



Kamoro v Bushline Properties Company Limited & another (Environment and Land Appeal E121 of 2022) [2025] KEELC 135 (KLR) (22 January 2025) (Judgment)

Neutral citation: [2025] KEELC 135 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E121 OF 2022
BM EBOSO, J
JANUARY 22, 2025**

BETWEEN

MOSES KAMORO APPELLANT

AND

BUSHLINE PROPERTIES COMPANY LIMITED 1ST RESPONDENT

**MICHAEL NDEGWA KAHUYA & MELANIA MARY WANJIKU (SUING
THROUGH FRANCIS KARANJA NDUNG'U BY VIRTUE OF A POWER OF
ATTORNEY) 2ND RESPONDENT**

*(Being an Appeal arising from the Ruling of Hon C A Otieno Omondi, Senior
Principal Magistrate, delivered on 30/11/2022 in Ruiru MC E & L Case No 88 of 2020)*

JUDGMENT

Introduction

1. This appeal challenges the ruling rendered by Hon C A Otieno Omondi on 30/11/2022 in Ruiru SPMC MCEL No. 88 of 2020. The ruling was a culmination of an application by the appellant, dated 2/10/2022, in which the appellant sought an order striking out the suit on the grounds of: (i) res judicata; (ii) res subjudice; and (iii) abuse of court process. The three key issues that fell for determination in the said application were (i) Whether the suit by the respondents was res judicata, (ii) Whether the suit by the respondents was res subjudice; and (iii) Whether the suit by the respondents was an abuse of the process of the court on account of a multiplicity of suits. The three issues are, invariably, the key issues that fall for determination in this appeal. Before I analyse and dispose the issues, I will briefly outline the background to the appeal; the grounds of appeal; and a summary of the parties' submissions in the appeal.



Background

2. The respondents initiated the suit in the Magistrate Court through a plaint dated 24/7/2020. The plaint was subsequently amended. The respondents contended in their pleadings that the appellant had illegally encroached onto their parcels of land registered as Ruiru/Ruiru East Block 2/19084 and Ruiru/Ruiru East Block 2/19085 respectively. They sought, among other reliefs, an order restraining the appellant against encroaching on their parcels of land. Subsequent to that, the respondents filed an application dated 13/7/2021 seeking interlocutory injunctive orders in relation to what they described as parcel numbers Ruiru/Ruiru East Block 2/27624 [sic] and 27625[sic]. On his part, the appellant filed a notice of preliminary objection inviting the court to strike out the suit.
3. A ruling rendered in the suit by Hon J A Agonda [P.M] culminated in Thika ELC Appeal No. E081 of 2021 which this Court disposed in the following terms:
 - a. The ruling of Hon J. A Agonda PM rendered on 16/9/2021 in Ruiru SPMC E & L Case No 88 of 2020 is set aside wholly.
 - b. The preliminary objection dated 26/1/2021 and the application dated 13/7/2021 shall be heard afresh and disposed by a different Magistrate at Ruiru Senior Principal Magistrate Court.
 - c. Parties shall bear their respective costs of this appeal
4. Subsequent to that, the appellant presented to the trial court a formal application dated 2/10/2022 seeking orders striking out the suit in terms of the following verbatim orders:
 1. The suit filed by the plaintiffs be struck out for offending Section 7 of the *Civil Procedure Act* on the doctrine of res judicata as according to the Judgment in Thika Judicial Review No. 7 of 2018 Republic Vs District Lands Office and others.
 2. The suit filed by the plaintiffs be struck out for offending Section 6 of the *Civil Procedure Act* on the doctrine of res subjudice as according to the Judgment in Thika Judicial Review No. 7 of 2018 Republic – Vs District Lands Office and others.
 3. The suit filed by the plaintiffs be struck out for being an abuse of court process as the plaintiffs have filed a multiplicity of suits.
 4. Any further and or relief that this Honourable court may deem just
 5. Costs of this application be provided for.
5. Upon considering the application, the lower court rendered the impugned ruling in which it made the following findings in relation to the issues before it: (i) the suit was not re judicata; (ii) the suit was not res subjudice; and (iii) the court did not have materials to support a finding that the suit was an abuse of the process of the court.

