



Muyuka & another v Barclays Bank of Kenya & 2 others (Environment & Land Case E005 of 2021) [2023] KEELC 16581 (KLR) (29 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16581 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E005 OF 2021
MN MWANYALE, J
MARCH 29, 2023
FORMERLY ELDORET ELC NO. 719 OF 2012**

BETWEEN

HELLEN MUYUKA 1ST PLAINTIFF

TYSON MWINGI CHANGARA 2ND PLAINTIFF

AND

BARCLAYS BANK OF KENYA 1ST DEFENDANT

DANIEL KOSGEI RONO 2ND DEFENDANT

**PAN AFRICAN LIFE NOW TRADING AS SANLAM LIFE INSURANCE
LIMITED 3RD DEFENDANT**

RULING

1. This ruling relates to an issue raised by the court suo moto on February 20, 2023. This court posed the question whether it has jurisdiction over the matter in view of a contract of insurance between the 3rd Defendant and the 1st Defendant. Particularly whether the dispute is an environment and land dispute or a commercial dispute.
2. Parties were invited to submit on this issue. The Plaintiff, 1st Defendant and 3rd Defendant complied by filing their respective submissions which the court has taken into consideration. In brief, the Plaintiff and the 3rd Defendant hold similar views that this court is properly seized with jurisdiction to hear and determine this matter since it involves an instrument in land. However, the Plaintiff submits that in the event the court answers the issues in the negative, then the matter be transferred to the High Court for final determination. The 1st Defendant on the other hand submits that the proper court clothed with jurisdiction over disputes of this nature is the High Court. To buttress their position, they relied



in the court of Appeal Case of *Co-operative Bank of Kenya Limited Vs Patrick Kangethe Njuguna & 5 others* (2017) eKLR.

Analysis and Determination:

3. I have considered the positions taken by parties in their respective submissions over the issue at hand. It is important to note that jurisdiction is central in judicial proceedings hence the need to raise it suo moto once the court's mind was drawn to this issue upon perusal of the pleadings herein. Without jurisdiction, a court is acting in vain and any engagements therein are a nullity. This was the position in the locus classicus case of *The Owners of the Motor Vessel "Lilian S" Vs Caltex Oil (Kenya) Limited* (1989) eKLR.
4. A court only exercises jurisdiction conferred to it by either the *constitution* or legislation or both. This court's jurisdiction emanates from Article 162(2) (b) which states that this court has jurisdiction over disputes relating to the environment the use and occupation of, and title to land. The *Environment and Land Court Act* similarly prescribe in detail the jurisdiction of this court under section 13.
5. 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 case cited by the 1st Defendant's Counsel which is, *Co-operative Bank of Kenya Limited Vs Patrick Kangethe Njuguna & 5 Others* (2017) eKLR that;

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- “ 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, is 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 for Article 162 of the *Constitution* fails”

6. The Court of Appeal proceeded under paragraph 41 to state as follows:

- “ 41. Furthermore, the jurisdiction of the Environment and Land Court to deal with disputes relating to contracts under Section 13 of the *Environment and Land Court 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.”

7. The Court of Appeal pronounced that this Court lacked jurisdiction to deal with disputes relating to mortgages and charges instead, such disputes fell within the Civil Jurisdiction of the High Court.
8. Upon perusal of the amended Plaintiff and the 1st Defendant's Amended statement of Defence, it is not in dispute that the issue relates to a legal charge registered against the suit properly in favour of the 1st



Defendant who later exercised their statutory power of sale to recover the outstanding loan amount. The dispute therefore emanates from a contract known as a “charge” which as directed by the Court of Appeal in the Co-operative Bank case does not fall within the ambit of this court’s jurisdiction.

9. Moreover, the Plaintiff’s prayer against the 3rd Defendant for payment of outstanding balance pursuant to the insurance cover in place clearly demonstrates that this court’s jurisdiction over this matter is lacking. I hold this view since the court ought to probe whether an insurer-insured existed between the affected parties as well as the terms of the Policy which issues were not contemplated to fall within the jurisdiction of this court either by the Constitution of Kenya or the Environment and Land Court Act. The proper Court to address and determined such a commercial dispute is the High Court as set out in Article 165(3) of the Constitution which donates unlimited original jurisdiction in Criminal and Civil matters to the said court.
10. Flowing from the foregoing, I find that this matter falls within the jurisdiction of the High Court and not the Environment and Land Court.
11. In view of the age of the matter, that was initially filed in the High Court being Eldoret High Court Civil Case No 90 of 2011 before transfer to the Environment and Land Court at Eldoret. The matter was rightly filed before the High court and thereafter transferred to the Environment and Land Court, before the decision on the Environment Land Case jurisdiction was pronounced in 2017, in the Co-operative Bank Vs Patrick Njaguna Case, I wish to invoke Article 159 of the Constitution and Sections 1A and 1B of the Civil Procedure Act, I direct in the interest of substantive justice that the matter be transferred to the High Court at Kapsabet for final determination. The Deputy Registrar to take necessary steps to facilitate the transfer accordingly.
12. Costs shall await outcome before the High Court.
13. It is so ordered.

DATED AT KAPSABET THIS 29TH DAY OF MARCH, 2023

M. N. MWANYALE,

JUDGE

In the Presence of:

Ms. Muthee for 1st Defendant

Mr. Maritim for Plaintiff

Ms. Tanui for 2nd Defendant

Mr. Aloo for 3rd Defendant

