



REPUBLIC OF KENYA



**Ali v Ashioya (Civil Appeal E021 of 2025) [2025] KEHC 9827 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9827 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E021 OF 2025**

**WM MUSYOKA, J**

**JULY 4, 2025**

**BETWEEN**

**HASSAN ALI ..... APPELLANT**

**AND**

**OYE ASHIOYA ..... RESPONDENT**

*(Appeal from orders made in ruling by Hon. Odenyo, Senior Principal  
Magistrate, SPM, in Busia CMCCC No. E056 of 2024, on 19th March 2025)*

**RULING**

1. On 1<sup>st</sup> April 2025, a Motion, of even date, was placed before me, for stay of ruling and orders made in Busia CMCCC No. E056 of 2024, pending hearing and determination of the instant appeal.
2. I directed service of the said Motion, and further required the parties to first address me on jurisdiction, given that the dispute appeared to turn around rent, and, therefore, the right to use and occupy land.
3. The parties have complied with those directions, for I see written submissions in the record before me.
4. The appellant submits that the trial court had no jurisdiction on the matter, for the proper forum ought to have been at either the Environment and Land Court or the Rent Tribunal. The decisions in *Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service* [2019] eKLR (Karanja, Gatembu & Sichale, JJA), The *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited* [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA), *Republic v Chengo & 2 others* [2017] eKLR [2017] KESC 15 (KLR)(Maraga, CJ, Mwilu, DCJ&VP, Ibrahim, Ojwang, Wanjala, Ndungu & Lenaola, SCJJ) and *Cooperative Bank of Kenya Limited v Fredrick Kang'ethe Njuguna & 5 others* [2017] eKLR (Visram, Karanja & Koome, JJA) are cited in support. The provisions in Article 162(2) (b) of the *Constitution*; section 13(2)(a) of the *Environment and Land Court Act*, 2011; and section 7 of the *Civil Procedure Act*, Cap 21, Laws of Kenya are also relied upon.



5. The respondent submits that the issue turns on rent and land, hence the High Court has no jurisdiction over it. Section 13(2) of the *Environment and Land Court Act* is cited. The *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited* [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA) is also relied on.
6. It is common ground that the dispute between the parties is over rent. It is also common ground that rent, being the consideration upon which a person acquires a right to occupy and use land, is charged on premises which stand on land, hence bringing the matter within the realm of Article 162(2)(b) of the Constitution and Section 13 of the *Environment and Land Court Act*.
7. I am surprised that this appeal has been filed at the High Court, given that the appellant concedes that the appropriate jurisdiction lies with the Environment and Land Court. Article 165(5) of the *Constitution* bars the High Court from handling disputes that revolve around title to land and use and occupation of land. Now that the dispute herein is about rent, which facilitates occupation and use of land, the High Court cannot, on account of Article 165(5) of the *Constitution* have any jurisdiction over the appeal.
8. Why was this appeal filed here? The appellant appears to entertain the notion, that since *Busia CMCC No. E056 of 2024* was a civil matter, an appeal emanating from it must find its way to the High Court. There would also be the notion that the right appellate court to challenge decisions of the Magistrate's Court is the High Court.
9. The High Court only entertain appeals from decisions of the Magistrate's Court within jurisdiction. The Magistrate's Court exercises aspects of jurisdiction over matters that do not fall within the jurisdiction of the High Court, and in respect of which the High Court cannot exercise appellate jurisdiction. By virtue of Articles 162(2) and 165(5) of the *Constitution*, the High Court has no jurisdiction over matters relating to employment, labour relations, title to land and use and occupation of land. Yet, the Magistrate's Court does have jurisdiction over those matters or aspects of them. Appeals from decisions of Magistrate's Courts, over those matters or their aspects, cannot be entertained by the High Court, on account of Articles 162(2) and 16 (5) of the *Constitution*. The proper appellate Courts ought to be either the Employment and Labour Relations Court or Environment and Land Court, depending on the nature of the dispute.
10. What has been placed before me relates to land and rents. It has been argued that that ought to fall under the exclusive jurisdiction of the Environment and Land Court and the rent tribunals, and the Magistrate's Court ought not to touch them. I beg to disagree. The Environment and Land Court and the rent tribunals do not have exclusive jurisdiction. The jurisdiction of the rent tribunals is limited to certain categories of tenancies. Disputes on tenancies, that do not fall under the rent tribunals, would go to the Magistrate's Court, subject to pecuniary jurisdiction, and to the Environment and Land Court.
11. The Magistrate's Court has jurisdiction over land matters. It is empowered by section 150 of the *Land Act*, Cap 280, Laws of Kenya, alongside the Environment and Land Court, to hear and determine disputes, actions and proceedings concerning land under that Act. A similar provision exists, at section 101 of the *Land Registration Act*, Cap 300, Laws of Kenya. The Magistrate's Court, as a subordinate Court, by dint of Article 169(1)(a) of the *Constitution*, does have jurisdiction over these matters, and it would be misleading to suggest that it is bereft of jurisdiction. Consequently, on any determination on these matters is appealable to the Environment and Land Court, and not to the High Court, on account of Articles 162(2) and 165(5) of the *Constitution*.



12. For clarity's sake, let me refer to the provisions of the [Land Act](#) and [Land Registration Act](#), which touch on tenancies and leases. A tenancy is a class of a lease. Leases are covered by Parts V and VI, of the [Land Act](#), dealing with administration and management of private land, and leases. That is sections 38 to 77 of the [Land Act](#). The [Land Registration Act](#) may not be so relevant, as it deals with registration of leases at the lands' registry, which is not an issue here. A dispute on leases and tenancies, around the issues provided for under Parts V and VI of the [Land Act](#), should be placed before the competent subordinate court, and appeals from decisions of that competent subordinate court should be to the Environment and Land Court and not the High Court. Where the primary value of the claim exceeds the jurisdiction of the competent subordinate, then the dispute ought to be escalated to the Environment and Land Court, not the High Court.
13. I believe I have said enough to demonstrate that the appeal herein is before the wrong court. It is, therefore, incompetent. I have no jurisdiction to determine it. Neither do I have jurisdiction to transfer it to the court with jurisdiction. In any event, I have not been invited to consider its transfer. As it is an incompetent appeal it should suffer the fate of incompetent filings, of being struck out. I hereby strike it out. The trial court records shall be returned to the trial court. The orders I made on 1<sup>st</sup> April 2025, for interim relief, are hereby discharged. The respondent shall have the costs of the appeal. This appeal file shall be closed. Orders accordingly.

**DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 4<sup>TH</sup> DAY OF JULY 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. DB Kapten, instructed by BS Advocates LLP, Advocates for the Appellant.

Mr. Oye Ashioya, instructed by Ashioya & Company, Advocates for the Respondent.