Appeal

6. Aggrieved by the ruling of the trial court, the appellant brought this appeal, advancing the following fourteen (14) verbatim grounds:
 1. The learned trial magistrate erred in law and in fact in failing to find that the suit by the respondents herein ought to be struck out for offending Section 7 of the *Civil Procedure Act* on the doctrine of res judicata as according to the judgment in Thika Judicial Review No. 7 of 2018: Republic vs District Lands Office and Others.



2. The learned trial magistrate erred in law and in fact in failing to find that the said issues raised before the honourable court were substantially in issue in Thika Judicial Review No. 7 of 2018: Republic vs District Lands Office and Others.
3. The learned trial magistrate erred in law and in fact in failing to find that the suit before the honourable court was encroachment/trespass while the issue could not/cannot be determined without the orders for mandamus for the Land Registrar to determine the boundary dispute as directed in Thika Judicial Review No. 7 of 2018: Republic vs District Lands Office being effected.
4. The learned trial magistrate erred in law and in fact in failing to be guided by the decision of the court in Thika Judicial Review No. 7 of 2018: Republic vs District Lands Office that a boundary dispute falls within the jurisdiction of the Land Registrar and further by statutory provisions that a land boundary dispute ought to be resolved according to Section 18 (2) and 19 of the *Land Registration Act*.
5. The learned trial magistrate erred in law and in fact in failing to find that the suit by the respondents herein ought to be struck out for offending Section 6 of the *Civil Procedure Act* on the doctrine of res subjudice as according to the judgment in Thika Judicial Review No 7 of 2018: Republic vs District Lands Office and Others.
6. The learned trial magistrate erred in law and in fact in failing to find that the issues before the Honourable Court are subjudice as the court in Thika ELC Judicial Review Case No. 7 of 2018: Republic vs District Land Registrar, Thika Lands Office is still seized of the case until its orders of the Land Registrar to visit the suit lands and ascertain the boundaries are...
7. The learned trial magistrate erred in law and in fact in failing to find that the suit by the respondents herein ought to be struck out for being an abuse of court process as the respondents have filed a multiplicity of suits.
8. The learned trial magistrate erred in law and in fact in failing to find that the respondents herein had failed to prove that the orders in Thika ELC Judicial Review Case No. 7 of 2018: Republic vs District Land Registrar, Thika Lands Office had been satisfied effected and which would have formed the basis of her conclusion that the suit before the honourable court was an abuse of court process.
9. The learned trial magistrate erred in law and in fact in failing to find that if indeed no sufficient evidence had been placed before the honourable court to prove that the orders in Thika ELC Judicial Review Case No. 7 of 2018: Republic vs District Land Registrar, Thika Lands Office had been satisfied then the suit was an abuse of court process: the honourable court mistakenly and in error proceeded to find that since no evidence was placed before it then the suit was not an abuse of court process.
10. The learned trial magistrate erred in fact and in law by totally disregarding the appellant's pleadings and submissions, thereby arriving at a wrong conclusion.
11. The learned trial magistrate erred in fact and in law by disregarding the evidence in the appellant's pleadings particularly in the application dated 2/10/2022 thereby arriving at a wrong conclusion.
12. The learned trial magistrate erred in fact and in law by disregarding what she ought to have considered and considering what she ought to have disregarded, thus arriving at a wrong conclusion.



13. The learned trial magistrate erred in law and fact in failing to take into account existing and specific provisions of law dealing with the circumstances of the case.
7. The learned trial magistrate erred in law and fact by failing to uphold the doctrine of precedent, the already determined decision by the superior court in Thika ELC Judicial Review Case No. 7 of 2018: Republic vs District Land Registrar, Thika Lands Office and appreciate and be guided by case law with similar facts.
8. The appellant sought the following reliefs from this Court: (i) an order setting aside the impugned ruling dated 30/11/2022; (ii) an order striking out the respondent's suit in the trial court; and (iii) an order condemning the respondent to pay costs of the appeal.

