



**Bukhari Parcel Service & General Supply Limited & another v Ahmed & 2 others  
(Civil Appeal E004 of 2025) [2025] KEHC 11343 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CIVIL APPEAL E004 OF 2025**

**JN ONYIEGO, J  
JULY 25, 2025**

**BETWEEN**

**BUKHARI PARCEL SERVICE & GENERAL SUPPLY LIMITED .... 1<sup>ST</sup>  
APPELLANT**

**MOHAMED MUHUMED KASSIM ..... 2<sup>ND</sup> APPELLANT**

**AND**

**HASSAN IBRAHIM AHMED ..... 1<sup>ST</sup> RESPONDENT**

**AHMED SHEIKH HUSSEIN ..... 2<sup>ND</sup> RESPONDENT**

**GARISSA MAIZE MILLERS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the ruling delivered on 25.02-2025 by  
Hon. S. Otuke in civil case No. E052 of 2024 Garissa CM's court)*

**JUDGMENT**

1. The appellants/plaintiffs herein moved the trial court via a plaint dated 20.08.2024 seeking the following orders:
  - i. A permanent injunction to be issued against the defendants by themselves or its(sic) from interfering with the peaceful occupation of the plaintiff in the premises.
  - ii. Loss of business from the time the business premises were closed down.
  - iii. General damages for mental pain and suffering.
  - iv. Return of the goods seized and stolen cash.
  - v. Costs of this suit.



- vi. Any other relief that the court deems fit.
2. By an amended plaint dated 16.12.2024, the appellants moved the trial court seeking for orders as follows:
- i. A permanent injunction to be issued against the defendants by themselves or its agents from interfering with the peaceful occupation of the plaintiffs in the premises.
  - ii. A finding that the 2<sup>nd</sup> plaintiff is a part shareholder of the 3<sup>rd</sup> defendant.
  - iii. A declaration that the 2<sup>nd</sup> plaintiff and the 1<sup>st</sup> plaintiff has (sic) proprietary rights in the said building known as social hall building along Kismayu road and should have been allowed to have unrestricted access to the same as shareholder/business partner of the 3<sup>rd</sup> defendant who is the lessee of the building known as social hall building along Kismayu road and by reason of that his company the 1<sup>st</sup> plaintiff has rightfully been operating from the premises.
  - iv. Loss of business from the time the business premises were closed down as set out in paragraph 11A above.
  - v. General damages for mental pain and suffering.
  - vi. Return of the goods seized and stolen cash.
  - vii. Costs of this suit.
  - viii. Any other relief that the court deems fit.
3. The suit stemmed from the fact that sometime or around the 01.04.2002, the 2<sup>nd</sup> plaintiff who was then looking for an investment within Garissa town got an opportunity to buy shares from Maua Posho Mill owned by the 2<sup>nd</sup> defendant and one Ali Yare (now deceased) who were directors and owners of the Maua Posho Mill. That the 2<sup>nd</sup> plaintiff eventually purchased 28% shareholding/ownership of the Maua Posho Mill Ltd.
4. That subsequently, without the approval and knowledge of the 2<sup>nd</sup> plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> defendant then fraudulently incorporated the 3<sup>rd</sup> respondent as a company/vehicle to operate the assets and resources of Maua Posho Mill. That through the connivance of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the operations, business and resources of Maua Posho Mill mutated to the 3<sup>rd</sup> respondent who effectively took over the resources and the assets of Maua Posho Mill. The 2<sup>nd</sup> appellant contended that the 3<sup>rd</sup> respondent was incorporated, established and run using the resources of Maua Posho Mill which mutated to Garissa Maize Millers. That in the process of incorporation of the 3<sup>rd</sup> respondent, the 1<sup>st</sup> and 2<sup>nd</sup> respondents fraudulently left out the 2<sup>nd</sup> appellant as either a director or a shareholder.
5. The appellants listed the particulars of fraud as stated in paragraph 31 of the amended plaint. The 2<sup>nd</sup> appellant averred that on account of his interest and stake in Maua Posho Mills whose assets and resources were used to acquire property and obtain leases in the name of the 3<sup>rd</sup> respondent, he should rightfully have proprietary interest as shareholder/business partner of the 3<sup>rd</sup> respondent who is the lessee of the building known as social hall building along Kismayu road.
6. It was stated that on 16.08.2024, the respondents intrusively entered its premises and seized its tools of trade including cash in excess of Kes. 350,000/-, computers among other items. That in any event, on account of the averments set out, the 2<sup>nd</sup> appellant had proprietary rights in the said building and thus he ought to have been allowed unrestricted access as a shareholder.



