



**Pambo (Suing as the Legal Administrator of the Estate of the Late Pambo Aringo) v Ayugi (Sued as the Legal Representative of the Estate of Jacob Odhiambo Kimori) & 4 others (Environment and Land Appeal E020 of 2023) [2025] KEELC 6281 (KLR) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6281 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**  
**ENVIRONMENT AND LAND APPEAL E020 OF 2023**  
**FO NYAGAKA, J**  
**SEPTEMBER 23, 2025**

**BETWEEN**

**GEORGE OTIENO PAMBO (SUING AS THE LEGAL ADMIGONISTRATOR OF THE ESTATE OF THE LATE PAMBO ARINGO) ..... APPELLANT**

**AND**

**EUNICE ATIENO AYUGI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JACOB ODHIAMBO KIMORI) ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY LAND REGISTRAR, HOMA BAY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY LAND SURVEYOR, HOMA BAY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**SAFARICOM LIMITED COMPANY ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

*(Being an Appeal from the Ruling of Hon. J.S. Wesonga SPM delivered in Homabay CM ELC No. E034 of 2022 on 10th March 2023)*

**JUDGMENT**

**Background**

1. The instant appeal arises from a Ruling dated 10<sup>th</sup>, March 2023 which was delivered by Honorable J.S. Wesonga SPM in Homabay Chief Magistrate's Court Case Number ELC E034 of 2022. The ruling relates to the issue of jurisdiction, raised by the 1<sup>st</sup> respondent through a Notice of Preliminary Objection to the Plaintiff's suit. His basis of the preliminary objection was that the land parcels that were the subject of litigation are located in Mbita Sub-county, which is located in Homabay county. The appellant maintained that the Magistrate's court at Mbita was stripped of pecuniary jurisdiction



to hear and determine the matter, given that the pecuniary value of the suit properties higher than its limit.

2. After a lengthy deliberation and analysis of precedent, the trial court rendered itself in the following terms:

There is no suggestion that there is any jurisdictional bar to the suit aside from the issue of the suit being filed in a court other than the court within the local limits of whose jurisdiction the property is situate. Assuming that the suit property was situate in Homabay, this court would have comfortably handled the matter to conclusion. Strictly speaking, this court has jurisdiction and the requirement of filing the case elsewhere is more of an issue of distribution of work among the various magistrate court stations. It is important to reiterate that a valid preliminary objection should, if successful, dispose of the suit.

3. Accordingly, the court ordered that:
  - a. The preliminary objection be disallowed;
  - b. The plaintiff/ applicant to move with speed and make the appropriate application at the environment and land court to transfer the suit to the appropriate court station;
  - c. Each party to bear its own costs; and
  - d. Mention on 17<sup>th</sup> April 2023 to confirm compliance with order (b) above.
4. The appellant, being aggrieved and dissatisfied by the above finding and orders of the trial court instituted the instant appeal.

### **The Appeal**

5. The appellant's appeal is based on several grounds as can be seen on the face of the Memorandum of Appeal dated 17<sup>th</sup> April 2023. Specifically, the appellant is aggrieved that:
  1. The learned magistrate erred in law and fact by failing to dismiss the preliminary objection with costs and without making any further adverse orders against the appellant herein having made a finding that the preliminary objection was not merited and the suit was not subject to be struck out
  2. The learned magistrate erred in law and in fact by proceeding with the hearing and determination of the application, which is the subject of this appeal, without serving the same on the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants and without involving them in the suit as they were equally and directly affected by the outcome of the 1<sup>st</sup> respondent's application and subsequent orders/directions and were therefore denied an opportunity to respond which violated the constitutional right to fair hearing and was against the doctrine of substantive justice.
  3. The learned magistrate erred in law and in fact by acting beyond her jurisdiction in ordering the appellant to move with speed and make an application to the environment and land court for transfer of the case to the appropriate court station and failed to appreciate that it was the 1<sup>st</sup> respondent who had sought the transfer of the case which the appellant was opposed to and it was only natural that the aggrieved party who in this case is the 1<sup>st</sup> respondent should have been directed to file the application for transfer to the ELC and further failed to take into account the burden of expenses to be incurred by the appellant in the process.



