



REPUBLIC OF KENYA



KENYA LAW
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**Were v Miano (Commercial Appeal E066 of 2023)
[2025] KEHC 6603 (KLR) (Commercial and Tax) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E066 OF 2023**

NW SIFUNA, J

MAY 22, 2025

BETWEEN

DOUGLAS OTIENO WERE APPELLANT

AND

MOSES KARIUKI MIANO RESPONDENT

RULING

1. The Appeal herein arose from a decision of delivered on 23rd March 2023 by Hon. Cyprian Nguthari Mugambi, Chairman of the Business Premises Tribunal. The Respondent has raised a Preliminary Objection against the Appeal. On the ground that the High Court lacks jurisdiction in Appeals from the Business Premises Tribunal.
2. The Appellant for his part in fighting off the Objection, has maintained that his Appeal was properly filed in this Court, and that this Court being the Commercial Court, has jurisdiction. The Application proceeded by way of written submissions, that were later highlighted. The Appellant has further in his submissions urged that should this Court find that it lacks jurisdiction, it should transfer this Appeal to the proper court, for hearing and disposal.

Analysis and Determination

3. In reaching a determination on this Objection, I have considered the Memorandum of Appeal, as well as the Respondent's Preliminary Objection and the rival submissions of the parties, on it.
4. An Objection on jurisdiction is a proper one to be raised as a Preliminary Objection, as it can determine the matter in limine. Jurisdiction is a matter of law and not a matter of fact. A court's jurisdiction is conferred either by the Constitution or a Statute. Hence a party cannot cloth a court with jurisdiction the court does not have.



5. I concur with the Respondent that this Court as the High Court, despite being the Commercial Court, lacks jurisdiction on appeals arising from the Business Premises Tribunal. It does not matter how much commercial sense or logical sense a contrary argument will make. Even as inviting or persuading as the Appellant's arguments in favour of such jurisdiction is, it is not anchored on any constitutional or statutory provision.
6. The Environment and Land Court (the ELC) is the court with jurisdiction on appeals from the decisions of the Business Premises Tribunal. In *Owners of the Motor Vessel "Lilian S" v. Caltex Oil (K) Ltd*, the Court of Appeal stated that jurisdiction is everything, and without it, a court should down its tools.
7. I hold that whenever a court finds that it lacks jurisdiction, it should terminate the matter, and not transfer the matter to the proper court in which it ought to have been filed. Therefore, the Appellant's plea that this Appeal be transferred to the Environment and Land Court (ELC), is for rejection.
8. This Court's power to transfer a matter from one court to another, was not meant to cure the filing of matters in courts that lack jurisdiction, or be a remedy for enabling the circumventing of the handicap of want of jurisdiction. If filed in a court that lacks jurisdiction, that suit or Appeal, is dead on arrival.
9. The transfer power can only be exercised where the court in which the matter was originally instituted, had jurisdiction; not vice versa. Consequently, the Appellant's after-thought invite to this Court to circumvent that handicap, is hereby politely declined.
10. In the end therefore, this Appeal having been filed in this Court, a court lacking jurisdiction, is hereby dismissed with costs.

DATED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MAY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

