



**Marete v Koira Limited & another; Kenya Power & Lighting Company Limited & another  
(Interested Parties) (Petition E047 of 2023) [2024] KEHC 1623 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E047 OF 2023**

**OA SEWE, J**

**FEBRUARY 8, 2024**

**IN THE MATTER OF CONTRAVENTION OF ARTICLES 2, 3, 10, 19, 20,  
21, 22, 23, 29, 31, 47, 50, 157(11), 163 AND 259 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION  
ACT, 2015 AND IN THE MATTER OF RULES 4, 10, 11, 13, 20 AND 23 OF  
THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**BETWEEN**

**JOSEPH KINOTI MARETE ..... PETITIONER**

**AND**

**KOIRA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MY SPACE PROPERTIES (KENYA) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... INTERESTED PARTY**

**COUNTY GOVERNMENT OF MOMBASA ..... INTERESTED PARTY**

**RULING**

1. The Notice of Motion dated 14<sup>th</sup> September 2023 was filed by the petitioner pursuant to Articles 22, 23(3), 25(a), 27, 28, 43(1)(c) & (d), 48, 57(c), 165(3)(b), (6) & (7) of the [Constitution of Kenya, 2010](#), Section 29 of the [Rent Restriction Act](#), Chapter 296 of the Laws of Kenya as well as Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Chapter 21 of the Laws of Kenya, and all other enabling provisions of the law. He asked for several prayers, some of which are spent. The outstanding prayers, which are the subject of this ruling are that:



- (a) Pending the hearing and determination of the suit, the Court be pleased to issue a prohibition order prohibiting/restraining the respondents, their agents, employees, servants, accomplices and/or any person from harassing, intimidating, interfering with, preventing and/or denying the petitioner, his agents, employees, servants, visitors and/or any other person the right to position his motor vehicles registration numbers KCA 225G and KCW 838B and any other motor vehicles whenever in his possession, within the City House tenants' parking yard;
  - (b) Pending the hearing and determination of the suit, the Court be pleased to issue an order directing the respondents and the 1<sup>st</sup> interested party, their agents, employees, servants, accomplices and/or any person with authority from the 1<sup>st</sup> interested party to supply the petitioner with electricity to his demised premises, namely Flat No. 8, 2<sup>nd</sup> Floor, City House.
  - (c) Pending the hearing and determination of the suit, the Court be pleased to issue an order directing the respondents and the 2<sup>nd</sup> interested party, their agents, employees, servants, accomplices and/or any person with authority from the 2<sup>nd</sup> interested party to supply the petitioner with clean and safe water to his demised premises, being Flat No. 8, 2<sup>nd</sup> Floor, City House.
  - (d) Pending the hearing and determination of the suit, the Court be pleased to issue an injunction restraining the respondents, their agents, employees, servants, accomplices and/or any person from interfering with the petitioner's quiet occupation and use of the dwelling premises.
  - (e) Stay of proceedings does issue in respect of Mombasa Rent Restriction Tribunal Case No. 181 of 2015 pending the hearing and determination of the Petition.
  - (f) The record of proceedings before the Tribunal in Mombasa Rent Restriction Tribunal Case No. 181 of 2015 be called for to ensure the fair administration of justice pending the hearing and determination of the Petition.
  - (g) The Officer Commanding Station (OCS) Central Police Station be directed to ensure there is no breach of the peace in enforcing any orders of this Court.
  - (h) Such further orders as the Court may deem fit in the interest of justice be made.
  - (i) The costs of the application be provided for.
2. The application was premised on the grounds that the petitioner is a Kenyan citizen; and a retired police officer, having served for a cumulative period of 12 years. He continues to be in occupation of the premises known as Flat No. 8 on the 2<sup>nd</sup> Floor of City House on the basis of a valid tenancy contract between him and the 1<sup>st</sup> respondent. His cause of action was that the 1<sup>st</sup> respondent has unreasonably denied him access to the City House tenants' parking yard without any justifiable cause. He further complained that the respondents have also denied him access to adequate housing and reasonable standards of sanitation such as connection to electricity and clean water, without any justifiable reasons.
  3. Hence, the petitioner postulated that the actions of the respondents are malicious and are intended to compel him to vacate the premises. He further asserted that the respondents' acts are tainted with direct discrimination, illegality and irrationality; and therefore are in breach of the fundamental rights provided for in *the Constitution*. He expressed his apprehension that, unless the orders prayed for are granted, he stands to suffer irreparable harm in terms of violation of his rights under **Articles 25(a), 27, 28, 48 and 57** of the **Constitution of Kenya**.