4. The learned magistrate erred in law and fact by failing to appreciate and consider the appellant's submissions that the magistrate's court at Mbita lacked the pecuniary jurisdiction to hear and determine the suit being sought to be transferred by the 1<sup>st</sup> defendant pursuant to section 9(a) (i) of the Magistrates Courts Act.
5. The learned magistrate erred in law and fact by drawing a conclusion and thereby finding that the suit property was within the territorial jurisdiction of Mbita Law Courts from the plaintiff's exhibits without subjecting the same the pecuniary jurisdiction of the subject matters pursuant to the provisions of section 12 of the Civil Procedure Act in the determination of any other right to or interest in immovable property.
6. The learned trial magistrate erred in law and fact by assuming that the other defendants supported the 1<sup>st</sup> defendant's application and hence there was no need of ensuring that they were give an opportunity to submit in favor or in opposition of the application and more so in light of the fact that two of the five respondents, that is the, the second and the third actually and officially work in Homabay.

### **The Party's Submissions**

6. The application was canvassed by way of written submissions.
7. The applicant filed his submissions dated 4<sup>th</sup> December 2024 wherein he couched the issues for determination in the following terms:
  1. Power to transfer files, jurisdiction of the Magistrate's courts.
  2. Whether territorial jurisdiction is superior to pecuniary jurisdiction in filing, hearing and determination of suits for recovery of immovable property.
  3. Whether the appeal should be allowed as prayed.
8. On the issue of the power of the courts to transfer suits, the appellant submitted that the trial court was right in finding that the Preliminary Objection was not merited but erred in ordering the appellant to make an application at the Environment and Land Court for purposes of transferring the suit to Mbita. He submitted that the court acted beyond its jurisdiction in failing to dismiss the Preliminary Objection and in issuing orders that were not prayed, which orders were adverse to the appellant. He maintained that the power to transfer the instant suit was vested in the Environment and Land Court by dint of section 18 (1) (b) of the Civil Procedure Act.
9. As to whether territorial jurisdiction is superior to pecuniary jurisdiction in matters relating to recovery of immovable property the appellant relied on the case of Phoenix of E.A. Assurance Company Limited v S. M Thiga t/a Newspaper Service [2019] eKLR to argue that territorial jurisdiction is subject to pecuniary jurisdiction and other limitations imposed by law.
10. As to whether the application should be allowed as prayed, the applicant relied on Section 18 of the Civil Procedure Act and submitted that any party in a suit may make an application for the transfer of the suit and argued that the trial magistrate erred in directing that he files the application for transfer yet it was the was aggrieved by the suit being filed at Homabay.
11. The appellant argued that it would be illegal to transfer a competent suit filed in a court of competent jurisdiction to a court without jurisdiction. He prayed that his appeal be allowed and costs of the appeal be awarded to him.



12. On his part, the 1<sup>st</sup> respondent filed his submissions dated 8<sup>th</sup> April 2025. He identified two issues for this court's determination, being: whether the appeal was filed within time and whether the appeal should be dismissed summarily.
13. Concerning the first issue, the 1<sup>st</sup> respondent submitted that the ruling which forms the basis of the instant appeal was rendered on 10<sup>th</sup> March, 2023 yet the Memorandum of Appeal is dated 17<sup>th</sup> April 2023 and filed on 19<sup>th</sup> April 2023. He relied on the provisions of Section 79G of the *Civil Procedure Act* as well as Order 50 Rule 8 of the Civil Procedure Rules to argue that the appeal was filed out of time, that is beyond the 30-day statutory limitation period for filing appeals from the lower courts.
14. On the second issue, the 1<sup>st</sup> respondent submitted that at the time the ruling being appealed, the Mbita magistrate's court had a Principal Magistrate and a Senior Magistrate who was later transferred in November 2024. He further submitted that the appellant had not submitted any valuation report to disqualify the Mbita magistrates court from hearing and determination of the matter. He submitted that the appellant was not being truthful about the cadres of judicial officers at the Mbita Magistrates' Court.
15. The 1<sup>st</sup> respondent thus prayed that the appeal be struck out with costs to himself, the same having been filed out of time.

