



court where it was filed. It was a simple claim to receive money, arising out of a failed contract. The Chief Magistrate's Court had substantive jurisdiction to determine that suit, whenever it sat, geographically.

5. The matter was turned more on territorial or geographical jurisdiction. The facts, relating to where the contract was consummated, were all over the place. The money was paid for a contract to be performed at Kajiado. The defendants were apparently based at Eldoret, it appeared as if the contract was executed at Eldoret, or online, as the appellant was based in the USA. There was also the issue of Nairobi, where the appellant appeared to have a residence. To the trial court, geographically, the suit could be filed at Kajiado, where the project was to be executed, or Eldoret, where the contract was drawn. It was found that not much was going for Nairobi, as there was nothing to show that the appellant had a residence there.
6. I do not think that a suit should be struck out merely because the court, where it was filed, lacked territorial jurisdiction. Substitutive justice would require that such a suit be transferred to the court with jurisdiction. The court, without territorial jurisdiction, ought to just down its tools, and leave it to the parties, to move the court with jurisdiction to order transfer.
7. The issue of striking out should arise only where the court, where the suit is filed, has no substantive jurisdiction. Even then, the higher courts, the Court of Appeal in particular, are conflicted on this. One view holds that such a suit ought to be struck out; the other holds that it ought to be transferred to the court with jurisdiction. The High Court, for example, has no jurisdiction over land, environment, employment and labour relations matters, but such matters, if filed there, are routinely transferred to the appropriate courts, to wit the Environment and Land Court and the Employment and Labour Relations Court, without the issue of striking out arising.
8. The legal environment changed fundamentally, after the promulgation of the current Constitution, in 2010. The focus now is on doing substantive justice, and eschewing rules of procedures that are likely to undermine justice delivery. Territorial jurisdiction is for administrative convenience, to avoid suits being filed all over the place, and to bring order on where filing ought to be done. It should

not be used to drive parties from the judgment seat, if it is established that a court, where the suit is filed, is, territorially, not the place where the suit should have been filed. Such suit should be transferred to the proper place, rather than have it struck out. Striking out is punitive and drastic. Parties go to court to get justice, and striking out of a suit is not doing justice, particularly where the suit strays into the wrong court. Let such a suit be pointed in the direction of the correct court, by being transferred there.

9. I find merit in the appeal herein. I hereby allow it. The consequence shall be that the order, of the trial court, of 28<sup>th</sup> March 2024, is set aside, and substituted with the order reinstating that suit, Nairobi, CMCCCOM No. E132 of 2023, and a further order that that suit be transferred to the Kajiado Chief Magistrate's Court, for hearing and disposal. Each party to bear own costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT  
BUSIA, ON THIS 9<sup>TH</sup> DAY OF FEBRUARY 2026.**

**WM MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.**

**Mr. Maurice Onyango, Court Assistant, Milimani, Nairobi.**

**Advocates**

**Ms. Migiro, instructed by PK Mureithi & Company, Advocates for the appellant.**

**George Sonkule, Advocate for the respondent.**