4. The foregoing grounds were expounded on in the petitioner's Supporting Affidavit in which he pointed out that he has occupied the suit premises since July 1998; and that the 1<sup>st</sup> respondent has all along been excessively discriminatory towards him. He further averred that he has been requesting for parking space since 1998 in vain; whereas other tenants have unrestricted access to the almost empty parking yard. He added that he has been forced to park his motor vehicles outside the parking areas, thereby occasioning him excessive financial expenses towards motor vehicle repairs following frequent breakages and loss of motor vehicle parts to thieves. The applicant further stated that he has had to also incur expenses towards renting commercial parking areas during the night.
5. The petitioner further complained that since 2001, he has been buying drinking water from private suppliers; and that although he has been remitting Kshs. 1,000/= every month for the supply of hard water to his flat, he has never been supplied with hard water at all. He added that, on account of the respondents' illegal actions, he filed **Mombasa Rent Restriction Tribunal Case No. 181 of 2015** for redress; which case is still pending. The petitioner also exhibited receipts to demonstrate that he owes the 1<sup>st</sup> respondent no arrears of rent; and yet the 1<sup>st</sup> respondent has failed and/or refused to maintain the demised premises in a tenable condition. In addition to the payment receipts, the petitioner exhibited other documents, including photographs of the parking area as well as demand letters written in connection with the subject matter of this Petition.
6. By way of response to the application the 2<sup>nd</sup> respondent filed a Notice of Preliminary Objection dated 11<sup>th</sup> October 2023; its contention being:
  - (a) The Court lacks jurisdiction as the Petition does not raise any constitutional issues but it is based on a contract as between the parties.
  - (b) The entire Petition is an abuse of the court process and should therefore be dismissed with costs to the 2<sup>nd</sup> interested party.
7. The 2<sup>nd</sup> interested party filed a Replying Affidavit, sworn on its behalf by Daniel Kombe Katana, a Legal Assistant at Mombasa Water Supply and Sanitation Company Limited (Mowassco). It averred that Mowassco has the mandate of providing affordable quality water and sanitation services to the residents of the County of Mombasa; and that its customers are billed monthly on the basis of meter readings. In respect Account No. 7000520502, the 2<sup>nd</sup> interested party averred that it is registered in the name of the 1<sup>st</sup> respondent; and that the account was opened on 9<sup>th</sup> September 2004. The 2<sup>nd</sup> interested party further averred that no water bill has ever been paid since the first billing on 2<sup>nd</sup> February 2005. Hence the account was disconnected in the year 2005 after it accumulated arrears of Kshs. 4,518/=; which amount remains unpaid to date.
8. At paragraph 8, the 2<sup>nd</sup> interested party stated that it is ready and willing to restore water supply upon payment of the arrears along with reconnection charges. It added that, the petitioner is a stranger to them as they are unaware of his tenancy or occupation of the suit premises. Accordingly, the 2<sup>nd</sup> interested party denied the petitioner's assertions of violation of his constitutional rights.
9. None of the other parties filed any responses to the application in spite of being granted time so to do. Accordingly, directions were thereafter given on 2<sup>nd</sup> October 2023 that the application be canvassed by way of written submissions. Again, only the petitioner and the 2<sup>nd</sup> interested party filed written submissions to the subject application. On behalf of the petitioner the following issues were proposed for determination in the written submissions dated 9<sup>th</sup> October 2023:
  - (a) Whether the Notice of Motion dated 14<sup>th</sup> September 2023 is merited;



