



**Logitech International Limited v Kenya Ports Authority & 3 others (Civil Suit E015 of 2021) [2023] KEHC 17426 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17426 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E015 OF 2021  
OA SEWE, J  
MAY 12, 2023**

**BETWEEN**

**LOGITECH INTERNATIONAL LIMITED ..... PLAINTIFF**

**AND**

**KENYA PORTS AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**CHINA COMMUNICATION CONSTRUCTION COMPANY LIMITED .... 2<sup>ND</sup>  
DEFENDANT**

**TOYO CONSTRUCTION COMPANY LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**BOSKALIS EAST AFRICA LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff, Logitech International Limited, filed this suit on 12<sup>th</sup> February 2021 against the 4 defendants, Kenya Ports Authority, China Communication Construction Company Ltd, Toyo Construction Company Ltd and Boskalis East Africa Ltd, seeking the following reliefs:
  - (a) An order of Mandamus compelling the 1<sup>st</sup> defendant to ensure no dredge waste materials are disposed near and/or within the sea bed close to the plaintiff's sea water collection point.
  - (b) An order requiring the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to stop the depositing of dredge waste materials next to the plaintiff's sea water collection point.
  - (c) Special damages of Kenya Shillings One Hundred and Six Million Five Hundred and Eighty-Eighty Thousand Two Hundred and Forty-Three (Kshs. 106,588,243/=).
  - (d) General damages.
  - (e) Interest of [c] and [d] above.



- (f) Costs of the suit.
- (g) Such other or further relief as the Court may deem fit and just to grant.
2. At paragraphs 7 of its Complaint, the plaintiff averred that, at all times material to this suit, it was in occupation of the property located off the Kilindini Channel within the G-Section of the 1<sup>st</sup> defendant's property under a long term lease from the 1<sup>st</sup> defendant for purposes of running a desalination plant. It further contended that on or about the 16<sup>th</sup> October 2015, a company, namely Associated Electrical & Hardware Supplies Limited entered into a contract with the 1<sup>st</sup> defendant for the supply of portable water. Consequently, on or about 13<sup>th</sup> April 2016, pursuant to the contract with Associated Electrical & Hardware Supplies Ltd, and with the 1<sup>st</sup> defendant's consent, the plaintiff proceeded to import and assemble two (2) machines for the purpose of desalination of sea water, thereby creating a Reverse Osmosis Water Plant (hereinafter referred to as "the RO Plant") off the Kilindini Channel within G-Section of the property of the 1<sup>st</sup> respondent, Kenya Ports Authority (KPA).
3. The plaintiff further averred that since operations began in 2018, the RO Plant ran uninterruptedly at the expected capacity of 1200m<sup>3</sup> of water per day until on or about 22<sup>nd</sup> March 2019 when it experienced unexpected and unprecedented technical hitches such that it barely ran one hour without tripping or stopping. He further stated that preliminary investigations carried out by the plaintiff's site engineer revealed that there was low salt rejection due to pollution at sea. Though the plaintiff's technicians cleaned the plant membranes and fixed the hitch, the plaintiff insisted on and called for an in-depth and detailed investigation by its affiliate company in Netherlands, Hatenboerwater BV.
4. It was further asserted that the detailed investigations revealed that the RO Plant's malfunction was attributable to the severe increase in turbidity and concentration of suspended particles such as sand, mud and organic matters especially during sea turbulence; and that the turbidity was caused by dredging activities conducted by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants. The plaintiff averred, at paragraphs 22 and 23 of the Complaint that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants were not only carrying out their dredging activities in a negligent manner, but also deposited toxic waste next to the plaintiff's RO plant, and persisted in so doing in spite of complaints by the plaintiff,
5. Accordingly, the plaintiff prayed for the aforementioned reliefs against the defendants jointly and severally.
6. The defendants resisted the suit and to that end have filed their respective Defences. In addition to its Statement of Defence filed on 9<sup>th</sup> March 2021, the 2<sup>nd</sup> defendant filed a Notice of Preliminary Objection dated 20<sup>th</sup> September 2021, contending that the Court does not have jurisdiction to take cognizance of and/or determine this suit in light of the express provisions of Articles 162 and 165 of the Constitution and Section 13 of the Environment and Land Court Act, 2011.
7. Accordingly, directions were given on the 17<sup>th</sup> March, 2022 that the Preliminary Objection, be canvassed by way of written submissions. The 2<sup>nd</sup> defendant filed its submissions dated 12<sup>th</sup> May, 2022 on the 23<sup>rd</sup> May, 2022. The 1<sup>st</sup> and 3<sup>rd</sup> defendants also filed their submissions, and they are dated 26<sup>th</sup> July, 2022 and 27<sup>th</sup> June, 2022, respectively. The plaintiff's written submissions in response to the Preliminary Objection are dated 1<sup>st</sup> July, 2022. Counsel for the 4<sup>th</sup> defendant opted to file no submissions and relied on the submissions on record in support of the Preliminary Objection.
8. The 2<sup>nd</sup> defendant's stance is that, since the plaintiff seeks compensation for loss suffered as a result of acts of pollution allegedly committed at sea by the defendants, this Court lacks the requisite jurisdiction to entertain the suit. Counsel made reference to the assertions by the plaintiff that its cause