7. The respondents filed their joint amended defence and counter claim dated 23-12-2024 denying the plaintiffs' claim of part ownership and or share-holding of the 3<sup>rd</sup> respondent's premises. They denied the allegation by the plaintiffs that they had 28 % share-holding stake in the 3<sup>rd</sup> defendant (company) vide a mutual agreement the existence of which was denied. Instead, they averred that the plaintiffs were tenants in the disputed premises from 2013 paying a monthly rent of 15,000/= which they defaulted in paying 2021 thus necessitating the eviction in question.
8. They claimed that the plaintiffs were in rent arrears of about kes 720,000 and denied seizing nor destroying any items belonging to the plaintiffs. In their counter claim, they demanded general damages; special damages to the tune of Kes 1,070,000/=; rent arrears of kes 720,000/=; eviction order from the premises; costs of the appeal; interest on the above plus any other relief the court may grant.
9. On 10-12-2024, the matter was mentioned for pre- trial directions before honourable Otuke (RM). On that day, Mr. Bosire for the plaintiff sought leave to file a formal application to amend the plaint. The court then granted the application necessitating the filing of the amended plaint. When the matter came up for mention on 21-1-2025, Mr. Bosire alerted the court that according to para. 11 of the amended plaint, the court had no monetary jurisdiction of the suit value amounting to kes 17, 884 / =. Mr Bosire requested for the file to be placed before a court with competent monetary jurisdiction within Garissa CM's court.
10. In response, Mr. Onchiri opposed the application stating that the amended plaint had introduced a new suit. The court reserved delivery of the ruling till 25.02-2025 when it struck out the entire suit for lack of jurisdiction. The court said the claim revolved around a land lord and tenancy relationship dispute to which it had no jurisdiction.
11. Being aggrieved by the decision of the trial court, the appellants filed a memorandum of appeal dated 03.02.2025 citing the following grounds:
  - i. That the learned magistrate erred in law and fact in failing to appreciate the nature of dispute that was before the court.
  - ii. That the learned magistrate erred in law and fact in failing to contextualize and put the contents of the amended plaint in their proper perspective in so far as they set out the cause of action before the court and the particulars thereof.
  - iii. That the learned magistrate erred in law and fact in reaching the conclusion that the dispute before the court was one of a landlord and tenant dispute and thereby holding that the court did not have jurisdiction to hear and determine the dispute and that the suit should have been filed in the right forum.
  - iv. That the learned magistrate erred in law and fact in failing to appreciate that the dispute before the court as set out in the amended plaint was multi-faceted and was a claim for:
    - a. Denial to the appellants by the 1<sup>st</sup> and 2<sup>nd</sup> respondent of the proprietorship/ shareholding and the attendant rights of proprietorship/shareholding of the 3<sup>rd</sup> respondent company.
    - b. Ownership and proprietorship by the 2<sup>nd</sup> appellant of the building known as social hall building Kismayu road and the attendant rights of unrestricted access and enjoyment to the said property.
    - c. For damages for loss of business.



- d. General damages.
  - e. Return of goods seized and stolen by the respondents.
  - v. That the learned magistrate erred in law and fact in holding and finding that notwithstanding the above, the claim was improperly before the Chief Magistrate's Court Garissa.
  - vi. That the learned magistrate erred in law and fact by failing to appreciate that when his pecuniary designation was called up into question by the appellant's advocates, the recourse that was required of him was to administratively refer the suit to a magistrate within Garissa Chief Magistrate's Court clothed with the pre-requisite pecuniary jurisdiction or to refer the suit to the head of station at the Garissa Chief Magistrate's Court for reallocation to a magistrate within Garissa Chief Magistrate's Court clothed with the requisite pecuniary jurisdiction instead of proceeding to strike out the amended plaint.
  - vii. That the learned magistrate erred in law and fact in overreaching his mandate.
  - viii. That the learned magistrate erred in law and fact in reaching a conclusion that was manifestly biased, erroneous, contrary to the law and judicial precedent and on the whole unjust.
12. It was prayed thus:
- i. The appeal be allowed.
  - ii. That the ruling and finding of the lower court be set aside and more specifically the finding that the suit before the lower court was filed before an improper forum and striking out the amended plaint be set aside.
  - iii. That the appellants' suit before the lower court be reinstated for hearing before any other magistrate other than Hon. Shadrack Otuke. (R.M).
  - iv. That the appellants be awarded the costs of the appeal.
13. The appeal was canvassed by way of written submissions.
14. The appellant submitted that looking at the entire ruling of the trial magistrate, one thing that stood out was the fact that the learned magistrate did not indicate with specificity what particular aspect of the initial or amended plaint was out of his jurisdiction. Thus the trial magistrate was faulted for failing to appreciate that when his pecuniary designation was called into question, the best option would have been for him to administratively refer the file to a magistrate with the requisite jurisdiction within the station.
15. It was reiterated that the dispute raised by the appellants squarely lay within the jurisdiction of Garissa Magistrates' court as it was clearly set out in the amended plaint and the kind of orders that were sought by the appellants. That the orders sought were multi-faceted in nature and therefore, were within the jurisdiction of the Garissa Magistrates Court. This court was therefore urged to allow the appeal as prayed.
16. The respondent on the other hand submitted in regards to the following issues:
- i. Whether the Honourable learned magistrate was correct in determining the nature of the dispute before the court.
  - ii. Whether the learned magistrate was correct to balance the interests between the parties.



