



In re Estate of Cheruiyot Chemor Sokoti – Deceased (Succession Cause E002 of 2024) [2024] KEHC 16382 (KLR) (13 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E002 OF 2024
RN NYAKUNDI, J
DECEMBER 13, 2024**

IN THE MATTER OF THE ESTATE OF CHERUIYOT CHEMOR SOKOTI – DECEASED

BETWEEN

PIUS KIPKEMOI CHERUIYOT PETITIONER

AND

KENNETH KORIR OBJECTOR

RULING

1. Before me for determination is a notice of motion dated 10th June, 2024 expressed to be brought within the provisions of Section 1A, 1B, 3A and 80 of the *Civil Procedure Act* and Order 45 and 51 of the Civil Procedure Rules. The Objector seeks orders as follows:
 - a. Spent
 - b. Pending hearing interparties and determination of the application the enforcement of the orders issued on 7th February, 2024 and made on 24th January, 2024 be stayed or suspended.
 - c. The order issued on 7th February, 2024 and made on 24th January, 2024 be set aside and or vacated.
 - d. Costs of the application be provided for.
2. The application is premised on the grounds set out therein and the contents of the affidavit sworn in support of the same. The grounds have been captured as hereunder:
 - a. The order issued on 7th February, 2024 and made on 24th January, 2024 be stayed adversely affects the objector.
 - b. The order issued on 7th February, 2024 and made on 24th January, 2024 were obtained through material concealment of facts and or deceit.



- c. The order issued on 7th February, 2024 and made on 24th January, 2024 was made in error since the file sought to be transferred, Eldoret Chief Magistrate's court succession cause No. 425 of 2017 In the matter of the estate of Cheruiyot Chemor Sokoti, had already been struck out on 6th December, 2012 by the honourable court for lack of jurisdiction and a new cause ordered to be filed before a court of competent jurisdiction.
 - d. The petitioner's advocate failed to disclose to the Honourable court that he entered into a consent judgment on 6th December, 2023 and conceded into having Eldoret Chief Magistrate's court succession cause No. 425 of 2017 struck out for lack of jurisdiction.
 - e. The Petitioner maliciously wants to circumvent the orders issued in the subordinate court on 6th December, 2023.
 - f. That had the honourable court known that the Eldoret Chief Magistrate's court succession cause No. 425 of 2017 had been struck out for lack of jurisdiction it could not have issued the orders made on 24th January, 2024
 - g. That the Petitioner is intent on misusing this honourable court.
3. As of the date of crafting this ruling, no response or opposition had been filed through the Court's electronic filing system or by any other means. The deadline for filing a response elapsed, and the application therefore stands unopposed. In the absence of any contrary submissions or objections from the Petitioner, the Court proceeds to consider the merits of the unopposed application.

Analysis and Determination

4. At the heart of this application lies a question about the validity of orders issued by this court on 24th January 2024. Through those orders, this court directed that Eldoret Chief Magistrate's Court Succession Cause No. 425 of 2017 be transferred to this court for hearing and determination. The objector now challenges these orders, primarily on the ground that they purported to transfer a matter that had already been struck out.
5. The sequence of events leading to this application is crucial. In 2017, a succession cause concerning the estate of Cheruiyot Chemor Sokoti was filed at the Eldoret Chief Magistrate's Court. On 6th December 2023, by consent of all parties, that case was struck out for lack of jurisdiction. The consent order explicitly directed that the matter be filed afresh before a court of competent jurisdiction. Yet, barely two months later, on 24th January 2024, orders were obtained transferring this very case to the High Court.
6. The law on jurisdiction is clear and unequivocal. Regarding the fate of a suit or cause filed in a court without jurisdiction, the Court of Appeal had this to say, in *Phoenix of EA Assurance Company Limited v S.M. Thiga t/a Newspaper Service* [2019] e KLR: -

“We have carefully considered the record, the submissions by counsel and the law. The main issue is whether the subordinate court had jurisdiction in the first place to entertain the respondent's suit.

According to the appellant, the court had no jurisdiction and the suit was a nullity ab initio and it could not therefore be transferred to the High Court whether by consent or otherwise. On the other hand, the respondent seems to be saying that the subordinate court had jurisdiction to hear the suit but only award damages that were within its pecuniary jurisdiction, and therefore the suit was transferable to the High Court.



We are not persuaded that proposition by the respondent is correct in law. 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. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject, this Court pronounced; *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.”

7. This principle is not merely procedural; it goes to the very foundation of judicial authority. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence.
8. What compounds the irregularity in this case is the material non-disclosure when seeking the transfer orders. The petitioner failed to bring to the court's attention the crucial fact that Succession Cause No. 425 of 2017 had already been struck out. This was not a minor oversight but a significant omission that affected the very basis upon which the transfer orders were sought and obtained.
9. Once a matter is struck out, it ceases to exist in the eyes of the law. Any orders made thereafter, are mere nullities, not merely voidable, but ab initio, having no effect either as estoppel or otherwise. One cannot transfer what does not exist in law.
10. In the case of *Sir Ali Bin Salim vs Shariff Mohammed Sharry, 1938 KLR* the court stated:
 - i) If a court has no jurisdiction over the subject matter of the litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities and not only voidable, they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the court in which they are rendered, but be declared void by every court in which they may be presented. It is well established law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction”
11. In *Macfoy –vs- United Africa Co. Ltd. (1961) 3 All E.R. 1169*, Lord Denning at page 1172 stated 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. So will this judgment collapse if the statement of claim was a nullity. But if an act is only voidable, then it is not automatically void. It is only an irregularity which may be waived. It is not to be avoided unless something



is done to avoid it. There must be an order of the court setting aside: and the court has discretion whether to set it aside or not. It will do so if justice demands it but not otherwise”.

12. Furthermore, from the underlying facts about the estate, its substantial value exceeding Kshs. 20,000,000 and its location in Elgeyo Marakwet County, underscore why a fresh filing, rather than a transfer of a struck-out matter, was the appropriate course of action. The proper procedure, following the striking out of the original case, was to file a fresh succession cause before a court of competent jurisdiction. This would have ensured proper consideration of all jurisdictional elements while maintaining the integrity of the judicial process.
13. The court cannot ignore these fundamental flaws. The orders of 24th January 2024 purported to transfer a non-existent case. They were obtained without disclosure of material facts, and they attempted to breathe life into proceedings that had been properly struck out by consent of all parties. Such orders cannot stand.
14. In light of the foregoing analysis, I am satisfied that this application has merit. A court of law cannot transfer what does not exist, and once the original succession cause was struck out, it ceased to exist in law. Any attempt to transfer it was therefore an exercise in futility.
15. Accordingly, I make the following orders:
 - a. The application dated 10th June 2024 is hereby allowed.
 - b. The orders issued on 24th January 2024 and extracted on 7th February 2024 are hereby set aside.
 - c. The parties are at liberty to file a fresh succession cause before the High Court at Iten.
 - d. All instruments and forms, including but not limited to Forms P&A 41, P&A 54, and any other statutory forms filed or used in Succession Cause No. 425 of 2017, are hereby declared voidable ab initio for want of jurisdiction of the court.
 - e. Given the nature of these proceedings and in the interest of justice, I order that each party bears their own costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 13TH DAY OF DECEMBER 2024

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R. NYAKUNDI

JUDGE

In the Presence of:

Mr. Wainaina for the Applicant

