

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA KAKAMEGA
HIGH COURT CIVIL APPEAL NO 156 OF 2023

MICHAEL ODWOMA-----1ST
APPELLANT

BIBIAN ODWOMA----- 2ND
APPELLANT

VERSUS

KENNEDY KATIECHI MUKOYANI-----1ST
RESPONDENT

ELIJAH MBALUKA-----2ND
RESPONDENT

ANDREW OTIENO----- 3RD
RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS----- 4TH
RESPONDENT

THE ATTORNEY GENERAL----- 5TH
RESPONDENT

(Appeal from the judgment of V.O AMBOKO -PM delivered on 11th October 2023 in Kakamega CMC NO 13 of 2017)

JUDGEMENT

1. The plaintiffs herein had instituted a suit at the lower court on 15th January 2017 seeking a declaration that the all documents/agreements signed by the plaintiff individually or jointly on the 19th day of July 2016, 31st day of October 2016 and 9th day of December 2016 are null and void and unenforceable for the reasons that they were signed under duress, threats, harassment perpetuated by the 1st, 2nd and 3rd defendants. They further sought a declaration that the agreement dated 16th January 2017 between the 1st Respondent and the 6th Respondent in respect of the sale of

the 1st appellant's motor vehicle registration number KBX 944 J is null and void for lacking the consent of the 1st Appellant.

2. The trial court, upon hearing the parties' case, raised the issue of jurisdiction. They aver that the issues raised by the plaintiff touch on the violation of fundamental freedoms and rights under the constitution, which fall under Article 165 (3) (b) of the constitution, and hence the lower court lacked the jurisdiction to grant the prayers sought by the Appellant.
3. The plaintiffs, being aggrieved by the decision of the trial court, filed an appeal stating that the Hon. Magistrate erred both in fact and law when she struck out the appellant's suit on the ground that she did not have jurisdiction to grant the orders sought.
4. They pray that the appeal be allowed and judgment be entered in their favour as follows;
 - a) A declaration that the 2nd and 3rd Respondent abused their powers when they falsely and illegally detained the plaintiffs, as indicated in paragraphs 19 and 20, against the plaintiffs
 - b) An order directed against the 2nd, 3rd, 4th and 5th defendants directing that they individually or collectively pay to the plaintiff's general damages as shall be determined by the court for false arrest and illegal detention
 - c) A declaration that all documents/agreements signed by the plaintiff individually or jointly on the 19th day of July 2016, 31st day of July 2016 and 9th day of December 2016 are null and void and consequently unenforceable for the reason that the

same were signed under threats, harassment, coercion and duress perpetuated by the 1st, 2nd and 3rd defendants

- d) A declaration that the Agreement dated 16th January 2017 between the 1st Defendant and the 6th Defendant in respect of the sale of the 1st Plaintiff's motor vehicle registration number. KBX 944J is null and void, lacking the consent of the 1st plaintiff
- e) An order that the 1st, 2nd and 3rd Defendants do return the 1st plaintiff's motor vehicle Reg. No KBX944 J Toyota Hilux double cabin, and the alternative is the Kshs. 2,850,000.00 is the value of the vehicle at the time when the vehicle was illegally taken away from the 1st defendant and subsequently sold to the 6th defendant without the consent and knowledge of the 1st plaintiff.
- f) An order directed at the 1st defendant to immediately return to the 1st plaintiff the following original documents;
- i. Original title deeds to L.R. NO. KAKAMEGA/SHIKKULU/3183,3412,3510,3511,3512,3513 and 3581
 - ii. Original sale agreement towards the purchase of L.R. NO KAKAMEGA MUNICIPALITY BLOCK 11/20 and an original landlord's notice thereof to terminate or alter terms of tenancy dated 25th day of May 2016
 - iii. Original sale agreements towards the purchase of LR Kitisuru plot 17/75 between the 1st plaintiff and Purvis

