



M Oriental Bank Limited v Kenya National Highways Authority & another (Environment and Land Petition E007 of 2024) [2025] KEELC 6787 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND PETITION E007 OF 2024**

CK YANO, J

OCTOBER 9, 2025

BETWEEN

M ORIENTAL BANK LIMITED PETITIONER

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST RESPONDENT

NATIONAL LAND COMMISSIONS 2ND RESPONDENT

RULING

1. The Petitioner commenced this suit by way of Petition dated 24th May, 2024 claiming violation of various provisions of *the Constitution* of Kenya, 2010 by the Respondents. The subject matter of the said petition is the parcel of land comprised in Title No. Noonkopir Township/454. The Petitioner claims that the registered proprietors thereof charged the land to it as security on 27th March, 2014, but due to the actions of the Respondents, they could not realise the security.
2. The 1st Respondent herein filed a Preliminary Objection dated 5th December, 2024 asking the court to strike out the Petition. The grounds raised in the Preliminary Objection are that this court lacks territorial jurisdiction to take cognisance of, hear and determine the issues raised in the Petition, and that it is therefore an abuse of the process of the court.

Submissions:

3. On 30th April, 2025 the court directed that the preliminary objection would be canvassed by way of written submissions. The parties were granted 14 days each to file their written submissions, with the 1st Respondent starting. The matter was mentioned on 21st May, 2025 to confirm the filing of submissions.
4. On the said date, Ms. Obino Counsel for the 2nd Respondent informed the court that they did not oppose the PO. Counsel for the Petitioner however asked for 14 more days to comply and file



his submissions, which prayer was allowed. I have perused the court file and combed through the CTS online filing platform, and confirmed that the Petitioner did not file its submissions. The 1st Respondent complied and filed its submissions dated 7th May, 2025.

The 1st Respondent's Submissions;

5. On behalf of the 1st Respondent, Counsel cited the celebrated case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) 1 EA 696 where a PO was defined as a pure point of law which may dispose of the suit. Counsel submitted that the PO herein raised the issue of jurisdiction, which meets the threshold in the Mukhisa Biscuit Case. Counsel submitted that a Court may only exercise the jurisdiction conferred upon it by *the Constitution*, statute or both. This was the holding in the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR and Owners of the Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd (1989) KLR 1.
6. Counsel further submitted that this Court derives its jurisdiction from Section 13 the *Environment and Land Court Act*. Counsel added that under Section 12 of the *Civil Procedure Act*, matters ought to be filed within the local limits of whose jurisdiction the property is situated. In addition, that Section 15 thereof provides that other suits are to be instituted where the defendant resides, or cause of action arises.
7. Counsel submitted that from the Petition, it is clear that the suit property is identified as L.R No. NOONKOPIR TOWNSHIP/454, and is located at Kajiado. This has also been established in the Certificate of Lease dated 30th November 2024 as well as the survey report. Counsel pointed out that an Environment and Land Court exists in Kajiado. Further, that the ELC in Kajiado has been listed and named in the Judiciary Environment and Land Court New Divisions: User Operations Guidelines 2023 as having jurisdiction over the suit property as well as other pieces of land located in Kajiado
8. Counsel submitted that there is no explanation why the instant Petition had been filed in Eldoret miles away from the location of the suit property. Counsel asserted that the Eldoret ELC lacks territorial jurisdiction, and thus should dismiss the petition.
9. Counsel also submitted that jurisdiction has to be there when the suit was filed in the first instance, otherwise the suit would be dead on arrival and could not be remedied. Further, that where a suit is filed without jurisdiction, the only remedy is to withdraw it and file it in a court with jurisdiction. Counsel submitted that a court cannot transfer a suit from a court that lacks jurisdiction to another suitable court as in doing so, it sanctifies an incompetent suit. Counsel cited Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR and Macfoy v United Africa Co LTD [1961] 3 All ER, 1169.
10. Counsel prayed that the matter should not be transferred to Kajiado ELC or any other Court whatsoever. He relied on Kagenyi v Musiramo and Another (1968) E.A. 43, Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another (2012) eKLR and Phoenix of E.A Assurance Co. Ltd v S.M Thiga t/a Newspaper service (2019) eKLR. Counsel asked the court to uphold the Preliminary Objection dated 5th December, 2024 and strike out the Petition dated the 24th May, 2024 with costs.

