non-compliance with the provisions of Section 90(2), 96(2) and 97(3) of the Land Act. The said provisions are generally on the procedure to be followed when exercising a statutory power of sale.
10. The jurisdiction of this court flows from Article 162(2)(b) of the Constitution which provides for the establishment of the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Section 13 of the Environment & Land Court Act on the other hand provides that the Court shall have power to hear and determine disputes——
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.
11. The Court of Appeal case of Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 others (2017) Eklr went into great length in addressing the issue of jurisdiction of the ELC court when it comes to matters such as the one herein. Though the plaintiff's decry that the same is not a blanket decision of the jurisdiction of this court, the same is binding to this court by virtue of the stare decisis doctrine. The court in that case found that:
 - a. Land use involves the application of land, air above it, or ground below it for its adapted purpose. Charging land (securing a loan with land as collateral) is not considered land use
 - b. A charge is an interest in land securing payment of money or fulfillment of conditions. It creates a limited relationship where the chargee (lender) has rights over the land for security, not for using the land.
 - c. A charge is a disposition (legal arrangement) in land, not land use. Dispositions create relationships but do not alter environmental conditions of the land, unlike land use.
 - d. If a disposition were land use, absentee landlords with a charge would not face adverse possession claims, which contradicts legal principles.
 - e. The ELC does not have jurisdiction over charges as land use under Article 162 of the Constitution. The main issue in the case was accounting for amounts due, not the validity of the charge itself.
 - f. The ELC's jurisdiction over contracts relates to land use, not financial instruments like mortgages or charges, which fall under the civil jurisdiction of the High Court.



- g. The High Court has jurisdiction over accounting disputes per Article 165(3) of *the Constitution*, which provides unlimited original jurisdiction in civil matters.
12. It is clear from the suit as filed that the plaintiffs are seeking to challenge the manner in which the defendant wants to exercise its statutory power of sale. It appears clear to me that our courts have taken the position that where a dispute relates to legal charges and the subsequent statutory power of sale, the court clothed with jurisdiction to handle the dispute is the High Court. There are several decided cases on the issue. In Keter Vs Ecobank Kenya Limited (civil case no 16 of 2018) (2022) KEHC 13352 KLR (28th September, 2022) (RULING) the court expressed itself as follows;
- “The substratum of the suit relates to legal charges and the subsequent statutory power of sale. The High Court has jurisdiction to deal with a dispute in which the predominant issue is the exercise of the statutory power of sale by the chargee”
13. Further, in Thomas Mutuku Kasue VS Housing Finance Company LTD (HFC) & another (2021) eKLR, the court held;
- “The court of appeal whose decision is binding on this court has held that where the predominant issue in a suit involves mortgages, charges, collection of dues and rents, it is the High court, and not the Environment and Land court, that has jurisdiction to deal with the dispute.....”
14. It seems to me clear that the court of appeal case referred to in Thomas Mutuku’s case (Supra) is the Co-operative Bank of Kenya’s case (Supra) referred to earlier in this ruling. A crucial finding in that case is that Environment and Land courts’ jurisdiction over contract relates to Land use and not financial instruments like mortgages and charges. The Appeal court pointed out clearly that that falls under civil jurisdiction of the High Court.
15. From the foregoing, I do find that the court vested with the jurisdiction to hear the suit herein is the High court and not Environment and Land court. Consequently, the preliminary objection dated 3.11.2023 is hereby upheld and the suit herein is dismissed for want of jurisdiction. The plaintiff to bear costs of the suit.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 29TH DAY OF OCTOBER, 2024.

In the presence of Mosobela for Kiragu Kimani for defendant.

Court Assistant – Leadys

A. KANIARU

JUDGE – ELC, EMBU