### **Issues, Analysis and Determination**

16. The following issues are pertinent for this court's determination in the instant appeal:
  - a. whether the appeal was filed out of time;
  - b. if the answer to a) above is in the affirmative, whether the appeal is merited; and
  - c. who should bear the costs of the appeal
17. The 1<sup>st</sup> Respondent raised a very critical issue concerning the timing of the filing of the instant appeal. This issue goes to the jurisdiction of this court, and as such must be considered in limine. In Patrick Kiruja Kithinji v Victor Mugira Marete [2015] KECA 872 (KLR), the Court of Appeal stated that:
  12. In our view, whether or not an appeal is filed on time goes to the jurisdiction of this court. It is trite that this court has jurisdiction to entertain appeals filed within the requisite time and appeals filed out of time with leave of the court. To hold otherwise would upset the established clear principles of institution of an appeal in this court. Consequently, we find that an appeal filed out of time is not curable under article 159 (of *the Constitution*).
18. The time for filing of appeals emanating from the lower courts is provided for in Section 79G of the *Civil procedure Act*. It provides as hereunder:

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
19. Clearly, unless leave is granted for a party who does not file an appeal in time, he should do so within thirty (30) days of the decision. Any appeal filed outside of the thirty days and without leave of the Court is improper and ought to be dismissed.



20. In this matter, I have perused the Record of Appeal filed by the plaintiff/appellant. Indeed, the Ruling which forms the basis of the instant appeal was rendered on 10<sup>th</sup> March, 2023. The Memorandum Appeal is dated 17<sup>th</sup> April 2023 and was filed on 19<sup>th</sup> April 2023.
21. Order 50 Rule 8 of the Civil Procedure Rules provides for computation of days. Specifically, it provides as follows:
- In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.
22. Further, where time expires on a Sunday, Order 50 Rule 3 of the Civil Procedure Rules provides the following guidance:
- Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.
23. Accordingly, the period taken by the appellant to file to the appeal is thirty-seven (37) days, excluding 10<sup>th</sup> March 2023 when the ruling was delivered by the trial court. The 9<sup>th</sup> April 2023, being the 30<sup>th</sup> day fell on a Sunday. But it does not change the count of the days since there were seven more days in addition to the thirtieth. The next working day was 10<sup>th</sup> April 2023.
24. The record does not bear any information or fact that after the 30<sup>th</sup> day of the delivery of the Ruling the appellant moved this Court in terms of the proviso to Section 79G of the *Civil Procedure Act*. The appellant, having filed the appeal seven (7) days out of the stipulated time failed to comply with the law. The Court ought not to exercise jurisdiction over a subject not competently before it. As earlier observed, whether or not an appeal is filed within time is a jurisdictional issue. Consequently, the Court does not have the jurisdiction to entertain the instant appeal, the same having been filed out of time.
25. In *Owners of the Motor Vessel Lilian "S" v Caltex Oil (Kenya) Limited (Civil Appeal No. 50 of 1989) [1989] KECA 48 KLR*, Nyarangi, J.A expressed himself on the matter of jurisdiction in the following terms:
- A question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter was then obliged to decide the issue right away on the material before it. Jurisdiction was everything. Without it, a court had no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downed tools in respect of the matter before it the moment it held the opinion that it was without jurisdiction.
26. In the circumstances, the court has no choice but to down its tools at this juncture. Accordingly, the appellant's appeal is dismissed.
27. As to who should bear the costs of the appeal, Section 27 of the *Civil Procedure Act* is instructive that costs are awarded at the discretion of the court but they ordinarily follow the event. The appellant having not succeeded will bear the costs of the appeal.
28. Orders accordingly.



**JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2025.**

**HON. DR. IUR NYAGAKA,**

**JUDGE**

From 1:19 PM to 1:27 PM, in the presence of,

Md. Fiona: Court Assistant.

Mr. Magara Advocate for the Appellant

Mr. P. Ojala Advocate for the for 1<sup>st</sup> Respondent

Ms. Odhiambo acting alongside Mr. Ojala Advocate.