Analysis and Determination:

11. I have considered the preliminary objection and the written submissions filed by the parties herein. In my view, the issues for determination are:-
 - i. Whether the suit herein ought to have been filed at the Kajiado ELC
 - ii. Whether the lack of territorial jurisdiction is fatal to this suit



iii. Who shall bear the costs for this preliminary objection?

i. Whether the suit herein ought to have been filed at the Kajiado ELC;

12. The most appropriate definition of a Preliminary Objection was indeed set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 where the court had this to say:-

“... A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point 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.”

13. In the same decision, Sir Charles Newbold, P further held 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 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...”

14. The test to be applied in determining whether the 1st Respondent’s PO met the threshold or not is what Sir Charles Newbold set out above in the *Mukisa Biscuits Case* (supra). In the instant PO, the 1st Respondent has raised the issue of jurisdiction. Jurisdiction, as is well known, refers to the authority which a court has to hear the matters that are being litigated before it and to make a determination thereon by way of its decision.

15. On jurisdiction, in the now famous case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* (1989) eKLR, the Court of Appeal held that:-

“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.”

16. The jurisdiction of the Environment and Land Court is prescribed at Article 162(2)(b) as read with Section 13 of the *Environment and Land Court Act*. When it comes to territorial jurisdiction, the applicable law is found in the *Civil Procedure Act*, which at Section 12 provides that:-

12. Suit to be instituted where subject matter situate

Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;



- (f) for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.

17. In addition, Section 15 of the *Civil Procedure Act* reads as follows:-

15. Other suits to be instituted where defendant resides or cause of action arises

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- (b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

18. Explanation (2) under Section 15 of the Act explains that a corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

19. I have seen the Certificate of Lease dated 29th November, 2009 annexed to the Petition, showing that the land was leased by the County Council of Olkejuado to Tarus Stephen Kipkiyeni and Jane Jeptanui Rotich. The Certificate of Lease was issued by the Kajiado Land Registry. Also annexed to the Petition is a Survey Report prepared by Gatome & Associates and forwarded through a letter referenced KIT/KJD/2021, as well as a Valuation Report by Acumen Valuers Limited. The letter, Survey Report and valuation report all indicate that L.R. No. Noonkopir Township/454 is in Kitengela Town, Kajiado County.

20. Going by that fact alone, the suit herein ought to have been filed at the Environment and Land Court at Kajiado. But per Section 15 of the *Civil Procedure Act*, in the event that none of the Respondents have subordinate offices in Kajiado, then the suit could only be instituted at Nairobi where both their principal offices are. Notably, the Petitioner did not bother to explain to this court why this suit was filed in Eldoret.

ii. Whether the lack of territorial jurisdiction is fatal to this suit;

21. No doubt that lack of territorial jurisdiction and pecuniary jurisdiction could mean certain doom. The question now is whether the failure to approach the Kajiado ELC is fatal to this suit. The 1st Respondent argued that since the Petition was filed in a court that lacks territorial jurisdiction, then



was incompetent and not even transfer to the Kajiado ELC can salvage it. It is the 1st Respondent's case that the suit is void and it ought to be struck out instead.

22. Indeed, based on the decision of the Court of Appeal in *Equity Bank Limited v Bruce Mutie Mutuku t/ a Diani Tour & Travel (2016) eKLR* among other decisions, a court without jurisdiction has no power to transfer a case to a court with jurisdiction.
23. This would have been the case if this suit was filed in the High Court which does not have jurisdiction over land disputes, for then, the suit would be incompetent, fatally defective and doomed to fail. Not even transfer to the Environment and Land Court would save such a suit.
24. However, the Petition was duly filed in the Environment and Land Court, which even though in Eldoret, does have jurisdiction to entertain a dispute of its nature. This court, like the Kajiado ELC, has jurisdiction under Article 162(2)(b) of *the Constitution* as well as Section 13 of the *Environment and Land Court Act* to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. This jurisdiction donated by *the Constitution* and the *Environment and Land Court Act* does not limit this authority to particular territories of this country.
25. It must be noted that territorial jurisdiction is, without a doubt, aimed at ensuring the convenience of parties while litigating and to ensure access to justice, as was held in *Kassam & Another v Pearl Beach Hotels t/a English Point Marina (2022) KEHC 14132 (KLR)*, where the court stated that:-

