



**Njagi v Kinyanjui (Miscellaneous Application E1015 of 2024)
[2025] KEHC 9908 (KLR) (Appeals) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
APPEALS**

MISCELLANEOUS APPLICATION E1015 OF 2024

TW OUYA, J

JULY 10, 2025

BETWEEN

SYLVIA NJAGI APPLICANT

AND

JOEL NDURUHU KINYANJUI RESPONDENT

RULING

1. The Notice of Motion Application before the Court dated 30th October 2024 was brought under Certificate of Urgency and is expressed to be anchored under Sections 1A, 1B, 3A, 17, 18 and 63(e) of the [Civil Procedure Act](#); the Applicant is seeking the following Orders from this Court:
 - (1)Spent.
 - (2) That this Honourable Court be pleased to hereby transfer *Milimani SCCC. E4213 of 2024* from the Small Claims Court in Nairobi to the Small Claims Court in Machakos for hearing and determination.
 - (3) That costs of this application be provided for.”
2. The suit is supported by the grounds set out on its face as well as in the Affidavit sworn by Sylvia Njagi (the Applicant herein) on 30th October 2024. The genesis of the dispute before the Court is as follows:- the Applicant filed a Statement of Claim as against the Respondent before the Small Claims Court at *Milimani SCC E4213 of 2024* seeking special damages resulting from an accident involving her motor-vehicle registration number KCE 954C and the Respondent’s motor-vehicle registration number KCB 832F.



3. The Applicant averred that the aforesaid accident occurred along the Nairobi-Mombasa Highway and was reported at Athi River Police Station hence, the Small Claims Court at Machakos has jurisdiction over the matter.

The Applicant urged the Court to direct that her suit being *Milimani SCC E4213 of 2024* be transferred to the Small Claims Court in Machakos for hearing and determination in the interests of justice, and, for the convenience of the parties and witnesses involved.

4. The Respondent resisted the suit through his Replying Affidavit sworn on 21st November 2024. He contended that the question of jurisdiction is live before the Small Claims Court at Milimani which renders the instant suit sub-judice.
5. It was the Respondent's further averment that he filed a Notice of Preliminary Objection dated 10th October 2024 before the Small Claims Court in Milimani challenging the Applicant's suit on grounds that the Court lacked jurisdiction to determine the same because the accident giving rise to the Applicant's claim occurred in SYOKIMAU Area along Nairobi – Mombasa Road. Further, the Small Claims Court in Milimani scheduled 6th December 2024 being the date of delivery of its Ruling on the Notice of Preliminary Objection dated 10th October 2024. Therefore, the subject application amounts to an attempt by the Applicant to circumvent the decision of the Small Claims Court at Milimani on the issue of jurisdiction.
6. The Respondent contended that the matter before the Small Claims Court in Milimani as between the parties herein has been prosecuted since 27th August 2024, meaning that the statutory 60-day period for the resolution of the same has since lapsed. Hence the subject cause is likely to occasion further delay and amounts to an abuse of the due process of the Court.
7. The suit was canvassed by way of written submissions. The Applicant filed written submissions dated 26th December 2024 through his counsel and relied on the contents of paragraphs 4 and 5 of the Respondent's Replying Affidavit dated 21st November 2024 to anchor the submission that the Respondent does not stand to be prejudiced in the event *Milimani SCC E4213 of 2024* is transferred to the Small Claims Court in Machakos for determination.
8. Further reliance was sought in the provisions of Section 18 of the *Civil Procedure Act* as interpreted and applied by the Courts in the following cases: *Aberdare Investments v Bernard Wachira & 5 Others* (2015) eKLR; *Joseph Mururi v Godfrey Gikundi Anjuri* [2012] eKLR; *John Mwangi Karanja v Alfred Ndiangui* [2011] eKLR; *Grace Thogori Komo v Dan njagi Ndwiga* [2013] eKLR; and *Wycliffe Mwangaza Kigugwa v Grainbulk Handlers Limited* [2014] KEHC 6159.
9. The Respondent, filed written submissions dated 3rd December 2024 through his counsel. He submitted that by filing the instant cause, the Appellant is attempting to sanitize her claim which she filed before a Court without jurisdiction namely, the Small Claims Court at Milimani.
10. Guidance was placed in the reasoning of the Court in the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tours Travel* (2016) eKLR; and, *Ruth Muthoni Mwangi v Kenya Meat Commission* [2020] eKLR. The Respondent urged this Court to decline to be used to rectify the Applicant's incompetent suit.
11. Having carefully considered the grounds of appeal, the parties rival written submissions together with all the authorities cited, I find that the issue arising for my determination is whether this appeal has merit and whether the Applicant's suit namely *Milimani SCC E4213 of 2024* is incompetent having been filed before a Court without jurisdiction, hence, incapable of transfer to a Court of competent jurisdiction as sought.



12. In the instant suit, the Applicant argued and submitted that the Small Claims Court at Machakos is possessed of the requisite jurisdiction to determine *Milimani SCC E4213 of 2024* rather than the Small Claims Court at Milimani and urged the Court to transfer the suit to the former Court.

13. In the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR), the Court of Appeal reasoned as follows:

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.”

14. Similarly, in the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR, the Court of Appeal held as hereunder:

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.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. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign, It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of *the Constitution* to remedy the same...In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through transfer.”

15. The preceding jurisprudence was adopted by the High Court in the case of *Ruth Muthoni Mwangi v Kenya Meat Commission* [2020] eKLR, which holding was relied upon by the Respondent in his submissions on record.

16. In the case of *Joseph Muthee Kamau & Another v David Mwangi Gichure & Another* (2013) eKLR, the Court declared as follows:

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being *Kagenyi v Musirambo* (1968) EA 43. ...We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

17. The Applicant has admitted in the instant suit that Small Claims Court at Milimani lacks the necessary jurisdiction to entertain her claim which is currently pending determination.

18. In the case of *Macfoy v United Africa Co LTD* [1961] 3 All ER, 1169, the Court held as follows:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every



proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse...”

19. The option of withdrawing suit *Milimani SCC E4213 of 2024* and filing a fresh cause before the Small Claims Court at Machakos was available to the Applicant. However, she opted to file the subject cause rather than withdraw her suit and file a new suit before a Court invested with the requisite jurisdiction.
20. This Court holds and finds the Applicant’s suit number *Milimani SCC E4213 of 2024* incompetent, having been filed before a Court lacking the requisite legal jurisdiction to entertain the same. In the event, the Court is persuaded that the Applicant’s suit is incapable of transfer because it is a nullity in law.
21. The Court shall proceed to render the following Final Orders:
 - i. The instant Application is found unmerited and is hereby dismissed entirely.
 - ii. The Applicant to bear the Respondent’s costs in respect of the subject suit pursuant to the provisions of Section 27 of the *Civil Procedure Act*.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 10th July, 2025.

HON. T. W. Ouya

JUDGE

