



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kavuludi v West FM Media Limited (West TV) & 3 others (Civil Case  
E001 of 2023) [2025] KEHC 5806 (KLR) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5806 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL CASE E001 OF 2023  
REA OUGO, J  
MAY 2, 2025**

**BETWEEN**

**JOHNSTON KAVULUDI ..... PLAINTIFF**

**AND**

**WEST FM MEDIA LIMITED (WEST TV) ..... 1<sup>ST</sup> DEFENDANT**

**SHELDON ASAKHULU ..... 2<sup>ND</sup> DEFENDANT**

**HERBERT MUNANDI MUGUNDA ..... 3<sup>RD</sup> DEFENDANT**

**VIOLET CHEBET ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> defendants ( the applicants) through a Notice of Motion dated 15<sup>th</sup> October 2024 brought under Article 25 (c), 27 (1) (2),50(1) and 162 (4),165(6), and 169 of the Constitution of Kenya, Sections 1A, 1B, 3A, and 11 of the Civil Procedure Act, 2010, Section 7 of the Magistrate Court Act, 2015, Order 2 rule 15 (d) and Order 51 Rules 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law, seek the following orders;
  - i. That the suit herein be struck out;
  - ii. That in the alternative, the suit against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Applicant be and is hereby struck out
  - iii. that the costs of this application be borne by the Plaintiff/Respondent and awarded to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants and
  - iv. That the Honorable Court be pleased to grant such other further relief as it deems fit and just to grant.
2. The application is supposed by the affidavit of Hiran Mugaisi and the following grounds ;



1. The suit herein is incurable incompetent, still born, and a non- starter as against the Defendant/applicants and it is for striking out with costs.
2. The system of courts in Kenya is provided for under Article 162 of the Constitution, 2010 with appellate mechanisms from the lowest to the Apex Court and for the purpose of this suit the final appeal lies in the court of Appeal.
3. The right to a fair trial under Article 50 (1) of the Constitution, 2010 which includes right to appeal to a High Court as by law provided is cannot be limited by anybody or court as provided for under Article 25 ( c ) of the Constitution, 2010.
4. The Magistrate' Court under the Magistrates' Court Act, 2015 has jurisdiction to hear and determine defamation cases.
5. Section 11 of the Civil Procedure Act, 2010 provides that every suit shall be instituted in the court of the lowest grade competent to try it.
6. By virtue of section 11 of the Civil Procedure Act, 2010 and Articles 50 (1) (q) read together with Article 167 of the Constitution, 2010, this Court does not have jurisdiction to hear and determine the present suit as it is not the Court of the lowest grade with competent jurisdiction.
7. For the plaintiff to purport to institute this suit under the rubric of " Unlimited jurisdiction " will be in violation of the parties' right to fair trial which includes the right to appeal contrary to Article 25 (C) of the constitution, 2010 as the Court will deny the parties the appellate process to this court.
8. The unlimited civil jurisdiction envisaged under Article 165 (3) (a) of the Constitution for this Court is where that jurisdiction has not by the Constitution or an Act of Parliament been donated to another Court or Tribunal.
9. The right of the parties to exercise their unhampered right of appeal against a decision they are dissatisfied with stands circumscribed if this court assumes jurisdiction to hear and determine this suit which violates Article 50 (1) (q) of the Constitution, 2010 and the right to a fair trial under Article 25 (c) of the constitution, 2010.
10. The unlimited jurisdiction of this court is not an exclusive jurisdiction to assume such jurisdiction where under Section 11 of the Civil Procedure Act, 2010, that jurisdiction is conferred to another court of the lowest grade competent to hear and determine the suit.
11. Where there is a clear procedure for the redress of any particular grievance prescribed by the constitution or an Act of Parliament which includes filing of suits in the court of the lowest grade with competent jurisdiction, that procedure should be strictly followed as articulated by the court of Appeal in Speaker of the National Assembly –vs- James Njenga Karume ( 1992) Eklr and endorsed by the Supreme Court in Albert Chaurembo Mumba & 7 Others ( sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme ) –vs- Maurice Munyao & 148 others ( suing on their own behalf and on behalf of the Plaintiffs and other Members/ Beneficiaries of the Kenya Ports Authority Pensions Scheme ) (2019) eKLR.
12. The Plaintiff/Respondent filed this suit in this court in flagrant violation, breach of Articles 25 (C),50(1),162 and 169 of the Constitution, 2010 and Section 11 of the Civil Procedure Act, 2010 and Section 7 of the Magistrates' Court Act , 2015 which divests this court jurisdiction



to hear and determine it despite material notice by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/ Applicant, the plaintiff/Respondent did not take appropriate action.

