



Mutuku v Kipkai Enterprises Limited & another (Environment & Land Miscellaneous Case E042 of 2024) [2025] KEELC 4349 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4349 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND MISCELLANEOUS CASE E042 OF 2024**

**AY KOROSS, J
JUNE 10, 2025**

BETWEEN

BEATRICE NGINA MUTUKU APPLICANT

AND

KIPKAI ENTERPRISES LIMITED 1ST RESPONDENT

THE LAND REGISTRAR-NAIROBI 2ND RESPONDENT

RULING

1. This is a ruling in respect of notice of motion dated 25/09/2024 filed by the applicant whereby she seeks the following reliefs: -
 - a. Spent.
 - b. Spent.
 - c. THAT the honourable Court be pleased to transfer the file and proceedings of Mavoko Chief Magistrates Court ELC No. E067 of 2024 (Beatrice Ngina Mutuku vs Kipkai Enterprises Ltd).
 - d. THAT upon transfer of Mavoko Chief Magistrates Court ELC No. E067 of 2024 (Beatrice Ngina Mutuku vs Kipkai Enterprises Ltd) to the Environment and Land Court, Machakos, the applicant be provided with a new case file number upon satisfying the requisite court fees as shall be directed by the deputy registrar.
 - e. THAT the costs of this application be provided for.
2. The motion is supported by the applicant's affidavit sworn on the instant date. A summary of the depositions in support of the motion are that a) On 21/08/2024, she filed Mavoko ELC Case No. 067/2024 which was before Hon. Barbara Ojoo (CM), b) By a preliminary objection (PO), the 1st respondent questioned the pecuniary jurisdiction of the Mavoko Chief Magistrate's Court; and



2. C) A valuation report had since established the lower court lacks pecuniary jurisdiction and this court is the appropriate forum for handling the dispute d) It will save immense judicial time and resources if the orders herein are allowed in tandem with the overriding objectives of the court, e) Lastly, the adverse parties will not be prejudiced.
4. The motion was unopposed, and despite directions from the court for parties to canvass the motion by written submissions, none of them complied.
4. This court has carefully considered the motion, the supporting affidavit, the germane legal framework and jurisprudence and the single issue arising for determination whether the motion is merited.
4. To start us off, this court will look at the relevant provisions of law that set the pecuniary limits of the courts, more so that of the lower court. In this regard, Section 4 of the *Civil Procedure Act* (CPA) and Section 7(1) of the *Magistrates' Courts Act* (MCA) come to the fore;

Section 4 of the CPA provides:

“Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any court jurisdiction over suits the amount or value of the subject- matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.”

Whereas Section 7(1) of the MCA states: -

“(1)A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- (a)twenty million shillings, where the court is presided over by a chief magistrate;
- (b)fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (c)ten million shillings, where the court is presided over by a principal magistrate;
- (d)seven million shillings, where the court is presided over by a senior resident magistrate; or
- (e)five million shillings, where the court is presided over by a resident magistrate.”

4. It is now settled law as established in the decision of Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd (1989) that once a court finds it does not have jurisdiction to hear and determine a dispute, then it has no choice but to down its tools. This position was underscored in the Supreme Court of Kenya decision of Samuel Kamau Macharia v Kenya Commercial Bank (2012) eKLR when it stated as follows: -

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceeding.”

4. In this motion, the applicant who is the plaintiff in the lower court suit has admitted the lower court does not have jurisdiction to entertain the suit and to substantiate this, she has availed a valuation report by Snowbell Realtors Land Ltd which shows the market value of L.R. No. 12715/627 (“suit property”) is Kshs. 150,000,000/= and it has an estimated forced sale value of Kshs. 112,500,000/=.



This value obviously places the suit property outside the jurisdiction of the magistrate's court, whose ceiling is capped at Kshs. 20,000,000/=.

4. From jurisprudence, it is trite law that where a suit is filed in a court that does not have jurisdiction, that suit is a nullity and there can never be anything to transfer. This position was stated in the Court of Appeal decision of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tours & Travel* [2016] eKLR, which pronounced itself on this principle in the following manner: -

“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 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 situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer.”

4. The Court of Appeal further rendered itself on this same principle in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR] by citing the following principle outlined in the decision of *Joseph Muthee Kamau & another v David Mwangi Gichure & another* (2013) eKLR, thus: -

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being *Kagenyi v Musirambo* (1968) EA 43. The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court's pecuniary jurisdiction. We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

4. Being guided by the established precedents, and in conclusion, this court finds the Chief Magistrate's court at Mavoko does not have jurisdiction to hear and determine Mavoko ELC No. E067 of 2024 (*Beatrice Ngina Mutuku vs Kipkai Enterprises Ltd*), and as a result, the lower court suit is a nullity ab initio. Having found the lower court proceedings a nullity for want of jurisdiction, this court finds that the lower court suit is incapable of a transfer.
4. For the reasons and findings stated above, this court finds the motion is not merited and, as held in *Phoenix of E.A. Assurance Company Limited* (Supra), the only remedy available to the applicant is to withdraw the lower court suit and file a compliant one with the court seized with jurisdiction.
4. In the end, the notice of motion dated 25/09/2024 is hereby dismissed with each party bearing their respective costs. This file is hereby effectively marked as closed.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 10TH DAY OF JUNE, 2025.

HON. A. Y. KOROSS



JUDGE

06.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

M/s Momanyi for 2nd respondent.

Mr. Ouma holding brief for Mr. Odhiambo for applicant.

M/s Nyagoke for 1st respondent

Ms Kanja- Court Assistant