Kara Baker, and that between the 1st plaintiff and the 1st defendant.

iv. Original logbook in respect of motor vehicle Reg. No. KBX 944 J Toyota Hilux double cabin and original sale agreement thereof between the 1st plaintiff and the previous owner

g) An order restraining the 2nd, 3rd, 4th and 5th defendant from arresting and prosecuting the plaintiffs over the transaction involving the 1st plaintiff and the 1st defendant over the sale of LR NO KITISURU17/75

h) Interest on the amount in 5 above from January 2017 until repayment in full

i) Costs of the suit

j) Any other order or relief that the Honourable Court may deem fit and just to grant in the circumstances.

5. No submissions were filed by the parties at the time of writing this judgment, leaving this Court to determine the appeal based on the memorandum of appeal and the record of lower court proceedings. The core issue is whether the Chief Magistrate's Court lacked jurisdiction to entertain the suit, warranting the to dismissal of the appellant's suit.

6. Jurisdiction is the cornerstone of judicial authority. *In Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR*, the Court of Appeal held: ***"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.” This principle is echoed in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR**, where the Supreme Court emphasised that a court’s jurisdiction flows from the Constitution or statute, and proceedings without jurisdiction are a nullity.

7. The Court of Appeal in **Karisa Chengo & 2 Others v Republic [2017] eKLR** reaffirmed that jurisdiction flows from the Constitution or statute and cannot be conferred by the consent of the parties. The learned judges stated that ***“a court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”*** Similarly, in **Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012] eKLR**, the Supreme Court underscored that “a court’s jurisdiction flows from either the Constitution or legislation or both.” It therefore follows that once a court finds that it has no jurisdiction, any proceedings or orders issued thereafter are a nullity.
8. It was the appellants’ case that the trial magistrate should have proceeded to determine the matter on its merits since the claim involved transactions and agreements allegedly executed under coercion. But did not raise any constitutional issues which called for invitation of the Jurisdiction of the High Court.

9. I have looked at the pleadings and prayers from the Lower Court , the Appellant alledge that they were wrongly arrested by the police and detained the root cause being Civil transactions.
10. Upon being arrested, they were allegedly forced to sign agreements .
11. In the lower court the Appellants wanted the court to find that they were wrongly arrested, wrongly detained thus they were entitled to damages for arrest and wrongful detention.
12. They further wanted those agreements they signed while in custody be declared unenforceable for reason that they were coerced to enter into such agreements.
- 13.** The Magistrates Court Act Section 7(1) provides:- **A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—**
- (a) twenty million shillings, where the court is presided over by a chief magistrate;**
 - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;**
 - (c) ten million shillings, where the court is presided over by a principal magistrate;**
 - (d) seven million shillings, where the court is presided over by a senior resident magistrate; or**
 - (e) five million shillings, where the court is presided over by a resident magistrate.**
14. From the above a Magistrates Court has powers to determine whether a civil wrong (tort) of false arrest and false imprisonment

has been committed or not and if committed the amount of damages to award as compensation to the wronged person.

15. Similarly a Magistrates court has powers to determine whether a contract (agreement) is valid or not and some of reasons which can vitiate(nullify) or render a contract unenforceable is, if there is prove that a party was coerced or undue influence was exerted on him or her that is, if the contract was entered under duress.

16. So if the Magistrate had properly examined the pleadings and the prayers vis a vis the law should have arrived to a different finding.

17. For above reasons, I find that the Appeal has merit , it is allowed with no orders as to costs, for no party can be blamed for the error.

18. The file is remitted back to the Chief Magistrates' Court for hearing before another Magistrate who is possessed of the requisite pecuniary jurisdiction.

19. Mention on 27th November, 2025 before the Chief Magistrate for re-allocation.

20. Right of Appeal 30 days.

21. File closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA
THIS 29TH DAY OF OCTOBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

In the absence of all the parties and the advocates though aware of the Judgment date.