

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
CIVIL APPEAL NO. E009 OF 2024

ALFRED NG'ANG'A MUKOKI.....1ST APPELLANT
NIC BANK KENYA PLC.....2ND APPELLANT
FARMERS FRESH FEEDS.....3RD APPELLANT

VERSUS

JOHN NKONGE BUNDI (Suing as the legal representative
of the estate of BRIAN MUTUGI
NKONGE.....RESPONDENT

*(Being an Appeal against the ruling and order of Hon.
Gandani-(C.M) delivered on 30th April 2024 in Chuka
CMCC No. E144 of 2022).*

JUDGEMENT

1. This Appeal emanates from the ruling and order of Hon. Gandani (C.M) delivered on 30th April 2024 in Chuka CMCC No. E144 of 2024.
2. The brief facts of this matter follows. By Plaint dated 17th July 2022, the Plaintiff (now Respondent) sued the Defendants (now Appellants) for general and special damages arising out of a road traffic

accident alleged to have occurred on 21st April 2022. The Appellants entered appearance and vide a joint statement of defence dated 9th September 2022 denied the claim.

3. Parties subsequently entered into a consent on liability in the ratio of 80:20 which was adopted on 15th May 2025. The matter then proceeded for hearing and parties filed written submissions. The matter was slated for judgement on 27th September 2023 and when the same was due for judgment, the trial court (Hon. Kinyua RM) directed that the matter be placed before the Chief Magistrate for directions. He observed that there was a possibility that the award would be in excess of its pecuniary jurisdiction.

4. The matter was placed before the Chief Magistrate (Hon. Gandani) on 4th October 2023. Mr. Kiogora, counsel for the Defendant objected to the transfer of the matter at that stage arguing that the court

had heard the witnesses and was expected to write its judgment. That the Plaintiff was aware of the pecuniary jurisdiction of the Resident magistrate at the time of filing the suit but willingly submitted himself to the jurisdiction of the said court.

5. The Chief Magistrate (Hon. Gandani) through a ruling dated 8th November 2024 allowed the transfer and upon confirming that written submissions had been filed issued a judgement date for 6th March 2023 which would later be deferred to 30th April 2024.

6. On 30th April 2024, the court instead of delivering a judgment, delivered a ruling and ordered the Plaintiff to amend his Plaint to include another administrator being the widow in Miscellaneous Succession E045 of 2022.

7. Dissatisfied with the ruling, the Appellants lodged the present Appeal. The Memorandum of

Appeal dated 21st May 2024, set out the following grounds:-

- i. That the learned trial magistrate erred in law and fact by failing to deliver a judgment in the matter and instead opted to deliver a ruling which seeks to re-open the matter and seal gaps exposed by the Appellants during the trial of the matter.
- ii. That the learned trial magistrate erred in law and fact by failing to deliver a judgment in the matter based on the pleadings and evidence presented before her and instead descended into an arena of litigation by requiring that certain evidence be availed before writing the judgment as opposed to being an impartial arbiter in the matter.
- iii. That the learned trial magistrate erred in law by sanitising an illegality/irregularity when she accepted to write a judgment in a matter that

was heard by another court and irregularly transferred to her court.

8. The Appellant prayed that the Appeal be allowed with costs and the trial court's ruling and order be set aside and the matter be remitted for writing of the judgment before the court which heard the matter.

9. My duty as the first appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. This principle was espoused by the Court of Appeal in the case of **Kiilu & Another-v-Republic (2005) 1 KLR 174** where the Court of Appeal stated: -

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court's own decision on the evidence. The first

appellate court must itself weight conflicting evidence and draw its own conclusions.

It is not the function of a 1st appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusion. It must itself make its own finding. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had advantage of hearing and seeing the witnesses."

10. The Appeal was canvassed by way of written submissions as directed by the court. The Appellants filed their submissions dated 17th July 2025 framing the following issues for determination: -

- i. Whether the trial court erred in failing to deliver judgment and instead opted to deliver a ruling reopened the case sealing the gaps in the Respondent's case.
 - ii. Whether the judgment should be written and delivered by a different court from the one that took evidence.
 - iii. Costs of the appeal.
11. The Respondent filed his submissions dated 30th September 2025 framing the following issues for determination: -
 - i. Whether the lower court erred in delivering a ruling instead of a judgment reopening the Respondent's case.
 - ii. Whether the Law of Succession Act requires there be two administrators to administer an estate on behalf of a minor dependent.

- iii. Whether the learned trial magistrate erred in law and fact by failing to deliver a judgment in the matter based on the pleadings and the evidence presented before her and instead descended into the arena of litigation requiring that certain evidence be availed before writing the judgment as opposed to being an impartial arbiter in the matter.