of action is anchored on the results of preliminary investigations conducted by its engineer, to the effect that the interruption of the desalination Reverse Osmosis Water Plant was due to pollution at sea; and that this situation was the direct result of turbidity and concentration of suspended particles of sand, mud and organic matter linked to the defendant's activities. In particular, the 2<sup>nd</sup> defendant referred the court to paragraphs 15, 16 and 21 of the Plaintiff from which it surmised that the main cause of action is pollution.

9. Accordingly, the 2<sup>nd</sup> defendant submitted that the issue of compensation for the alleged dredging activities near the plaintiff's Reverse Osmosis Water Plant is a matter for the exclusive jurisdiction of the Environment and Land Court in terms of Article 162(2)(b) of the Constitution, Section 13 of the Environment and Land Court Act as well as Section 3(3)(e) of the Environmental Management and Co-ordination Act.
10. The 2<sup>nd</sup> defendant further pointed out that, in its Defence dated 8<sup>th</sup> March, 2021, it has asserted that the plaintiff's activities in the area were illegal activities in that they were contrary to its Environmental Impact Assessment license; that the plant is located at a site different from the National Environment Management Authority (NEMA) approved site; and that had the construction of the Plant been implemented as per the initial concept, the sedimentation levels of the area would not have had adverse effects on it. Thus, counsel submitted that, in the circumstances, the Court with jurisdiction to determine the dispute is the Environment and Land Court as is explicitly stated in Section 3(3)(e) of the Environmental Management & Co-ordination Act.
11. Thus, the 2<sup>nd</sup> defendant urged for the striking out of this suit on the authority of 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, wherein the Supreme Court held that an order for transfer of 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; and that parties cannot consent to confer jurisdiction to court where it is not provided in law.
12. In addition, the 2<sup>nd</sup> defendant relied on the case of Thomas Mutuku Kasue v Housing Finance Company Ltd (HFC) & Another [2021] eKLR, where the court relied on the case of Albert Chaurembo Mumba (supra), and held that the practice of the transfer of matters from the High Court to specialized courts and vice versa in instances where the court finds that it has no jurisdiction is illegal. Thus, the court was urged to allow the Preliminary Objection and strike out the suit with costs to the 2<sup>nd</sup> Defendant.
13. The 1<sup>st</sup> and 3<sup>rd</sup> defendants supported the Preliminary Objection. The 1<sup>st</sup> defendant submitted that Article 162 of the Constitution established a Court with the status of the High Court being the Environment and Land Court, whose constitutional function is to hear and determine disputes relating to the environment as well as use and occupation of land. The 1<sup>st</sup> defendant further pointed out that the Environment and Land Court has original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution.
14. The court was referred to the Supreme Court case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR; the Court of Appeal case of Owners and Master of The Motor Vessel "Joey" v Owners and Masters of The Motor Tugs "Barbara" and "Steve B" [2007] eKLR and Peter Mugambi Mubeke v District Criminal Investigation Officer (DCIO) Chuka & 2 Others [2021] eKLR, in which the centrality of jurisdiction was discussed.