- (b) Whether an injunction should issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively;
- (c) Who should pay the costs of the application.
10. The petitioner submitted that Articles 23 and 165(3) of the Constitution give the Court jurisdiction to hear and determine matters involving violation of fundamental rights under the Bill of Rights; and therefore that the jurisdiction of the Court is not in doubt. The petitioner also relied on Article 259 of the Constitution and the cases of *Meru County Government v Ethics & Anti-Corruption Commission* [2018] eKLR and *Abdirahman Abdi aka Abdirmahman Mohamed Abdi v Safi Petroleum Product Ltd & 6 Others* [2011] eKLR, among others, in urging the Court to find that he has established a veritable cause of action against the respondents.
11. In response to the respondents' prayer for the summary disposal of the Petition, the applicant relied on **D T Dobie & Company (Kenya) Limited v Muchina** [1982] KLR and **Olive Mwhaki Mugenda & Another v Okiya Omtata Okoiti & 4 Others** [2016] eKLR to back up his submission that no suit ought to be dismissed at the interlocutory stage unless it disclosed no cause of action. He proceeded to submit that he has made out a case for temporary injunction in terms of **Giella v Cassman Brown & Co. Ltd; Mrao Ltd v First American Bank of Kenya & 2 Others** [2003] KLR 125 in that he is lawfully in occupation of the demised premises and yet is not enjoying the same facilities as the other tenants. Thus, the petitioner prayed that his application be allowed and the orders sought granted pending the hearing and determination of the Petition.
12. The 2<sup>nd</sup> interested party relied on its written submissions dated 5<sup>th</sup> October 2023, essentially pitching for the striking out of the Petition along with the instant application on the ground that the Court lacks the requisite jurisdiction to entertain it. The main argument was that the issues raised in the Petition fall short of the threshold for a constitutional petition. Reliance was placed on *Cod & Another v Nairobi City Water & Sewerage Co. Ltd* [201] eKLR for the proposition that ordinary remedies available under common law and statutes must be pursued in the ordinary manner as provided for in statute.
13. It is imperative therefore that, before engaging in a merit consideration of the application dated 14<sup>th</sup> September 2023, the issue of jurisdiction be settled first. Indeed, in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, it was held:
- ...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds that it is without jurisdiction..."
14. Needless to emphasize that jurisdiction is donated either by *the Constitution* or Statute and is therefore not left to conjecture. The Supreme Court made this clear in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, thus:
- "...A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. Where



*the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law...”

15. The approach taken by the 2<sup>nd</sup> interested party was that the Petition does not raise constitutional issues; and that it is simply a dispute over a contractual arrangement between the petitioner and the 1<sup>st</sup> respondent. On his part the petitioner relied on Articles 23(1) and 165(3) of the Constitution as the provisions underpinning the jurisdiction of the Court to handle disputes involving allegations of violation of *the Constitution* whether as individual right violations or collectively. In this regard, the petitioner relied on *Meru County Government v Ethics & Anti-Corruption Commission* [2018] eKLR in which the Court of Appeal held:

“It bears recalling that the entire human rights edifice lies on theoretical framework built in large part on the natural law theories which treat human rights as a human attribute flowing directly and inescapably from the humanness of the right holders. The learned authors of *International Human Rights; Law, Policy and Process* 4th Ed. [2009] (Weissbrodt; Ni Aolain; FitzPatrick and Newman) while addressing the theoretical foundations of human rights, make that connection in these terms;

Natural law served as the principal basis for the development of natural rights theory. According to the natural rights theory, individuals have certain immutable rights as human beings. The Universal Declaration of Human Rights reflects natural rights thinking in pronouncing in Article 1: “All human beings are born equal in dignity and in rights.” According to natural rights theory, these rights may be derived from divine sources or some other universal principle of human nature.

...

