



Gichuhi & another v Progressive Credit & another (Environment & Land Case E030 of 2023) [2023] KEELC 20203 (KLR) (18 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E030 OF 2023
BM EBOSO, J
SEPTEMBER 18, 2023**

BETWEEN

GRACE WANGUI GICHUHI 1ST PLAINTIFF

WILSON GICHUHI KIMANI 2ND PLAINTIFF

AND

PROGRESSIVE CREDIT 1ST DEFENDANT

RISING SUN AUCTIONEERS 2ND DEFENDANT

RULING

1. The plaintiff initiated this suit through a plaint dated August 28, 2023. Through it, they challenged the 1st defendant exercise of the chargee’s statutory power of sale. They sought the following verbatim reliefs against the defendant:
 - i. A permanent injunction be granted restraining the 1st and 2nd defendants/respondents either by themselves, agents, workers and or employees from trespassing auctioning, advertising, wasting, damaging, sale, removal and or disposition of Dagoretti/Thogoto/1817 being a residential property within Kiambu County and registered in the names of Grace Wangui Gichuhi and a declaration that the threats are violations of plaintiffs rights.
 - ii. Costs of this suit thereon. [sic]
 - iii. Any other suitable relief from this court.
2. Together with the plaint, the plaintiffs brought a notice of motion dated August 28, 2023, seeking interlocutory injunctive orders against the defendant. When the application was placed before this court on August 30, 2023, the court directed the plaintiffs to serve the application. The court further directed parties to appear before it today to address it on the question of its jurisdiction to adjudicate mortgage/charge disputes. The parties’ advocates have presented rival oral submissions which have



been considered. The single issue that now falls for determination in this ruling is whether this court is seized of jurisdiction to adjudicate the dispute in this suit.

3. Mr Wang'ang'a, counsel for the plaintiffs, cited Article 162(2)(b) of the Constitution, Section 13 of the Environment and Land Court Act, and Section 78 of the Land Act, and argued that the three legal frameworks fully empower this court to hear and determine the dispute in this suit. On his part, Mr Maina, counsel for the defendant, relied on Section 13 and the Court of Appeal pronouncement in the case of Co-operative Bank of Kenya Limited V Patrick Kangethe Njuguna & 5 others (2017) eKLR. Mr Maina argued that this court does not have jurisdiction to adjudicate the dispute in this suit. I have considered the rival submissions.
4. This suit principally challenges the 1st defendant's right to exercise the chargee's statutory power of sale. It does not challenge the title to the suit property. The issue before court is one on which the Court of Appeal has made clear pronouncement on, at least, two occasions. In 2017, the Court of Appeal rendered a Judgment in the Kangethe Case (supra) in which it unequivocally stated that disputes relating to charges/ mortgages fell outside the jurisdiction of the Environment and Land Court. In 2022, the Court of Appeal reiterated the same pronouncement in Diamond Trust Bank Kenya Limited v FHH [2022] KECA 769 [KLR].
5. The interpretation rendered by the Court of Appeal in the above two decisions is binding on this court. Unless the Court of Appeal itself or the Supreme Court comes up with a contrary position on this issue, under the doctrine of stare decisis, the third tier superior courts remain bound by the pronouncement made by the Court of Appeal.
6. The result is that this court does not have jurisdiction to entertain the dispute in this suit. In tandem with the principle in Owners of Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd [1989]eKLR, this court is obliged to down its tools. Consequently, the suit herein is struck out on the ground of want of jurisdiction. The plaintiffs shall bear costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 18TH DAY OF SEPTEMBER 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Wang'ang'a for the Plaintiffs

Mr Jimi Maina for the Defendants

Court Assistant: Osodo