15. On its part, counsel for the 3<sup>rd</sup> defendant urged the Court to apply the “predominant purpose test” and find that the key issues arising from the Plaint revolve around the allegations of dredging and disposal of waste materials near and/or within the sea bed. Thus, counsel for the 3<sup>rd</sup> defendant urged that, since these are allegations of pollution, they fall within the jurisdiction of the Environment and Land Court. He accordingly urged for a finding that the Court with jurisdiction over the matter is the Environment and Land Court.
16. In response to the Preliminary Objection, counsel for the plaintiff submitted that the issues set out in the Plaint relate to breach of contract between the plaintiff and the 1<sup>st</sup> defendant; and therefore this court is clothed with the requisite jurisdiction to determine the dispute. Counsel further submitted that, to the extent that the plaintiff alleges destruction of its plant and machinery, this is a negligence suit. Reliance was placed on the case of *Suzanne Achieng Butler & 4 others v Redbill Heights Investments Limited & another* [2016] eKLR, where the court made a finding that the issue before the court was one for breach of a construction contract and not one for sale of land. On that account the court proceeded to find that it had the requisite jurisdiction to handle the matter.
17. The plaintiff further submitted that the High Court has the jurisdiction to hear matters that may ordinarily be filed at the Environment and Land Court as so long as the primary issue fits within the docket of the High Court. In this regard, counsel made reference to *Justus Chai Mbaru & 12 others v County Government of Mombasa; National Land Commission & 19 others (Interested Parties)* [2021] eKLR, where Hon. Munyao, J, held that the Environment and Land Court has jurisdiction to hear matters relating to fundamental rights and freedoms so long as the subject matter touched on the issues the ELC was created to determine.
18. The plaintiff further submitted that the suit herein raises several triable causes of actions grounded not only on the disposal of waste but also the failure by the parties to comply with their statutory and contractual obligations as stipulated under statute and its respective contracts. Thus, counsel for the plaintiff urged the Court to find that it has jurisdiction to hear and determine the action. Besides, the plaintiff contended that the breach of the contract herein occurred in the ocean; and that such are matters that fall under the jurisdiction of the Admiralty Division of the High Court under Section 4 (1) of the *Judicature Act*; which provides:

“The High Court shall be a court of admiralty, and shall exercise admiralty jurisdiction in all matters arising on the high seas, or in territorial waters, or upon any lake or other navigable inland waters in Kenya.”
19. Hence, according to the plaintiff, this suit has been filed before the proper court as the matter is for breach of contract that occurred at sea. Finally, the plaintiff submitted that in the event that the Court finds that this is not the appropriate forum for this suit, it should invoke its incidental concurrent jurisdiction to have the matter transferred to the Environment and Land Court as was done in Misc. Civil Application No. 12 of 2017: *Julius Oseya Nyende & 2 Others v Antoine Refrigeration Engineering Co. Ltd* [2017] eKLR, where Hon. Ngugi, J. (as he then was), held that, given incidental concurrent jurisdiction of the High Court and courts of equal status to deal with certain procedural or administrative questions that present quasi-judicial issues where the court in question is requested to act in the interest of justice, the superior courts have the cognate jurisdiction to transfer to the counterpart courts any case filed before it that would be more appropriately be adjudicated.
20. I have given careful consideration to the grounds raised in the Notice of Preliminary Objection dated 20th September 2021 in the light of the pleadings thus far filed. I have also considered the written submissions filed herein by learned counsel as well as the useful authorities cited by them. As was aptly



stated in *Mukisa Biscuits Manufacturers Ltd v West End Distributors Ltd* [1969] EA 696, a preliminary objection consists of:

“... a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.”

