



Trinity Transporters & Logistics Ltd v Makenga & 2 others (Civil Appeal E672 of 2023) [2024] KEHC 15840 (KLR) (Civ) (17 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15840 (KLR)

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

CIVIL

CIVIL APPEAL E672 OF 2023

JM OMIDO, J

DECEMBER 17, 2024

BETWEEN

TRINITY TRANSPORTERS & LOGISTICS LTD APPELLANT

AND

PAUL KIMUYU MAKENGA 1ST RESPONDENT

F.K. MANTHI 2ND RESPONDENT

MICHAEL MUTISO MUOKI & ANNE NDUNGE MUSOKI (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF MOURICE MBUNGO MUOKI - DECEASED) 3RD RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. G.M. Gitonga rendered on 21st June, 2023 in Milimani CMCC No. 7160 of 2017)

RULING

1. The issue of jurisdiction can be raised at any stage of the proceedings, and even at the appellate stage. The issue can be raised either by the parties or by the court on its own motion.
2. On 29th October, 2024, I sua sponte invited the parties herein to address the court via filed submissions on whether this court has jurisdiction to entertain and determine the present appeal, the same being one that emanates from a work injury claim.
3. Both the Appellant and the Respondent filed their respective submissions. The two parties take the common stand that this court does not have jurisdiction to entertain and determine the present appeal and that the same ought to have been filed in the Employment and Labour Relations Court.



4. I take the same persuasion as the parties – that as the matter before the lower court was in respect of a work injury claim, this court has no jurisdiction to determine this appeal. The appeal ought to have been filed in the Employment and Labour Relations Court.
5. The Appellant now seeks an order that this court transfers the appeal to the Employment and Labour Relations Court. The issue then for determination is whether this appeal can be transferred to the Employment and Labour Relations Court, having reached the finding that this court is without jurisdiction to determine the same.
6. In determining the above issue, I will consult case law.
7. The Court of Appeal in *Owners of Motor Vessel ‘Lilian S’ v Caltex Oil (Kenya) Limited* [1989] eKLR was emphatic that without jurisdiction, a court does not have legal authority to make any more steps. Nyarangi J.A. observed as follows in the said case:

“...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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”

8. In the Ugandan case of *David Kabungu v Zikarengu & 4 Others*, Kampala HCCS No. 36 of 1995, the court had the following to say:

“What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused... Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer would be refused...”

9. In *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another* [2012] eKLR where the court held that:

“The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi v Musiramo* (supra), Sir Udo Udoma, C.J. made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it. In *Ali Abdi Sheikh v Edward Nderitu Wainaina & Others* (supra), Koome, J. (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs. 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under Section 18 of the [Civil Procedure Act](#) cannot be exercised in a matter where the suit was filed in a court without jurisdiction.”



10. Dealing with the same issue of jurisdiction, J.B. Ojwang, J (as he then was) in *Boniface Waweru Mbiyu v Mary Njeri & another* expressed himself as follows:

“Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court.

It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other words, courts can only transfer a cause whose existence is recognised by law. It is now settled law that where a Court finds that it has no jurisdiction, it must immediately down its tools and proceed no further. That position was made clear by Nyarangi JA in *The Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Limited* (1989) KLR 1, where the learned Judge stated:

“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”.

11. In *Gaikia Kimani Kiarie v Peter Kimani Kiramba* [2020] eKLR the court observed as follows:

“Since the Applicant is seeking to transfer the suit based on the fact that the subordinate Court has no jurisdiction, then the Court finds that the Application is not merited as already held above by the Court. The suit is to be transferred from a Court with no jurisdiction, then it means it is not only an incompetent suit, but also a nullity in law and thus there is nothing to transfer. Consequently, the Court holds and finds that the Applicant has not satisfied this Court that it warrants the grant of the orders sought and therefore he is not entitled to the prayers sought.”

12. The jurisprudence that emerges from the decisions above is that without jurisdiction, this court is incapable of making an order for transfer of this appeal to the Employment and Labour Relations Court.
13. As I have already reached the finding that this court does not have jurisdiction to determine this appeal, and consequent thereto has no jurisdiction to transfer the same to the Environment and Land Court, the only appeal that this appeal must face is for it to be struck out. I proceed to strike it out.
14. Section 27 of the *Civil Procedure Act*, Cap 21 Laws of Kenya dictates that costs ought to follow the event. Consequently, the Appellant shall bear the Respondent’s costs of the appeal.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 17TH DAY OF DECEMBER, 2024.

JOE M. OMIDO



JUDGE

For The Appellant: Mr. Bundi.

For The 1st Respondent: No Appearance.

For The 2nd Respondent: No Appearance.

For The 3rd Respondent: Ms. Machira For Ms. Masika.

Court Assistant: Ms. Njoroge.

Mr. Bundi: I pray for an order that I be supplied with copies of typed proceedings and the ruling.

Court: The ruling will be uploaded in the CTS today. Copies of proceedings to be supplied to the parties upon payment of court charges, if any.

JOE M. OMIDO

JUDGE