Appellant's Submissions

8. The appeal was canvassed through written submissions dated 28/6/2024, filed by John Mwariri Advocate. Counsel for the appellant identified the following as the six issues that fell for determination in the appeal: (i) Whether the suit was res judicata; (ii) Whether the dispute fell within the jurisdiction of the Land Registrar according to Section 18 (2) and 19 of the *Land Registration Act*; (iii) Whether the suit was subjudice; (iv) Whether the respondents were in abuse of court process for filing a multiplicity of suits; (v) Whether the Learned Magistrate disregarded the appellant's pleadings and submissions, thereby reaching a wrong conclusion; and (vi) What remedies ought to be granted.
9. On whether the suit was res judicata, counsel for the appellant relied on Section 7 of the *Civil Procedure Act* and on the decision in the case of Philes Nyokabi Kamau vs Industrial & Commercial Development Corporation (2017)eKLR where the court identified the ingredients of res judicata as follows: (i) the parties should be similar; and (ii) the issues in dispute should be the same. Counsel submitted that the learned magistrate was right to find that the parties were similar, adding that, the learned magistrate erred when she found that the issues for determination were different in the suit filed at the trial court compared to the issues for determination in Thika ELC Judicial Review Case No. 7 of 2018. Counsel submitted that the 1st respondent's grievance in the judicial review case was the encroachment on land parcel number 2/19805 [sic] belonging to the 2nd respondent and land parcel number 2/10806 [sic] belonging to the appellant. Counsel added that because the issue for determination in both suits was encroachment, the learned magistrate erred in finding that the suit was not res judicata.
10. On whether the dispute fell within the jurisdiction of the Land Registrar in accordance with Section 18 (2) and 19 of the *Land Registration Act*, counsel for the appellant contended that the Court in Thika ELC Judicial Review Case No. 7 of 2018 affirmed the fact that the dispute between the parties was a boundary dispute could only be determined by the Land Registrar.
11. On whether the suit was subjudice, it was counsel's position that on 29/11/2019, Hon Lady Justice Gacheru ordered the Land Registrar to determine, fix the boundary, file a plan containing the necessary particulars, and make a note in the register that the boundaries had been fixed. Counsel argued that until the said orders are executed, the Court in Thika ELC Judicial Review Case No.7 of 2018 was still seized of the matter, hence the respondent ought not to have filed another suit. Counsel further argued that the appellant had demonstrated that two suits existed relating to the same subject matter, namely, Thika ELC Judicial Review Case No. 7 of 2018 and Ruiru CM ELC Case No. 88 of 2020. Counsel relied on Section 6 and the decision in the case of Kenya Airports Authority vs Mitu-Bell Welfare Society & 2 Others[2016].
12. On whether the respondents were in abuse of the court process by filing a multiplicity of suits, counsel faulted the respondents for proceeding to file the suit in the lower court before the Land Registrar had



complied with the court orders issued in Thika ELC Judicial Review Case No. 7 of 2018. Counsel argued that the respondents had not demonstrated to the Court that the Land Registrar had complied with the aforementioned orders, hence they abused the court process.

13. On whether the learned magistrate disregarded the appellant's pleadings and submissions, thereby reaching a wrong conclusion, counsel argued that the appellant had demonstrated through his application dated 2/10/2022 that the dispute in the said suit was a boundary dispute which the Court in Thika ELC Judicial Review Case No 7 of 2018 had determined when it directed the Land Registrar to determine and fix the boundaries of the suit properties. Counsel further argued that the appellant proved that the aforementioned orders were never complied with. Counsel added that the appellant demonstrated the similarity between the suit in the lower court and Thika ELC Judicial Review Case No 7 of 2018. Counsel urged this Court to reconsider the appellant's application dated 2/10/2022.
14. On the remedies that ought to be granted, counsel submitted that the proceedings in the lower court were contrary to Section 18 of the *Land Registration Act* hence they were null and void. Counsel further submitted that the suit in the lower court ought to be dismissed and parties directed to comply with the court order given in Thika ELC Judicial Review Case No 7 of 2018.