21. Accordingly, a Preliminary Objection ought not to be raised where reliance is placed on disputed facts which are yet to be proved; or where, to arrive at its determination on the preliminary points raised, the Court must embark on an inquiry to ascertain the underlying facts. Thus, in the *Mukisa Biscuits Case* Sir Newbold, P. added that:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually raised on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

22. Thus, the question of jurisdiction raised herein is indeed a proper subject of Preliminary Objection as it is now trite that jurisdiction is the lifeline of a case; and that without jurisdiction, a court ought to immediately down its tools. (See *Owners of the Motor Vessel "Lillian SS" v Caltex Oil Kenya Limited* [1989] KLR 1). In this regard, the Supreme Court *in the Matter of Interim Independent Electoral Commission* [2011] eKLR, held: -

“(29) Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent...

[30] The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution...”

23. Similarly, in the case of *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, the Supreme Court reiterated that:

“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 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...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 on 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.”

24. Accordingly, Article 162(2)(b) of the *Constitution* stipulates that:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

....

(b) the environment and the use and occupation of, and title to, land.

25. The Constitution therefore provides for courts of equal status to the High Court to hear and determine with issues arising in the environment and the use and occupation of, and title to, land; for which reason, Article 165(5) (b) of the *Constitution* is explicit that the High Court shall not have jurisdiction concerning matters that fall under the jurisdiction of the specialized courts. Moreover, Section 13 of the *Environment and Land Court Act*, the Act contemplated under Article 162(2) by which the Environment and Land Court was created, provides 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 interests in land; and
  - (e) any other dispute relating to environment and land.
- (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 healthy 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.
- (5) ...
- (6) ...
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
  - (a) interim or permanent preservation orders including injunctions;
  - (b) prerogative orders;



- (c) award of damages;
- (d) compensation;
- (e) specific performance;
- (f) restitution;
- (g) declaration; or
- (h) costs.

26. In addition, Section 3 (3) of the *Environmental Management and Co-ordination Act* provides

- (3) If a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may on his behalf or on behalf of a group or class of persons, members of an association or in the public interest may apply to the Environment and Land Court may make such orders, issue such writs or give such directions as it may deem appropriate to –
- (a) prevent, stop or discontinue any act or omission deleterious to the environment;
  - (b) compel any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment;
  - (c) require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act;
  - (d) compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and
  - (e) provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to foregoing.

27. With the foregoing in mind, I have looked at the Plaintiff dated 18<sup>th</sup> December, 2020. It is true that the plaintiff has made allegations of negligence and furnished particulars thereof at paragraphs 23 and 24 of the Plaintiff. But it is also true that the particulars supplied comprise alleged acts of environmental pollution; and are therefore matter that place the suit within the jurisdiction of the Environment and Land Court. The court has further, examined the averments of the Plaintiff in paragraphs 16, 18, 19, 21, 22 as well as the prayers sought, and it is clear therefrom that the issues raised are issues covered by the *Environmental Management and Co-ordination Act*. I am accordingly persuaded that the suit ought to have been filed before the Environment and Land Court.

28. Moreover, where, as in this instance, there is a blend of causes of action, what needs consideration, as was rightly pointed out by counsel for the 3<sup>rd</sup> defendant, is the predominant issue. The Court of Appeal had occasion to discuss this principle in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR, in which the question posed was whether a charge and the exercise of a bank's/financial institution's statutory power of sale entailed thereby amounts to land use for



purposes of Article 162(2)(b) of the Constitution and Section 13 so as to fall under the jurisdiction of the Environment and Land Court. Here is what the Court of Appeal had to say:

“...for land use to occur, the land must be utilized for the purpose for which the surface of the land, air above it or ground below it is adapted. To the law therefore, land use entails the application or employment of the surface of the land and/or the air above it and/ or ground below it according to the purpose for which that land is adapted. Neither the *cujus* doctrine nor Article 260 whether expressly or by implication recognizes charging land as connoting land use.

36. By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfillment of any condition (see Section 2 of the Land Act). As such, it gives rise to a relationship where one person acquires rights over the land of another as security in exchange for money or money’s worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the Land Act). The creation of that relationship therefore, has nothing to do with use of the land (as defined above). Indeed, that relationship is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced the chargor.