13. The comparative judicial decisions in Kenya for award of damages in defamation suits by the Court of Appeal show that the award, if any and which is contested, will be a small fraction and will not exceed the pecuniary jurisdiction of the Magistrate's Court under Section 7 of the Magistrates' Court Act, 2015 of Ksh.20,000,000.00 and the Plaintiff/Respondent herein has not demonstrated any aggravating circumstances that will result to an award higher than pecuniary jurisdiction of the Magistrate's court.
  14. The Magistrates' Court Act, 2015 provides for the jurisdiction of the Magistrates' Court to hear and determine the present suit and the suit filed herein by the Plaintiff/Respondent in clear disregard of the law is incurably defective, incompetent and for striking out.
  15. Notwithstanding the question of this Court's lack of jurisdiction having been raised by the Defendant the plaintiff failed to withdraw the suit and file it in a court with jurisdiction.
  16. An incurably defective and incompetent suit cannot be transferred by this court to any other court as the suit is a nullity incapable of being transferred.
  17. This court not having jurisdiction over the suit herein equally and inexorably lacks and is diverted of jurisdiction to transfer it to another court of competent jurisdiction.
  18. The suit is for striking out for want of jurisdiction given that the jurisdiction of this court reverses judicial hierarchy under section 11 of the Civil Procedure Act, 2010 and Articles 162 and 169 of the Constitution, 2010.
  19. The 1<sup>st</sup> Defendant/Applicant sued by the Plaintiff/Respondent is not a legal entity capable of suing and being sued and no proceedings can be legally maintained against it.
  20. The suit against the non-existent entity in law, the 1<sup>st</sup> Defendant/applicant herein is for striking out as against that non-existent entity with costs.
  21. Ignorance of the law is not a defence in law and it is equally not a basis to breathe life into a dead suit filed in a court without jurisdiction in the matter where this suit stands.
  22. In the interest of justice and fairness that the notice of motion herein be allowed and the suit be struck out its entity as prayed.
3. The supporting affidavit reiterates what is deponed on the grounds as stated in the preceding paragraph.
  4. The application was opposed. The plaintiff/ respondent filed grounds of opposition as follows that;
    - i. The application dated 15<sup>th</sup> October 2024 is untenable.
    - ii. The sole intention of the instant application dated 15<sup>th</sup> October 2024 is an afterthought and has been preferred late in the day.
    - iii. The instant application dated 15<sup>th</sup> October 2024 is an afterthought and has been preferred late in the day.
    - iv. The 1<sup>st</sup> and 2<sup>nd</sup> defendant/ applicants having preferred the instant application when the instant suit is due for hearing is a clear indication that the same is filed in bad faith.



