



REPUBLIC OF KENYA



KENYA LAW
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**Equity Bank Limited v Chepkwony & 4 others (Environment and Land
Appeal 14 of 2021) [2023] KEELC 933 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 933 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND APPEAL 14 OF 2021
MN MWANYALE, J
FEBRUARY 16, 2023**

BETWEEN

EQUITY BANK LIMITED APPELLANT

AND

EMMILY JELIMO CHEPKWONY 1ST RESPONDENT

ISAAC KIPKEMBOI CHEPKWONY 2ND RESPONDENT

KAPSIRICHOI FARMERS COOPERATIVE SOCIETY LTD .. 3RD RESPONDENT

GLADYS JEBET 4TH RESPONDENT

SAMSON KIMAIYO MUREI 5TH RESPONDENT

RULING

1. Before me for determination is an appeal filed on July 13, 2021 against the entire judgment and decree in Kapsabet MCELDC No. 53 of 2018.
2. The Court issued directions on October 24, 2022 that the instant appeal be heard by way of written submissions. Delivery of judgment was then scheduled on February 16, 2023.
3. Upon perusal of the record of appeal as well as submissions filed by parties herein, the Court's mind was drawn to a vital issue as to whether it had jurisdiction over this appeal. The Court ought to satisfy itself of the jurisdiction in any matter before proceeding. I therefore do so suo moto vide this ruling.



4. Jurisdiction is everything, without it a Court of Law acts in vain. This position was held by the Court of Appeal in the locus classicus case of *The Owners of the Motor Vessel "Lilians" -vs- Clatex Oil (Kenya) Limited (1989) eKLR* where it was held as follows;

“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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

5. The Supreme Court in the case of *Samuel Kamau Macharia and Another -vs- Kenya Commercial Bank Limited and 2 others* also has this to state with regards to jurisdiction.

“.....a Court can only exercise jurisdiction that had been donated to it by either *the constitution* or legislation or both. Therefore, it cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.”

6. This Court’s jurisdiction is donated by *the constitution* under article 162 (2) (b) which states that this court shall have jurisdiction over disputes relating to the environment, the use and occupation of, and title to land the *Environment and Land Court Act* similarly prescribe the jurisdiction of the court under section 13.

7. The Court of Appeal while resolving the question as to whether this Court has jurisdiction to determine a mortgage/charge dispute within the meaning of article 162 (2) (b) held in the case of *Co-operative Bank of Kenya Limited -vs- Patrick Kangethe Njuguna and 5 others* (2017) eKLR that;

“ 37. Further Section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land. As seen before, land use connotes the alteration of the environmental conditions prevailing on the land and has nothing to do with dispositions of land. Saying that creation of an interest or disposition amounts to use of the land, as akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use. The mere acquisition or conferment of an interest in land does not amount to use of that land.....

Consequently, the assertion that a charge constitutes use of land within the meaning of Article 162 of *the Constitution* fails.....”

8. The Court of Appeal proceeded to state under paragraph 41 of the said decision that;

“ 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.”



9. The Court of Appeal made it clear that this Court does not have jurisdiction to deal with disputes relating to mortgages and charges instead; it is the High Court that has such jurisdiction.
10. That said, upon a careful examination of the Record of Appeal particularly the plaint filed in the trial Court, it is noteworthy that the dispute herein related to a legal charge over property registration number Nandi/chepkongony/317. The issue here is not on the ownership of the suit property but the validity of the charge and the charge amount outstanding. The Plaintiff/1st Respondent claims under paragraph 14 of the plaint, found on page 6 of the Record of Appeal; that the charge amount sought to be recovered by the 1st defendant/appellant was against the in – Duplum Rule pursuant to the provisions of section 44 of the *Banking Act*. The issue here would involve tabulation of charge amount owing purely based on a contractual relationship of a banker and lender. This in my view creates a commercial dispute that falls squarely within the jurisdiction of the High Court that had unlimited original jurisdiction over civil matters.
11. In light of the above reasons and guided by the Court of appeal decision in *Co-operative Bank of Kenya Limited -vs- Patrick Kangethe Njuguna and 5 Others* (2017) eKLR cited herein above, I find that this appeal falls within the jurisdiction of the High Court at Kapsabet for hearing and determination and accordingly transfer the same to the High Court at Kapsabet. The Deputy Registrar to take necessary steps to facilitate the transfer to the High Court at Kapsabet.
12. Cost of this Appeal shall await its outcome before the High Court.
13. Orders accordingly.

DATED AT KAPSABET THIS 16TH DAY OF FEBRUARY, 2023.

Hon. M. N. Mwanyale,

JUDGE

In the presence of;

Mr. Maritim holding brief for Mr. Rotich for Respondent

Mr. Lagat for the Appellant