Respondents' Submissions

15. The respondents opposed the appeal through written submissions dated 12/7/2024, filed by Isolina Kinyua & Company Advocates. Counsel for the respondents identified the following as the six issues that fell for determination in the appeal: (i) Whether the suit offended Section 7 of the *Civil Procedure Act* on the doctrine of res judicata based on the Judgment in Thika Judicial Review Application No. 7 of 2018; (ii) Whether the suit offended Section 6 of the *Civil Procedure Act* on the doctrine of res subjudice based on the Judgment in Thika ELC Judicial Review Case No 7 of 2018; (iii) Whether the respondents were guilty of filing a multiplicity of suits hence in abuse of court process; (iv) Whether the appellant was dishonest and abused the court process for self-gain; (v) Whether the dispute fell within the jurisdiction of the Land Registrar according to Section 18 (2) and 19 of the *Land Registration Act*; and (vi) Whether this appeal is merited.
16. On whether the suit offended Section 7 of the *Civil Procedure Act* on the doctrine of res judicata on account of the Judgment in Thika Judicial Review Application No. 7 of 2018, counsel relied on the decision in the case of Independent Electoral and Boundaries Commission vs Maina Kiai & 5 Others[2017] eKLR where the court identified the elements that must be satisfied for a suit to be considered res judicata. Counsel submitted that the suit in Thika Judicial Review No. 7 of 2018 sought orders of mandamus against the Land Registrar while the suit in the lower court sought eviction orders and damages against the appellant. Counsel further submitted that one of the suits was a judicial review claim while the other was a claim for trespass and damages. Counsel added that the court in the Judicial Review Case stated that the issue of ownership of the suit properties could not be determined in the judicial review proceedings.
17. Counsel argued that judicial review cases were neither criminal nor civil in nature. Counsel further argued that the principle of res judicata did not apply to judicial review proceedings. Counsel added that the defence of res judicata was not applicable where there were fresh circumstances. Counsel referred to the decisions in the cases of Edward R. Ouko vs Speaker of the National Assembly & 4 Others[2017]eKLR, Management of the National Hospital Insurance Fund Ex-parte Central Organization of Trade Unions [2006]eKLR and Republic vs City Council of Nairobi & 2 Others [2014]eKLR. Counsel added that the respondents indicated that the Land Registrar – Ruiru had stated that the boundaries to the suit properties had been established.



18. On whether the suit offended Section 6 of the *Civil Procedure Act* on the doctrine of res subjudice on account of the Judgment in Thika ELC Judicial Review Case No 7 of 2018, counsel relied on the decision in the case of Richard Kiplagat Sigei vs Grace Sang [2020]eKLR where the court stated that the subjudice rule applies to pending cases and not decided cases. Counsel submitted that the suit in the lower court was not subjudice, noting that the suit in Thika ELC Judicial Review No. 7 of 2018 had been decided to finality and no appeal was pending in relation to it. Counsel further submitted that even if the court were to find that the suit in the lower court was subjudice, the court ought to only stay the proceedings pending the decision of the Land Registrar but not to dismiss the suit. Counsel relied on Section 6 of the *Civil Procedure Act* and the decision in the case of ASL Credit Limited vs Abdi Basid Sheikh Ali & Another [2019]eKLR.
19. On whether the respondents were guilty of filing a multiplicity of suits in abuse of court process, counsel submitted that the appellant had not proved the existence of the multiple suits filed by the respondents.
20. On whether the appellant was dishonest and was abusing the court process for self-gain, counsel contended that the appellant was trying to frustrate and delay the respondent's suit in the trial court through this appeal. Counsel argued that the defence filed by the appellant did not raise the issue of a boundary dispute, hence the appellant was legally estopped from raising the issue of boundaries through an interlocutory application or a preliminary objection.
21. On whether the dispute fell within the jurisdiction of the Land Registrar according to Section 18 (2) and 19 of the *Land Registration Act*, counsel submitted that jurisdiction was not an issue that was up for consideration by the lower court. Counsel urged this court to ignore the submission on jurisdiction made by the appellant given that it was not canvassed in the lower court. Counsel relied on the decision in the case of DEN vs PNN [2015]eKLR to support his submission.
22. On whether the appeal should be allowed, counsel contended that the trial court appreciated the principles of res judicata and res subjudice and arrived at the correct decision. Counsel urged the Court to reject the appeal.