“Indeed, as submitted by the objector in its written submissions that the purpose of section 15 of the Act was to protect defendants against the burdens of being sued and litigating in distant and inconvenient forums and also to facilitate just, expeditious, proportionate and affordable resolution of civil matters. These being the pillars of convenience as set down in the aforementioned section it would therefore be incumbent upon the defendant/objector to place before this court any material to show ill-motive by the plaintiff in using geographical inconvenience to defeat the substantive ends of justice and/or by demonstrating to the court how the current location acts as an impediment to its right to accessing justice; and finds that the defendant/objector has failed to provide any such material.”

26. Similarly, in *Hangzhou Agrochemical Industries Ltd v Panda Flowers Limited (2012) eKLR*, Justice Odunga explained that:-

“16. Efficient disposal of the business of the court and efficient use of available judicial and administrative resources would necessary demand that as much as possible cases be filed within the jurisdiction of the subject matter so as not to clog other registries while others remain unutilised. As for the timely disposal of the proceedings, again it would be prudent that the cases which have been instituted and are already being processed should not be unduly interrupted. The need to have the cases disposed of at a cost affordable to the respective parties on the other hand would call for the court to examine the costs implications involved in carrying out the trial at one place and not another. It is clear therefore that it is a matter of balancing the interests of the parties with the ultimate aim of doing justice.”



27. With regards to whether the this court can transfer the matter to the ELC Court at Kajiado, Order 47 Rule 6 of the Civil Procedure Rules provides as follows:-

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“ 6. Place of trial [Order 47, rule 6]

(1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.

(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.”

28. Order 47 Rule 6 was explained by the High Court in *Rapid Kate Services Ltd v Freight Forwarders Kenya Limited & 2 others* (2005) 1 KLR 292, where Emukule, J. stated that:-

“Whereas under rule 5(2) of Order 46 the Court has a wide and flexible discretion to order that a case be tried in a particular place, that discretion may however be exercised upon cause being shown, and that cause shall have regard to the convenience of the parties, and of the witnesses, the date of when the trial shall take place, and the circumstances of the case. The Court’s power to transfer proceedings from one Court to another is a useful corrective to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the Court will have regard to the nature and character of the proceedings the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power of the Court under section 3A of the *Civil Procedure Act*...Although there is only one High Court in Kenya which sits in different areas as directed by the Chief Justice (as opposed to subordinate courts established under various laws) it is not forbidden for a Kenyan High Court sitting in one location to order a transmission or allocation of a case file before him to another judge sitting in another location. It must be a matter of discretion for the judge and it must be for compelling reasons which would be for the purposes of ensuring justice and this is all within the inherent power of the Court under section 3A of the *Civil Procedure Act*...Whereas there is no express provision in the *Civil Procedure Act* Cap 21 for transfer of cases from one High Court to another, it does not mean that in a proper case the Court cannot transfer a case before it to another registry of the High Court. The fact that there is no provision on the matter cannot prevent the High Court from deciding it, if by doing so, it will be able to deliver justice. In doing so the Court will employ its unlimited and inherent jurisdiction...There is no such express provision for intra-High Court transfer of cases from one civil registry to another. In addition to the Court’s inherent power under section 3A to make orders to meet the ends of justice, there are provisions of order 46 rule 5(2) which expressly empower the High Court to order that a case be tried in a particular



place to be appointed by the Court. The language in this rule is deliberately guarded that the suit be “tried” not transferred” in a particular place appointed by the Court...This power is clearly unlike that under section 18 of the *Civil Procedure Act* where the High Court may order the transfer of a case to a subordinate court or withdraw the case, try and dispose it itself or order on how such suit shall be disposed. The power of the High Court under order 46 rule 5(2) is to order for the place where the suit shall be tried and for that purpose achieve the horizontal movement of intra High Court cases from one registry to another. In this way, the High Court ensures that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order of transfer the Court will have regard to the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power, which will be exercised having regard to all the circumstances of the case”.