- v. From the onset, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/ applicants did not question the jurisdiction of this Honourable Court and in fact they have proceeded to file their witness statements and documents only to make a U-turn at the 11<sup>th</sup> hour and as such preferred the instant application that is questioning the jurisdiction of this Honourable Court.
  - vi. The instant application offends the provisions of Article 165 of the Constitution of Kenya 2010 that bestows the High Court with original jurisdiction in both criminal and civil matters.
  - vii. Prayers 1 and 2 that are seeking the instant suit to be struck out are untenable in the sense that this Honourable Court has mandate, powers and jurisdiction to admit all matters filed in the Honourable Court or in subordinate courts by dint of the provisions of section 18 of the Civil Procedure Act, Cap 221 Law of Kenya.
  - viii. The applicants are malicious for seeking that this suit be struck out instead of seeking the same to be transferred to the subordinate courts assuming that their contention on pecuniary jurisdiction is justifiable.
  - ix. By dint of the provisions of section 7 of the Magistrates Court Act, 2015 the Chief Magistrate Court's pecuniary jurisdiction is only limited to Kshs. 20,000,000/- ( Kenya Shillings Twenty Million).
  - x. The plaintiff/ respondent cannot be faulted for preferring to file the instant suit in this Honourable Court since he is expected to be awarded more than Kshs. 20,000,000/- ( Kenya Shillings Twenty Million) in damages in respect of defamation herein.
  - xi. Bearing in mind the principles that guide an award of damages in defamation cases, the plaintiff is expected not to be awarded less than Kshs. 20,000,000/- ( Kenya Shillings Twenty Million) which award is way above the subordinate court's pecuniary jurisdiction.
  - xii. The High Court is clothed with the original jurisdiction to hear and determine all matters including the instant application defamation case given that the fact the pecuniary award herein is not certain.
  - xiii. It is in the interest of justice that this Honourable Court hears the matter so that it may have a free choice in awarding damages that are either below Kshs. 20,000,000/- ( Kenya Shillings Twenty Million) or above the aforesaid Kshs. 20,000,000/- as opposed to the subordinate court ( Chief Magistrates Court) whose pecuniary jurisdiction is limited to Kshs. 20,000,000/-.
5. Parties canvassed the application by way of written submissions. I have carefully considered the written submissions and the law that governs the filing of suits and the only issue for determination is whether this court should dismiss the plaintiff's suit. The plaintiff in his plaint is seeking a declaratory order, a permanent injunction, and general damages for defamation, compensatory damages, exemplary damages, punitive damages, and aggravated damages. The applicants' main argument is that this court does not have the jurisdiction to hear this suit as the suit was not instituted in the court of the lowest grade court competent to try it as provided under Section 11 of the Civil Procedure Act 2010. It is submitted that under section 11 of the Civil Procedure Act 2010 and Articles 50 (1) (q) as read with Article 167 of the Constitution this Court does not have jurisdiction to hear and determine the suit. That for the plaintiff to purport to institute the suit under the rubric of unlimited jurisdiction will violate the parties' right to a fair trial which includes the right to appeal contrary to Article 25 ( C) of the Constitution, 2010 as the court will deny the parties the appellate process to this court.



6. Section 11 of the Civil Procedure Act provides as follows; “Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:”. This section states that every suit shall be instituted in the court of the lowest grade competent to try it. It guides on where suits are to be filed. This section has to be read in conjunction with section 7 of the Magistrates Courts Act and the Constitution and any relevant law that guides where a party can file their suit or claim. In my view, section 11 does not bar the plaintiff from filing suit in the High Court. The plaintiff claims that he intends to seek an award of over 20 million on his claim of general damages. Any claim above Kenya Shillings Twenty Million falls within the jurisdiction of the High Court. The High Court has jurisdiction over defamation cases, and whether a case is dismissed will depend on the merits of the claim and any defences raised by the defendant, not on the court in which it was filed. The applicants have a right to appeal before the court of appeal if judgment is entered against them. The applicants are not going to be prejudiced in any way. Section 11 of the CPA does not take away this court’s jurisdiction to hear and determine the matter. Further, the High Court has original jurisdiction under Article 165 of the Constitution. Article 165 (3) (a) provides that the High Court has unlimited jurisdiction in criminal and civil matters.
7. The Magistrates Court Act pecuniary jurisdiction has a limit of Kenya Shillings Twenty Million see Section 7 (1) ( a) in Chief Magistrates’ Court. The plaintiff claims that he will be seeking an award of over Kshs, 20,000,000/- as general damages. This Court cannot bar him from filing suit in the High Court. Defamation cases have been heard before the High Court and various awards have been given. The cases cited by the applicant can be distinguished from this one. In the case of Speaker of National Assembly vs Njenga Karume (2008) KLR ( supra), the court held that there was a clear procedure for the redress of any grievance prescribed by the Constitution or Act of Parliament and that procedure must be strictly followed. The applicants have failed to demonstrate that there is a clear procedure for the redress in a case of defamation. In the case of United Miller Limited vs Kenya Bureau of Standards & 5 Others eKLR [2021] the court’s decision was about tribunals. The applicant’s submission that they will be denied the appellants process is misleading and misguided as they have a right to appeal to the Court of Appeal.

I find no merit in the application dated 15<sup>th</sup> October 2024. It is dismissed with costs to the plaintiff.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 2ND MAY 2025.**

**R. E. OUGO**

**JUDGE**

In the presence of:

Mr. Edmond Wesonga -For the Applicants

Respondent - Absent

Wilkister - C/A

