M'Twarugoji v Kathurima & another (Environment and Land Miscellaneous Case E024 of 2025) [2025] KEELC 6562 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6562 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND MISCELLANEOUS CASE E024 OF 2025

BM EBOSO, J

SEPTEMBER 29, 2025

BETWEEN

STANLEY KATHURIMA M'TWARUGOJI ..... APPLICANT

AND

LILLY NKATHA KATHURIMA ..... RESPONDENT

AND

AGRICULTURAL FINANCE CORPORATION ..... DEFENDANT

(An application for an order enlarging time for lodging an appeal against the ruling of the Chief Magistrate Court at Meru [Hon Atiang Mitullah] dated 18/2/2025)

RULING

1. Falling for determination in this ruling is the notice of motion dated 3/5/2025, brought by Stanley Kathurima M'Twarugoji [referred to in this ruling as "the applicant"). Through the motion, the applicant seeks an order enlarging the time within which to file an appeal challenging the ruling/order of the Chief Magistrate Court at Meru [Hon Atiang Mitullah] dated 18/2/2025. The application is contested.

2. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit dated 3/5/2025. It was canvassed through written submissions dated 5/7/2025, filed by M/s Kiautha Arithi & Company Advocates. The case of the applicant is that he resides in the United States of America. He migrated to the United States of America in March 2019, where he lives with his family. He contends that he never applied for nor took a loan from the 2nd respondent, adding that he was shocked to learn that his land, parcel number Ntima/Ntakira/5123 was up for auction on 28/8/20224 to recover arrears of a loan he allegedly received from the 2nd respondent on 15/11/2021.

3. The applicant states that he filed Meru CMCC E & L Case No. E190 of 2024 and contemporaneously filed an application for an injunction. The application was dismissed on 18/2/2025. He further states that, unfortunately, his then advocates on record, M/s Carlpeters Mbaabu & Co. Advocates, never informed him about the outcome. The applicant adds that he only learnt about the ruling after he made inquiries after a notice of valuation was left on his land by the 2nd respondent on 10/4/2025.

4. The applicant contends that he instructed M/s Kiautha Arithi & Co. Advocates to take up the matter and lodge an appeal, but they advised him that the appeal should have been filed within 30 days, which had lapsed. He further contends that since the 2nd respondent is determined to sell his land, it is only fair that an order of injunction be issued. The applicant adds that he is determined to have a forensic examination done on the letter of offer and on the charge document to prove that they are forgeries. The applicant states that her wife never signed the alleged spousal consent. He has exhibited the draft memorandum of appeal. The applicant urges the court to allow the application.

5. The 2nd respondent opposed the application through a replying affidavit dated 20/6/2025, sworn by John Kithinji and written submissions dated 21/7/2025, filed by M/s Fozia Gakii Muturia & Co Advocates. The case of the 2nd respondent is that on or about 15/3/2021, the applicant and the 1st respondent applied for an agricultural development loan of Kshs 2,800,000, which sum together with interest, was to be repaid within three years from the date of disbursement. He adds that, as a cardinal principle, the 2nd respondent would only finance the applicant and the 1st respondent after being furnished with a collateral for the credit facility. The applicant and the 1st respondent gave the title deed relating to land parcel number Ntima/Ntakira/5133 as security for the facility.

6. The 2nd respondent adds that they conducted due diligence on the title and on the land before accepting it as security and subsequently had a charge registered against it. They thereafter disbursed the loan amount. The applicant and the 1st respondent subsequently defaulted in the repayment of the loan. This prompted the 2nd respondent to initiate recovery of the loan. The 2nd respondent further states that as a result of the applicant's failure to honour their contractual obligation, the 2nd respondent invoked its statutory power of sale subsequent to which the applicant approached the Chief Magistrate Court vide Meru CMCC No. E190 of 2024. The applicant simultaneously filed an application seeking interlocutory injunctive orders. The application was dismissed by the court on 18/2/2025.

7. The 2nd respondent adds that at the time of prosecuting the application, the applicant fully participated and his counsel always appeared and the applicant had full knowledge of all proceedings. He further states that the ruling was delivered on 18/2/2025. The applicant adds that the applicant has approached the court only after being served with another valuation report by them. It is their case that the applicants have approached the court with dirty hands, adding that the application has been brought in bad faith. The 2nd respondent states that the application is an afterthought and a delay tactic. He further states that their actions are well within the law. The 2nd respondent urges the court to dismiss the application with costs.