One advantage of the natural law and natural rights theories is that they can explain why human beings have certain inviolable rights and why those rights must be protected. For example, natural law supports the norm of equality as derived from a belief in a common human nature of all people.”

- (16) Hence, the petitioner urged the Court to find that he has demonstrated a cause of action for which he ought to be accorded a hearing on the merits. He relied on *DT Dobie & Company (Kenya) Limited v Muchina* [1982] eKLR, in which Madan JA stated:

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward, for a court of justice ought not to act in darkness without the full facts of the case before it.”



17. Accordingly, I have perused the Petition in the light of the precedent set in *Anarita Karimi Njeru v Republic* [1979] eKLR that:

“...if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

18. The principle was affirmed by the Court of Appeal in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR as hereunder:

“(42)...the principle in *Anarita Karimi Njeru* (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

19. There is therefore no doubt that the Petition is compliant; for at paragraphs 6 and 7 the petitioner set out the provisions of *the Constitution* that are pertinent to his Petition. The provisions include Articles 27(5), 28, 43(1)(c) and (d), 43(1) and 57, among others. The specific manner of violation was also set out at paragraphs 33, 34 and 35 of the Petition. Accordingly, I find no merit in the 2<sup>nd</sup> interested parties contention that the Petition does not meet the requisite threshold. Indeed, in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR, the Court of Appeal pointed out that:

“...precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.”

20. The foregoing notwithstanding, it is manifest from the Petition, and the instant application that the Petition is hinged on the tenancy agreement between the petitioner and the 1<sup>st</sup> respondent. This is explicit at paragraphs 14 to 32 thereof; and therefore the threshold question to pose is whether the Court has jurisdiction to delve into the terms of the tenancy with a view of determining whether the denial by the respondents and interested parties of amenities, such as parking space, water and



- electricity, amount to violation of the petitioner’s constitutional right to non-discrimination under Article 27 and right to live in dignity under Articles 28 and 57(c) of the Constitution.
21. The question is apposite considering that it is a constitutional imperative at 165(5)(b) that:
- (5) The High Court shall not have jurisdiction in respect of matters: -  
...
    - b) Falling within the jurisdiction of the courts contemplated in Article 162(2).
22. Section 13 of the *Environment and Land Court Act*, 2011, an Act of Parliament enacted pursuant to Article 162(2) of the Constitution is explicit that:
- (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  - (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes-
    - a) relating to environmental planning and protection, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.
    - b) relating to compulsory acquisition of land;
    - c) relating to land administration and management;
    - d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and
    - e) any other dispute relating to environment and land.
23. Needless to say that for purposes of *the Constitution*, land includes the permanent fixtures thereon. Indeed, according to Black’s Law Dictionary, Tenth Edition, land is defined thus:
- An immovable and indestructible three-dimensional area consisting of a portion of the earth’s surface, the space above and below the surface, and everything growing on or permanently affixed to it.”
24. It is plain therefore that issues to do with tenancy contracts are matters that fall within the jurisdiction of the Environment & Land Court, notwithstanding that the issues may have a constitutional perspective to them. Indeed, Section 13(3) and (4) of the Environment and *Land Act* provides that:
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and health environment under Articles 42, 69 and 70 of *the Constitution*.
  - (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
25. Accordingly, where the underlying basis of a constitutional petition falls under the jurisdiction of the Courts mentioned in Article 162(2) of *the Constitution*, this Court would not be the correct dispute resolution forum. Hence, in *Delmonte Kenya Limited v County Government of Murang’a & Another* [2019] eKLR a multiple bench of the High Court held that:



