



**Koske v CEO/Managing Director Lipton Teas & Infusions Kenya PLC & 2 others  
(Petition E005 of 2024) [2024] KEHC 12057 (KLR) (9 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12057 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
PETITION E005 OF 2024**

**JK SERGON, J**

**OCTOBER 9, 2024**

**IN THE MATTER OF VIOLATION, INFRINGEMENT AND/OR THREATENED  
VIOLATION OF ARTICLES 10, 20, 21, 27, 28, 29, 33, 35, 40, 43, 47, 50  
(1) & 258 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF VIOLATION OF THE LANDLORD AND TENANT (SHOP, HOTELS  
& CATERING ESTABLISHMENTS) ACT UNDER SECTION 4(1), (2), (4) & (5) OF THE ACT**

**AND**

**IN THE MATTER OF VIOLATION OF THE FAIR ADMINISTRATIVE ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF INTENDED UNLAWFUL EVICTION  
AND DESTRUCTION OF PROPERTY OF THE PETITIONER**

**BETWEEN**

**WILFRED KIPKEMOI KOSKE ..... PETITIONER**

**AND**

**THE CEO/MANAGING DIRECTOR LIPTON TEAS & INFUSIONS KENYA  
PLC ..... 1<sup>ST</sup> RESPONDENT**

**MERCY CHIRCHIR ..... 2<sup>ND</sup> RESPONDENT**

**KEN TUWEI ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner filed a petition dated June 25, 2024 seeking the following reliefs;



- a. An order compelling the Respondents to pay the Petitioner Ksh 2,750,000/= being compensation for the damages and/or destroyed goods and for malicious and wrongful eviction and/or wrongful termination of a controlled tenancy in contravention of the law.
  - b. An order compelling the Respondents to restore and or repair the Petitioner's shop at their expenses.
  - c. An order compelling the respondents to unconditionally re-admit the petitioner back to his business premises.
  - d. An order compelling the respondents to provide alternative business premises but of similar standard and proximity to conduct his businesses.
  - e. A declaration that the Respondents malicious, forcible and wrongful eviction of the Petitioner is illegal, null and void.
  - f. An order compelling the respondents to pay the respondent compensation for loss of income at Ksh 90,000 per month until he settled in his businesses.
  - g. An order compelling the respondents to take up the Petitioner's loan facilities in various financial institutions which stand at Ksh 270,000/=.
  - h. An order compelling the respondents to settle Petitioner's children's school fees balance of Kshs. 70,000 and pay another Kshs. 70,000/= per term until the petitioner gets an alternative place for doing business.
  - i. An Order of prohibition against the Respondents, their agents, employees, and/or any other person acting on the 1<sup>st</sup> Respondent's instructions from harassing, issuing illegal directives and interfering with the petitioners' shop until this petition is determined.
  - j. Compensation for violation of fundamental rights
  - k. Cost of the suit.
2. A brief factual background of the petition is as follows; The petitioner had been running a business premises known as Chemogo Canteen situated in Chemogo Estate, Kapkwen Division and had been in occupation of the subject premises being Shop/Hotel A No 233310/3 and House Number A. No 221096/31 that belong to the 1<sup>st</sup> Respondent. The Petitioner had been paying rent and fulfilling his tenancy obligations without fail as attested by payment statements annexed to the petition. However, on 21<sup>st</sup> May 2024, the 1<sup>st</sup> Respondent with aid of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents descended on the Petitioner's business premises and demolished, ransacked, vandalised and damaged his shop and restaurant and thereafter destroyed and scattered his goods and wares all over the estate. The said demolition and destruction was carried out by the 1<sup>st</sup> Respondent without any lawful reasons, written notice or valid court order against the petitioner. The said demolition, destruction or vandalism were supervised by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents known as the 1<sup>st</sup> Respondents employees, servants and/or agents. That neither the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents nor their employees, servants and/or agents served the petitioner with written eviction notice to allow him to defend his tenancy or look for an alternative site for his business. The Petitioner stated that the said demolition, destructions and eviction from the said premises that they have been in occupation since 1948 have left him and his family without shelter, source of livelihood and income.