8. I have considered the application, the response to the application, and the parties' respective submissions on the application. I have also considered the relevant legal frameworks and jurisprudence. The following two questions fall for determination in the application: (i) Whether the Environment and Land Court is seized of jurisdiction to dispose the application; and (ii) Whether the application meets the criteria for enlargement of time for lodging an appeal to this court. I will dispose the two questions sequentially in the above order.

9. Is the Environment and Land Court seized of jurisdiction to dispose the application? The ownership of the suit land is not disputed. What is disputed is the validity of the charge that exists against the

title. The applicant is saying that he never borrowed money from the 2nd respondent and he never gave his title as a security. The dominant questions to be answered by the trial court are: (i) Whether the applicant and the 1st respondent borrowed money from the 2nd respondent; and (ii) Whether the duo used the title to the suit land as a collateral for the borrowed money. Are these questions for the Environment and Land Court?

10. I do not think so. The Court of Appeal has, on various occasions, stated that disputes relating to mortgages or charges are not for the Environment and Land Court. The Court of Appeal stated the following in *Co-operative Bank of Kenya Ltd Vs Patrick Kangethe Njuguna & 5 Others* Civil Appeal No. 83 of 2016:

> " 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".

11. . The Court of Appeal repeated the same pronouncement in *Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others* (Civil Appeal E055 of 2022) [2024] KECA 410 (KLR) (26 April 2024) in the following words:

> " We form this view taking to mind this Court's decision in the afore-cited case of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* (supra) where it was held that the ELC only has jurisdiction to deal with disputes connected to "use" of land and contracts incidental to the "use" of land, which do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court. Moreover, a charge is a disposition that has no direct contractual relation to "use" (by a tenant or licensee) as in this case, of a chargor's land. In view of the foregoing, we agree with learned counsel for the appellants that the learned Judge had no jurisdiction to entertain the respondents' suit as pleaded".

12. . Under the principle of stare decisis, this court is bound by the law as pronounced by the Court of Appeal. Based on the prevailing law, the application under consideration was filed in the wrong court. The application is a nullity ab initio on the above ground.

13. . Can the miscellaneous suit be transferred to the High Court by this court suo motto? Again, the Court of Appeal has, in a number of decisions, emphasized that a suit filed in a court that does not have jurisdiction is a non- starter and a nullity that cannot be transferred to a court seized of jurisdiction. In *Phoenix of E. A Assurance Company Limited -vs S. M. Thiga t/a Newspaper Service* Civil Appeal No. 244 of 2010 eKLR, the Court of Appeal stated as follows:

> " We are not persuaded that that proposition by the respondent is correct in law. Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject,

this Court pronounced; *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989):

> "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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

14. . These words were echoed by the Court in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR in the following words: -

> " In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred.
>
> Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign, It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of the *Constitution* to remedy the same".

15. . It bears observing that, a trend is emerging where many commercial cases in Magistrate Courts are erroneously designated as land and environment disputes. Because those magistrate courts have dual jurisdiction to deal with both commercial/civil disputes as well as environment/land disputes, questions of jurisdiction do not arise in the magistrate courts. However, when appeals are contemplated out of commercial/civil disputes that have been erroneously designated as environment and land cases, those appeals are misdirected to the Environment and Land Court on account of the erroneous designation. Regrettably, an erroneous designation of a case/dispute in a magistrate court does not and cannot confer jurisdiction on the Environment & Land Court. Appellate jurisdiction of a court is derived from the dominant question(s)/issues in the dispute in the trial court.

16. . For the above reasons, this miscellaneous application stands to be struck out for having been filed in a court that is not seized of jurisdiction. The court will down its tools at this point in tandem with the principle in *Owners of Motor Vessel "Lillian S" -v- Caltex Oil (Kenya) Ltd* [1989]. The applicant will be at liberty to file a competent application in the High Court.

17. . On costs, the general principle in Section 27 of the *Civil Procedure Act* is that costs follow the event. There is no proper reason to warrant a departure from the general principle. Consequently, the applicant shall bear costs of the suit.

18. . In the end, the application dated 3/5/2025 is struck out on the ground of want of jurisdiction on part of the Environment and Land Court. The applicant shall bear costs of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF SEPTEMBER, 2025

B M EBOSO [MR]

ELC JUDGE