89. In the end we find and hold that the dominant issue in the petition is the right to renewal of leases over the suit land. We further find that the issue is intrinsically connected to the use and title to land. The dispute thus falls squarely within the purview of the ELC under Article 162(2) of *the Constitution* as read with Section 13 of the ELC Act. We also find that although the petitioner claims violation of various constitutional rights, those claims are intertwined with the dominant issue and that the ELC has jurisdiction to deal with the alleged violations.”
26. Likewise, in *Republic v Chief Land Registrar & another* [2019] eKLR Hon. Mativo, J., being of a similar view, held that:
14. The jurisdiction of the Environment and Land Court is limited to the disputes contemplated under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*. In this regard, my view is that the intention of *the Constitution* is that if an issue arises touching on land in respect of its use, possession, control, title, compulsory acquisition or any other dispute touching on land, then this Court has no jurisdiction. My strong view is that this suit ought to have been transferred to the proper court the moment *the Constitution* of Kenya 2010 divested this court the jurisdiction to hear the case. Buttressed by the provisions of *the Constitution* and section 13 of the *Environment and Land Court Act*, I am clear in my mind that this court cannot properly entertain the application before me.
15. It is beyond argument that a High Court may not determine matters falling squarely under the jurisdiction of the Employment and Labour Relations Court and the Land and Environment Court, whether it is a substantive hearing or an application such as the instant application.
16. Even with that clear-cut jurisdictional demarcation on paper, sometimes matters camouflaged in what may on the surface appear to be a serious constitutional issues or Judicial Review applications or other matters falling in other High Court divisions may, on a closer scrutiny reveal otherwise - that the germane of the application is actually a labour dispute or land issue falling squarely in the forbidden sphere of the specialized courts! Such is the nature of the application before me. A boundary dispute or enforcing an order relating to a boundary dispute falls squarely in the forbidden sphere of the specialized courts, namely, the Environment and Labour Court. The drafters of *the Constitution* were very clear on the limits of this court's jurisdiction and the jurisdiction of the courts of equal status.
17. Where *the constitution* and legislation expressly confers jurisdiction to a court as in the present case, invoking this courts vast jurisdiction is inappropriate. The jurisdictional boundaries of the High Court are clearly spelt out under *the Constitution*. On this ground, I dismiss the Application dated 26th February 2018.”
27. In the light of the foregoing, it is my finding that this Court lacks the requisite jurisdiction to entertain not only the application but the entire Petition. In the premises, the Court cannot make even one more step towards a consideration of the merits of the application. Moreover, it is now trite that a suit filed in a court without jurisdiction cannot be transferred to another court. The Supreme Court of Kenya restated the position in *Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme)* [2019] eKLR, thus:
- (153) ...the purposive reading and interpretation of Article 162 together with Article 165(5) of *the Constitution* leaves no doubt that the original and appellate jurisdiction over disputes



related to Employment and Labour relations was transferred from the High Court to the Employment and Labour Relations Court. Prima facie, that meant that, any dispute subject to any other statutory or constitutional limitations emanating from the disputes contemplated under Article 162(2) supra, must be determined by the Employment and Labour Relations Court. This is what may have informed the consent by parties through respective counsel to transfer the matter from the High Court to the Employment and Labour Relations Court.

(154) However, as it was well elucidated in the case of *Kagenyi v Musirambo & Another* [1968] EALR 43, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It is therefore irrelevant as parties cannot consent to confer jurisdiction to a Court/tribunal where it is not provided by law.”

28. Likewise, in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR, the Court of Appeal held:

“Decided cases on this issue are legion and we cannot cite all of them...The Court succinctly settled this point in the following words:-

“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. The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court’s pecuniary jurisdiction.

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.

20. It is clear from the foregoing that the claim by the respondent was filed before a court devoid of jurisdiction. The suit was a nullity ab initio and was not transferable to another court; jurisdiction cannot be conferred by consent and ultimately, all orders emanating from that suit are null and void. Civil Appeal No. 6 Of 2018 Phoenix East Africa Assurance Co.ltd v. S.M. Thiga T/a Newspaper Services is therefore a nullity as it was based on a nullity.”

29. Accordingly, the Petition and the application dated 14<sup>th</sup> September 2023 are hereby struck out with no order as to costs, granted the nature of the dispute and the fact of what may appear to be overlapping jurisdiction.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 8TH DAY OF FEBRUARY 2024**

**OLGA SEWE**

**JUDGE**