37. Further, Section 2 aforesaid recognizes a charge as a disposition in land. A disposition is distinguishable from land use. While the former creates the relationship, the latter is the utilization of the natural resources found on, above or below the land. As seen before, land use connotes the alteration of the environmental conditions prevailing on the land and has nothing to do with dispositions of land. Saying that creation of an interest or disposition amounts to use of the land, is akin to saying that writing a will bequeathing land or the act of signing a tenancy agreement constitute land use. The mere acquisition or conferment of an interest in land does not amount to use of that land. Else we would neither speak of absentee landlords nor would principles like adverse possession ever arise. If a disposition were held to constitute land use, an absentee landlord with a subsisting legal charge over his land would never have to contend with the consequences of adverse possession, for he would always be said to be ‘using’ his land simply by virtue of having a floating charge/ disposition over the property.”

29. Consequently, the Court of Appeal held that the dominant issue in that case was the settlement of amounts owing from the respondents to the appellant on account of a contractual relationship of a banker and lender; and therefore that the High Court, as opposed to the ELC, had the requisite jurisdiction to handle the suit. Consequently, the Court of Appeal concluded that:

38. ...the assertion that a charge constitutes use of land within the meaning of Article 162 of the Constitution fails. In addition, the cause of action herein was not the validity of the charge, but a question of accounts.

...

40. To the appellant, the charge was an instrument granting an interest in the land, hence jurisdiction in the matter lay with the ELC. However, under Section 2 of the said Act, an instrument is a writing or enactment which creates or affects legal or equitable rights and liabilities. For the purposes of this suit, that instrument was the charge. However, it bears



repeating that the cause of action herein was never the charge (instrument) but the amounts due and owing thereunder. Neither the charge instrument nor the creation of an enforceable interest thereunder, were disputed. The main questions to be determined were the tabulation of the sums owing and whether statutory notices had issued prior to the attempted statutory sale.

41. , the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be understood within the context of the court’s jurisdiction to deal with disputes connected to ‘use’ of land as discussed herein above. Such contracts, in our view, ought to be incidental to the ‘use’ of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court.”
30. By parity of reasoning, it is plain that, even where a breach of contract or negligence is alleged, if the predominant issue falls within the jurisdiction of the Environment and Land Court, the suit ought to be handled by that Court, and in the process deal with all the causal issues, including issues to do with the enforcement of constitutional rights. Indeed, Section 3(5) of the Environmental Management and Co-ordination Act provides: -

In exercising the jurisdiction conferred upon it under subsection (3), the Environment and Land Court shall be guided by the following principles of sustainable development—

- (a) the principle of public participation in the development of policies, plans and processes for the environment;
- (b) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and are not repugnant to justice and morality or inconsistent with any written law;
- (c) the principle of international co-operation in the management of environmental resources shared by two or more states;
- (d) the principles of intergenerational and intragenerational equity;
- (e) The polluter-pays principle; and
- (f) the pre-cautionary principle.

31. It is therefore my finding that this Court lacks the jurisdiction to hear and determine this suit and must accordingly down its tools; and although the plaintiff sought a transfer of this suit to the Environment and Land Court in the event of such an eventuality, I must decline that invitation. This is because the Court is bound by the decision of Supreme Court in Albert Chaurembo Mumba (*supra*) in which it was held (at paragraph 154):

“... as it was well elucidated in the case of *Kagenyi v Musiramo & 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.”



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

“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 compliant 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...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 transferrable to another court; jurisdiction cannot be transferred by consent and ultimately, all orders emanating from that suit are null and void...”

33. Accordingly, I find merit in the 2<sup>nd</sup> defendant’s Preliminary Objection dated 20<sup>th</sup> September 2021. The same is hereby upheld and orders granted as hereunder:

- (a) The Plaintiff’s suit commenced vide the Plaint dated 18<sup>th</sup> December, 2020 and filed on 12<sup>th</sup> February, 2021 be and is hereby struck out for want of jurisdiction.
- (b) Costs of the suit to be borne by the plaintiff.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12<sup>TH</sup> DAY OF MAY 2023**

**OLGA SEWE**

**JUDGE**

