



**Amachire v Alolo & another (Environment & Land Miscellaneous Case
E003 of 2025) [2025] KEELC 4357 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E003 OF 2025**

E ASATI, J

JUNE 9, 2025

BETWEEN

ALFAYO AKOLO AMACHIRE PLAINTIFF

AND

MARTHA AMIMO ALOLO 1ST DEFENDANT

ST ELIZABETH FRINGMAN ACADEMY 2ND DEFENDANT

RULING

1. This ruling in respect of the Notice of Motion application dated 14th March 2025 expressed to be brought pursuant to the provisions of Section 18 (1) (b) (ii) Rule 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*. The application seeks for an order of transfer of Vihiga MCELC No. E005 OF 2023 to the Environment and Land Court at Vihiga for hearing and determination. The application further seeks for an order that upon transfer of the case, the same be set down for hearing on priority basis and that costs of the application be provided for.
2. I have considered the application. The reason for transfer of the suit from the lower court to this court is that the lower court has no jurisdiction to hear and determine claims of adverse possession following the decision of the Court of Appeal in Civil Appeal No. E141 of 2022.
3. A suit filed in a court without jurisdiction is an incompetent suit hence not transferrable to another court. The Court of Appeal has so held in the case of *Equity Bank Limited v Bruce Mutie Mututku t/ a Diani Tour Travel* (2016) eKLR as follows:

“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 Section 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 the Court lacks jurisdiction parties cannot even seek refuge under the O2 principle or the overriding objective under the *Civil Procedure Act*, the Appellate Jurisdictions Act or even Article 159 of the *Constitution* to remedy the same..."

4. The High Court in *Abraham Mwangi Wamugoni v Simion Mbiriri Wanjiku & Another* (2012) eKLR similarly held that;

"The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi v. Musiramo* (supra), Sir Udo Udoma, CJ made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it. In *Ali Abdi Sheikh v. Edward Nderitu Wainaina & Others* (supra), Koome, J (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs. 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the suit was filed in a court without jurisdiction. A similar view was taken by the same Judge in *Rainbow Manufacturers Limited v. National Bank of Kenya* (supra).....

It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as "transfer". In other words, courts can only transfer a cause whose existence is recognised by law. It is now settled law that where a court finds that it has no jurisdiction, it must immediately down its tools and proceed no further. That position was made clear by Nyarangi JA in *The Owners of Motor Vessel "Lillian S" v. Caltex Oil Kenya Limited* (1989) KLR 1"

5. For the foregoing reasons I find that the application cannot succeed. The same is therefore hereby dismissed. Each party to bear own cost of the application as the Respondents had neither been served nor responded to the application.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 9TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Ajevi: Court Assistant.

Orute h/b for Manyoni for the Applicant.

Okolo h/b for Owino for the Respondents.