3. The Petitioner found fault in the failure by the Respondents to inform the Petitioner of the would-be eviction and that the eviction was in violation of the petitioner's fundamental right to information and fair administrative action under Article 35 and 47 of the Constitution respectively.
4. The Petitioner stated that the actions by the said Respondents amounted to unlawful, illegal, and irregular destruction of the Petitioner's property in violation of Article 40 of the Constitution on the right to own property.
5. The Petitioner stated that the demolition of the business premises and forcefully evicting the petitioner from the said premises without according him an alternative shop is a violation of his fundamental rights to economic interests and social rights under Article 43 of the Constitution.
6. The Petitioner stated that the Respondent's forceful eviction of the Petitioner under the supervision of his agents, employees or servants is unlawful and illegal contrary to Section 90 of the Penal Code on forcible entry.
7. The Petitioner was adamant that he was a controlled tenant and therefore the Respondents' were obligated to comply with Sections 4(1), (2), (4) & (5) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act.
8. Wilfred Kipkemoi Koske the petitioner herein filed an affidavit in support of the petition
9. The 1st respondent filed a preliminary objection in response to the instant petition on the following grounds;
  - (i) That this Honourable Court is divested of jurisdiction to hear and determine the Petition by dint of the mandatory provisions of Article 162(2)(b) of the Constitution of Kenya, 2010 as read together with Section 13 of the Environment and Land Court Act (Cap 8D) Laws of Kenya.
  - (ii) That the Petition therefore offends the doctrine of exhaustion of Constitutional and Statutory remedies and as such the jurisdiction of this Court has been prematurely invoked.
  - (iii) That the Petition does not raise any Constitutional questions warranting the Petitioner to invoke the jurisdiction of this Honourable Court.
10. The claimant subsequently filed a notice of motion dated August 12, 2024 seeking to the following orders;
  - (i) That this honourable court be pleased to transfer HCCHRPET/005/2024 to the Environment and Land Court at Kericho.
  - (ii) That costs of this application be in the cause.
11. The application is based on the grounds of it and the supporting affidavit sworn by Kipkirui Kemboi an advocate of the High Court of Kenya and having conduct of this matter on behalf of the claimant/applicant.
12. The applicant avers that they discovered that the instant matter was erroneously filed at the High Court Constitutional Human Rights Court Division instead of the Environment and Land Court at Kericho as captioned on the heading of the pleadings. The applicant avers that this court ought to invoke constitutional provisions in article 159 of the Constitution of Kenya, 2010 to transfer the file to the Environment and Land Court Act at Kericho.



13. The applicant avers that it is in the interests of justice to have this application allowed and that there will be no prejudice to the respondents if the orders sought are granted.
14. The application came up for inter partes hearing and the Learned Counsel representing the parties made oral submissions. Mr. Kipkirui the Learned Counsel for the Claimant/Applicant stated that the petition was filed before this court erroneously and therefore ought to be transferred to the Environment and Land Court. Mr. Onyango the Learned Counsel for the Respondents stated that they filed a preliminary objection opposing the petition. Mr. Onyango stated that he opposed the instant application and cited the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR where the Court of Appeal at Mombasa observed as follows;

“ 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 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. 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 situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer.”

15. This Court has considered the instant petition, preliminary objection and notice of motion and finds that the issues for determination are whether this court has jurisdiction to determine the petition and whether this court can transfer the petition to the Environment and Land Court.
16. On the issue as to whether this court has jurisdiction, the respondents filed a preliminary objection in which they stated that this court is of divested of jurisdiction to hear and determine the petition by dint of the mandatory provisions of Article 162(2)(b) of the *Constitution* of Kenya, 2010 as read together with Section 13 of the *Environment and Land Court Act*. This court, having considered the question on jurisdiction, finds that the constitutional petition is founded on a tenancy agreement for a business premises referred to as Chemogo Canteen and that issues raised in the petition fall within the ambit of the Environment and Land Court. In compliance with article 162 (2) of the *Constitution*, Parliament enacted, the *Environment and Land Court Act* 2011 which provides the jurisdiction of the Environment and *Land Act* as follows

“Jurisdiction of the Court;

- 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, chooses in action or other instruments granting any enforceable interests in land; and
- e) Any other dispute relating to the environment and land.”

17. Jurisdiction is cardinal to every suit, jurisdiction has to be there when the suit is filed and where a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. In the *locus classicus* of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd.* (1989):

“ 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 the opinion that it is without jurisdiction... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

18. In *Republic v Chengo & 2 others* [2017] KESC 15 (KLR) the Supreme Court observed as follows;

“ the *Constitution*, the *Environment and Land Court Act* and the *Employment and Labour Relations Court Act* revealed that a special cadre of courts with sui generis jurisdiction were provided for. Such parity of hierarchical stature did not imply that either the Environment and Land Court or the Employment and Labour Relations Court was the High Court or vice versa. The three were different and autonomous courts and exercised different and distinct jurisdictions. ”

19. On the issue as to whether this court can transfer the petition to the Environment and Land Court, this court considered the decision of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR in which the Court of Appeal stated as follows;`

“ 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.”

Following the finding that this court cannot entertain the petition for want of jurisdiction, it goes without saying that this court cannot therefore transfer the matter to a court of competent jurisdiction.

20. Accordingly, it is clear from the foregoing that the claim by the petitioner was filed in a court devoid of jurisdiction:- The Preliminary Objection is upheld. This Petition is ordered struck out with costs to the Respondents.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF OCTOBER, 2024.**

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**J.K. SERGON**

**JUDGE**

In the presence of:-

C/Assistant – Rutoh

Odhiambo holding brief for Nyaburi for Respondent

Kipkirui for the Petitioner