Analysis and Determination

23. I have read and considered the original record of the trial court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions in the appeal. I have also considered the relevant legal frameworks and jurisprudence. As observed in the introduction part of this Judgment, the three key issues that fall for determination in the appeal are: (i) Whether Ruiru SPMC E&L Case No. 88 of 2020 is res judicata on account of the Judgment in Thika ELC Judicial Review Application No. 7 of 2018; (ii) Whether Ruiru SPMC E&L Case No. 88 of 2020 is res subjudice on account of the Judgment in Thika ELC Judicial Review Application No. 7 of 2018; (iii) Whether Ruiru SPMC E&L Case No. 88 of 2020 is an abuse of the court process on account of the plaintiffs [the respondents in this appeal] having filed a multiplicity of suits. Before I analyse and dispose the issues, I will outline the principle that guides this Court when exercising appellate jurisdiction.
24. This is a first appeal. The task of a first appellate court was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani (2013) eKLR as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess,



weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.”

25. The principle was similarly outlined in *Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

26. Is the suit in the lower court *res judicata*? The tenor and import of the doctrine of *res judicata* is that a cause of action may not be relitigated once it has been heard and determined on merits by a court or tribunal of competent jurisdiction. Kenya’s Parliament codified the doctrine of *res judicata* through the enactment of Section 7 of the [Civil Procedure Act](#) which provides as follows;

7. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially been in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

27. The Supreme Court of Kenya rendered itself on the tenor and import of the doctrine of *res judicata* in *Kenya Commercial Bank Vs Muiri Coffee Estate Limited & another* [2016]eKLR as follows:

“*Res judicata* is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of *res judicata* is to apply in respect of matters of all categories, including issues of constitutional rights”

28. The Supreme Court added thus:

“The doctrine of *res judicata*, in effect, allows a litigant only one bite at the cherry. It prevents a litigant or persons claiming under the same title from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily drag the courts, apart from occasioning unnecessary costs to the parties and it ensures that litigation comes to an end and the verdict duly translates into fruits for one party, and liability for another party conclusively.”

29. The appellant in this appeal contends that the issues in *Ruiru SPMC E & L Case No. 88 of 2020* are the same as the issues that were considered and determined in *Thika ELC Judicial Review Application No. 7 of 2018*. The lower court did not agree with the appellant on this contention. I too do not agree with him. *Thika ELC Judicial Review Application No. 7 of 2018* [hereinafter referred to as “the JR Application”] was a plea for the following orders of mandamus;

1. “An order of mandamus to compel the respondent [the Thika Lands office] to visit land parcel number Ruiru/Ruiru East Block 2/19084 and thereby to determine and fix the boundary in respect of the property



