



REPUBLIC OF KENYA



**Rukwaro v KCB Bank Limited (Miscellaneous Application
E086 of 2025) [2025] KEHC 6019 (KLR) (Civ) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL**

MISCELLANEOUS APPLICATION E086 OF 2025

JWW MONG'ARE, J

MAY 12, 2025

BETWEEN

JAMES MWANGI RUKWARO APPLICANT

AND

KCB BANK LIMITED RESPONDENT

RULING

1. What is before this court is the Applicant's Notice of Motion Application filed on 28th January 2025 which seeks to invoke supervisory jurisdiction of this court in matters filed in the subordinate court under Article 165(5) of *the Constitution*.
2. I have perused the originating summons and note that the application is seeking a plethora of orders which includes a prayer that this court do interfere with the proceedings and matters that are sought to be heard and determined at the lower court.
3. As held by the Court of Appeal in the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR a court of a tribunal is called at the earliest to determine a question of jurisdiction and where it finds that it has none, then it must take no further action but down its tools. It is therefore important that this court determines the question of jurisdiction.
4. I have carefully considered the present application which seeks a total of 13 prayers. On evaluation of the said application I find what the court is being asked to do by the present application is to interfere with matters that the lower court is properly seized of and not those envisioned for supervision by the law and especially under section 18 of the *Civil Procedure Act* which provides as follows:-

"18. 18. Power of High Court to withdraw and transfer case instituted in subordinate court_



- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

5. The suit in the lower court was instituted by the Applicant as a Plaintiff in that suit. Matters raised by the Applicant in the said suit are matters that the court has jurisdiction to try. I find therefore the jurisdiction of this court has not been properly invoked and hold therefore that this court lacks jurisdiction to entertain the motion as filed. The same is struck off and costs of the same are awarded to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MAY 2025

J.W.W. MONG'ARE

JUDGE