- iii. Whether the learned magistrate was correct in observing that the court lacked jurisdiction thus could not transfer the matter.
  - iv. Whether the learned magistrate was right to strike out the suit.
  - v. Whether the appeal should be allowed.
17. It was urged that the claim has been disguised as a claim for partnership in the 3<sup>rd</sup> respondent's business yet none of the prayers sought spoke to the existence of a partnership between the parties. As such, the trial magistrate's ruling could not be faulted as the same spoke to the intention of the suit being that of landlord /tenant. In support of the foregoing, counsel relied on the Court of Appeal's decision in the case of Independent Electoral at and Boundaries Commission & another vs Mule & 3 Others [2014] KECA 890 TKLC) where it was held that parties are bound by their own pleadings. As such, the trial court rightly observed that the nature of the dispute was that of a landlord/tenant.
  18. On whether the learned trial magistrate was correct to balance the interests of the parties, counsel urged that the interest between the parties according to their pleadings and order therein sought against each other were those of Tenant and Landlord relationship. That the trial magistrate was right in balancing the interests between the parties as he was not clothed with the requisite jurisdiction to determine the matters in dispute. According to counsel, striking out the suit was the only available remedy.
  19. On whether the learned magistrate was correct in observing that the court lacked jurisdiction thus could not transfer the matter, counsel submitted that the appellants upon amending their plaint introduced fresh cause of action and thereafter, sought the court to transfer the file to the court with the right jurisdiction. That in the given scenario, the trial magistrate did not have the pecuniary jurisdiction to determine the amended suit.
  20. Similarly, the nature of dispute being that of a tenant and landlord, the court could not have competently determined the suit as such disputes are a preserve of the Business Premises and Rent Tribunal (BPRT) as established under Cap 301 of the Laws of Kenya Landlord and Tenant shops, Hotels, and catering establishment) Act. Thus noting that jurisdiction flows from *the constitution* or legislation, it would have been a grave injustice for the court to cloth itself with the jurisdiction it lacked.
  21. Counsel thus relied on the Supreme Court's decision in Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others (2012)e KLR where it was observed;
    - “ 68. A court's jurisdiction flows from either *the constitution* or legislation or both... it cannot arrogate to itself jurisdiction exceeding that which is conferred upon by law...”
  22. Thirdly, that disputes relating to land contract and land use are specifically a preserve for the Environment and Land Court which through its foundation in *the constitution* is established vide the *Environment and Land Court Act*. That vide Section 13, the court is empowered to hear disputes relating to land use, land contract and any other dispute relating to the environment and land.
  23. It was thus contended that the suit herein ought to have been filed in a ELC court hence not this court. That the issue herein emanated from the land which hosts the business premises site belonging to the 3<sup>rd</sup> respondent who enjoys a 20-year lease agreement with the County government of Garissa.



24. On the issue of transfer, the respondent relied on the case of Equity Bank Limited vs Bruce Muite Mutuku T/A Diani Tour & Travel {2016} eKLR where the court in part observed as follows;  