2. An order compelling the respondent to render determination in view of the report of the District Surveyor dated 17th September, 2018 and file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed and the plan shall be deemed to accurately define the boundaries of the said parcel.”
30. The cause of action in the JR Application was that the Land Registrar had failed to discharge his statutory mandate under Sections 18 and 19 of the [Land Registration Act](#). The said sections vest in the Land Registrar the statutory mandate to determine and fix boundaries of all registered parcels of land.
31. A perusal of the plaint in Ruiru SPMC E&L Case No. E088 of 2020 on the other hand reveals that the cause of action in the suit relates to alleged encroachment by the appellant onto land parcel numbers Ruiru/Ruiru East Block 2/ 19084 and 19085. Indeed, the claimants in Ruiru SPMC E&L Case No. E088 of 2020 sought injunctive orders and damages against the appellant on account of the alleged encroachment. Most significantly, whereas the Thika Lands Office was the respondent in the JR Application, the said Office was not a party to Ruiru SPMC E & L Case No. E088 of 2020.
32. It is clear from the above brief analysis that the causes of action in the two suits are not the same. Secondly, the Thika Lands Office which was the only respondent in the JR Application is not a party to the suit in the lower court. Thirdly, the reliefs sought in the two suits are different; in one suit the reliefs relate to judicial review orders, which are available only against a public body or a public officer. The reliefs sought in the other suit are private law remedies available against a private tortfeasor. For the above reasons, it is my finding that the elements of res judicata were not established by the appellant.
33. Is the suit in the lower court res subjudice? The doctrine of res subjudice forbids the trial of any suit in which the matter in issue is also directly and substantially in issue in an existing prior suit between the same parties or parties litigating under the same title. The doctrine has been codified in Section 6 of the [Civil Procedure Act](#) as follows:-
- “No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”
34. Suffice it to state that, res subjudice is a factual phenomenon that should be proved through evidence by the party alleging it. Secondly, when res subjudice is established, depending on the circumstances of the case, the court seized of the offending suit may issue one of the following orders:(i) an order striking out the offending suit; (ii) an order staying the offending suit pending the hearing and determination of the prior suit; and (iii) an order consolidating the two or more suits.
35. The appellant contends that because M/s Bushline Properties Company Limited filed Thika ELC JR Application No 7 of 2018 which, from the evidence on record, was disposed through a Judgment rendered by Gacheru J on 29/11/2019, the suit in the lower court is res subjudice. The lower court did not agree with the appellant on this view. I too do not agree with him on that view. First, by the time the suit in the lower court was initiated in 2020, Thika ELC JR Application No. 7 of 2018 had already been disposed. Put differently, at the time of filing the suit in the lower court, Thika ELC JR Application No. 7 of 2018 could not be described as a pending litigation. Secondly, the Thika Lands Office which was the only respondent in the JR Application is not a party to the suit in the lower court. Thirdly, the causes of action in the two suits are not the same. In summary, the key elements of res subjudice were not established by the appellant. For above reasons, the finding of the court is that the appellant did not establish res subjudice.



36. The third issue is whether the suit in the lower court was an abuse of the process of the court on the ground that the respondent had filed a multiplicity of suits. Was there evidence of a multiplicity of suits? I do not think so. The only evidence which the appellant presented in this regard relates to Thika ELC JR Application No. 7 of 2018, a public law case that had been heard and determined by Gacheru J. The appellant did not present any evidence relating to any pending or past suit relating to the cause of action that was before the lower court. Clearly, the appellant did prove abuse of court process as pleaded in the application dated 2/10/2022. The appellant's relevant plea in the application dated 2/10/2022 reads as follows:

“The suit filed by the plaintiffs be struck out for being an abuse of court process as the plaintiffs have filed a multiplicity of suits.’

37. In the absence of evidence establishing abuse of court process, I come to the finding that abuse of court process was not proved.

38. I will make some observations on an aspect of the submissions that the appellant tendered in this appeal. The appellant focused on the provisions of Section 18 and 19 of the Land Registration Act and contended that by dint of Section 18 of the said Act, the lower court does not have jurisdiction to entertain the suit. He urged the court to allow the appeal and the application on that ground. I have looked at the motion which the lower court was seized of. The grounds upon which the striking out orders were sought were outlined in each of the prayers. It is clear from the motion dated 2/10/2022 that the appellant did not invite the lower court to strike out the suit on the ground of lack of jurisdiction under Section 18 of the Land Registration Act. Put differently, neither the lower court nor the respondents were invited to interrogate the issue of jurisdiction under Section 18 of the Land Registration Act. It is therefore unprocedural for the appellant to introduce the issue of jurisdiction under Section 18 at the appellate stage yet it was not one of the grounds that were raised in the application that culminated in the ruling that is the subject of this appeal.

39. For the above reasons, this court has not found merit in this appeal. The appeal is rejected and dismissed.

40. In tandem with the principle in Section 27 of the Civil Procedure Act, the appellant shall bear costs of the appeal. It is so ordered.

41. Lastly, it is clarified that the date for delivery of this ruling was reserved while the Presiding Judge was still stationed at Thika ELC. Effective from 13th January 2025, the Judge was transferred to Meru ELC and Chuka ELC. It is for this reason that this ruling is being rendered virtually at Meru ELC. The relevant original court file shall be returned to Thika ELC forthwith and the Court Registry at Thika ELC shall upload the ruling onto the CTS immediately.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 22ND DAY OF JANUARY, 2025

B M EBOSO [MR]

JUDGE

In the Presence of:

Court Assistant - Tupet