29. Therefore, even if there were no specific provisions to allow a court do a particular act, there exists the inherent and jurisdiction to act fairly and equitably to secure the interests of justice. Sections 3 and 3A of the *Civil Procedure Act* provide that:-

“ 3. Saving of special jurisdiction and powers

In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.

3A. Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

30. The inherent jurisdiction of the Court was defined as the authority which enables it to fulfil itself properly and effectively, as a court of law. Further, that it is a virile and viable doctrine and has been defined as being a residual source of powers which the court may draw upon as necessary whenever it is just and equitable to do so. The court exercised its inherent jurisdiction in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and secure a fair trial between them. (See *Madara Evans Okanga Dondo v Housing Finance Company of Kenya (2005) eKLR*).
31. This inherent jurisdiction as well as the inherent power has often been exercised by the Courts to transfer cases from one Court to another Court.
32. In the *Hangzhou Agrochemical Industries Ltd Case (Supra)*, Justice Odunga further held that:-

“ 17. In my view therefore, the High Court is perfectly entitled, where it so deems appropriate, to direct that a matter filed in one place be heard by the same Court sitting at a different place. The mere fact that the change of venue may involve the change in the presiding officers concerned does not derogate from the fact that it is still the same High Court hearing the matter. A Judge of the High Court is a Judge wherever he is and carries with him the jurisdiction of that court and mere posting to different stations is, in my view,



simply an administrative arrangement which does not deprive the Judge of his Constitutional mandate.”

33. The ELC possesses inherent jurisdiction, meaning it has the power to manage its own affairs and ensure justice is served. This inherent power allows the ELC to transfer a case to another ELC territory if it's deemed necessary for a fair and efficient hearing. It is this inherent and/or residual power of this court that gives it authority to transfer this case to the Environment and Land Court at Kajiado.
34. This court has already found that it is properly seized with unlimited jurisdiction to hear and determine this matter. This therefore means that it also has jurisdiction to transfer it to the Environment and Land Court at Kajiado in view of the fact that the subject property is located there, and to ensure convenience for the parties litigating before it.

iii. Who shall bear the costs for this preliminary objection?

35. On the issue of costs, Courts are guided by Section 27(1) of the [Civil Procedure Act](#) which provides that:-

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“27. Costs

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

36. Despite the fact the general rule that costs follow the event, this court therefore has discretion to decide whether or not it will make an award for costs. However, where a court opts to depart from the general rule on costs, it is required to record the reasons for its decision. See *Joseph Oduor Anode v Kenya Red Cross Society* (2012) KEHC 3607 (KLR), where it was held that:-

“I agree with Mr Kuloba that whereas this Court has discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute is that costs follow the events unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words where the Court decides not to follow the general principles the Court is enjoined to give reasons for not so doing. In my view it is the failure to follow the general principles without reasons that would amount to arbitrary exercise of discretion and not the other way round.”

37. In this instance, although the 1st Respondent has not succeeded in establishing its PO, I note that it is the Petitioner's decision to file this suit in Eldoret that gave rise to the PO in the first place. For, this reason, this court will not condemn the 1st Respondent to costs.



Orders:

38. In conclusion, I find that the 1st Respondent's preliminary objection is not merited and I dismiss it with no order as to costs. Consequently, I order that this matter be transferred to the Environment and Land Court at Kajiado for hearing and determination.

39. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 9TH DAY OF OCTOBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Mr. Mwetich for petitioner.

Ms. Kwamboka for 1st Respondent.

Ms. Obino fro 2nd Respondent.

Court Assistant - Laban.