“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...”
25. To that end, this court was urged to dismiss the appeal herein with costs as the same was gravely incompetent to even warrant a transfer as anticipated by the appellants.
26. I have considered the appeal herein, the grounds in support, response thereto and written submissions by both counsel. The crux of the appeal is that the trial magistrate lacked the requisite pecuniary jurisdiction to handle the matter and instead of administratively presenting it before a court within the said station with a competent jurisdiction, chose to strike out the matter.
27. In compliance with section 15 of the *Civil Procedure Act*, every suit ought to be instituted in a Court within the local limits of whose jurisdiction the Respondent or each of the Defendants actually or voluntarily reside at the commencement of the suit or carries on business or works or where the cause of action accrued or arose. In the circumstances of the case before me, the question is, which court has the requisite monetary jurisdiction as prescribed under the Magistrate’s Court Act.
28. It is trite law that if the Court where the suit is filed has no territorial or pecuniary jurisdiction, any party can apply to the High Court for transfer of such case to the right Court with jurisdiction. However, a lower Court without jurisdiction can strike out a suit for want of jurisdiction on its own motion or on being moved by either party. Jurisdiction is the cornerstone of any litigation and without it, a Court has no legs to stand on nor legal authority to entertain a suit that is not properly before it. See Owners of the Motor vessel “Lillian S” vs Caltex Oil Kenya Ltd (1989) eKLR where Nyarangi, J held that jurisdiction is everything and without it a court cannot move a step further hence should down its tools.
29. Section 18 of the *Civil Procedure Act* empowers the High Court to transfer a case from one subordinate Court to the other. [See Kithita Ngeana vs Mwaniki Kisumu (2018) eKLR; Godi vs Njuguna & another (Miscellaneous Application 100 of 2024) [2024] KEELRC 1844 (KLR) (12 July 2024).
30. Further to the above, the court in the case of David Kabungu vs Zikarenga and 4 others Kampala HCCS No. 36 of the 1995 Okello J, held that; “Section 18 (1)(b) of the *Civil Procedure Act* gives the Court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo motto by the Court without application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another Court is not sufficient ground though it is a relevant consideration.
31. Of importance to note is the fact that before granting such an order like the one before this court, the Court has to consider whether the applicant/appellant has made out a strong case to the satisfaction of the Court that the application/appeal ought to be granted.
32. In this case, the appellant urged that noting that the appellants amended their pleadings and upon the trial court realizing that the pecuniary jurisdiction was way above him, the best option would have been for him to administratively refer the file to a magistrate with the requisite jurisdiction within the station. On the other hand, the trial magistrate from what I understand from his ruling is that since he had no jurisdiction to handle the matter, he had to down his tools as any action after being found to lack jurisdiction would have been null and void.



33. Additionally, the respondents opposed the appeal citing reasons that the nature of the suit herein fall within the purview of the court under article 162(2) of *the constitution*. But a cursory look at the prayers in the amended plaint amended 16.12.2024 in my view depicts a different picture.
34. Clearly, the appellants inter alia seek to be considered or recognized as shareholders of the 3<sup>rd</sup> respondent company. What is in dispute is the share-holding or extent of ownership of the 3<sup>rd</sup> respondent company and the accruing benefits arising out of the said shareholding which in my view is a commercial dispute and not a land dispute as argued by the respondents which in any event was not the reason for striking out the suit.
35. The substantive suit as per the plaint has no connection with land lord tenancy relationship or breach of such relationship. It is the respondents who introduced the issue of tenancy relationship claim. Which court is supposed to hear a claim over share-holding dispute? Definitely, it is not an ELC court nor business premises tribunal. In this case a magistrate's court can hear the dispute over shareholding or partnership. If the amended plaint introduced a new claim, that will be for the trial court to determine.
36. There is no doubt that any claim over rent in such business premises ought to be filed before the business premises tribunal. To that extent, the trial court was right to make such conclusion only in so far it affects the counter claim which introduced tenant/ landlord relationship.
37. Ultimately, the trial court in this case Hon. Otuke (RM) had no pecuniary jurisdiction to entertain the suit. The proper thing he should have done was to down tools and refer the file back to the registry for allocation to another magistrate in this case the chief magistrate to hear it. It should be noted that pecuniary jurisdiction of a station is determined by the rank of the senior most judicial officer in that station.
38. To strike out the substantive suit for lack of pecuniary jurisdiction when there is another magistrate with the requisite jurisdiction within the same station was not proper. Apparently, the hon. Magistrate did not make any remarks or finding regarding his lack of monetary jurisdiction which was the main subject of determination.
39. In a nutshell, it is my finding that the trial magistrate hon. Otuke (RM) had no monetary jurisdiction to entertain the suit and instead of striking it out, he should have downed the tools and then refer the file to the registry for proper administrative action to direct the file to a magistrate with competent monetary jurisdiction in this case the chief magistrate. In view of the above finding, it is my holding that the appeal is merited and the same is allowed with orders as follows;
  - i. The appeal herein succeeds.
  - ii. The CM's Civil Suit No. E052 of 2024 be placed before the chief magistrate Garissa for hearing and or further directions.
  - iii. Each part to bear own costs to costs.

**DATED, SIGNED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JULY 2025**

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**J. N. ONYIEGO**

**JUDGE**