Analysis and determination

12. I have considered the trial record, grounds of appeal and the respective submissions of the parties as well as the authorities cited. The following issues arise for determination: -
 - i. Whether the trial court erred by failing to deliver judgment and instead reopened the Plaintiff's case to include another administrator.
 - ii. Whether a judgment can lawfully be delivered by a magistrate who did not hear the evidence.

(1).Whether the trial court erred by failing to deliver judgment and instead reopened the Plaintiff’s case to include another administrator.

13. It was submitted by the Appellants that the duty of the trial court is to review the evidence and consider the same on the strict basis of the pleadings before it and arrive at a determination that is within the law. That the trial court had no basis reopening the Respondent’s case with a view to aiding the Respondent seal the gaps exposed during trial whereas a court should remain impartial. In support of their argument, they relied on the case of **Chege v Bank of Baroda (Kenya) Ltd [2023] KEELRC 1458 (KLR)** where the court held: -

“...courts should be impartial and temples of justice and any perception or

real bias should be eliminated by parties sticking to the rules and procedures as provided for in law...”

14. They also relied on the case of **Malawi Railways Limited v Nyasulu [1998] MWSC** which held as follows: -

“As the parties are adversaries, it is left to each one of them to formulate his own case in his own way, subject to the basic rules of pleadings... For the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at trial.

The court itself is bound by the pleadings of the parties as they are themselves. It

is no part of the duty of the court to enter upon an inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised.

Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter to the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be denial of justice.

In the adversarial system of litigation therefore, it is the parties themselves

who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any other Business” in the sense that points other than those specific may be raised without notice.”

15. The Appellants further cited the case of **Libyan Arab Uganda Bank for Foreign Trade and Development and Anor v Adam Vassiliadis [1986] UGCA** where the Ugandan Court of Appeal cited with approval the dictum of **Lord Denning in Jones v National Coal Board [1957] 2QB 55** which emphasized that courts sit to hear and determine issues raised by the parties not to conduct an investigation or examination on behalf of the society at large.

16. The Respondent on his part submitted that the Chief Magistrate exercised the court’s inherent

jurisdiction in reallocating the matter on grounds of pecuniary jurisdiction. That the matter was filed in the Magistrate's court and its allocation to the Resident Magistrate's court is an administrative duty by the court as the special damages pleaded were Kshs. 172,900. That the claim for loss of dependency after liability had been agreed upon formed the basis for transfer to the Chief Magistrate by the Resident Magistrate which decision has not been appealed against. Further, that in their defence, the Appellants submitted to the jurisdiction of the court and no preliminary objection was raised.

17. The Respondent submitted that the lower court's decision to deliver a ruling instead of a judgment was proper and within the confines of the law after having noted only one administrator was handling the administration of the estate that had a minor dependent. They urged that the court's

mandate was to facilitate justice and safeguard interests of all parties and particularly those of minors who are considered primary beneficiaries and dependents in succession matters.

18. I have paid due consideration to the respective submissions of the parties and the persuasive authorities cited.

19. In **Galaxy Paints Co. Ltd v Falcon Guards Ltd [2000] eKLR**, the Court of Appeal held that: -

“It is trite that issues for determination in a suit generally flow from the pleadings. A court cannot make a determination on issues not pleaded.”

20. Similarly, in **Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others [2014] eKLR**, the Court of Appeal affirmed that a court cannot

introduce issues not founded on the pleadings, observing:

“Parties are bound by their pleadings, which set the agenda for the trial.”

21. In the present case, the issue of the adequacy of administrators was not pleaded, not raised at pre-trial, was not a matter for which evidence was taken, and was not an issue submitted on by either party.

22. The Respondent argued that the ruling was justified under the court’s inherent jurisdiction and in the interests of safeguarding a minor’s rights. I must agree with the Respondent that the court retains inherent power to prevent injustice. However, this power must be exercised within the structure of the adversarial system and cannot be applied to the prejudice of another party or to rewrite a litigant’s case.

23. The Court of Appeal in **Stephen Boro Gitiha v Family Finance Bank & 3 Others [2015]**

eKLR reiterated that inherent power cannot be used to circumvent express legal procedures or to reopen a case after close of trial except under narrowly defined circumstances such as review under Order 45.

24. In this case, the trial court's ruling effectively reopened the Respondent's case long after evidence had been closed and submissions filed. No application for amendment had been made, and the Appellants were denied a chance to be heard on the new issue. The trial court's introduction of a fresh issue at the tail end of proceedings was therefore inconsistent with the legal principles already outlined in the case law above. This was a material procedural irregularity.

25. I observe however the intention of the court was to protect the rights of a minor. On this score

the correct place to do that was in the succession cause alluded to by the court in its ruling.

26. I therefore find merit in the Appellants' argument that the trial court erred in failing to prepare judgment on the basis of the pleadings and evidence.

(ii).Whether a judgement can lawfully be delivered by a magistrate who did not hear the evidence

27. On this second issue, the Appellant submitted that the action of the Resident Magistrate of declining to write a judgment over a matter that he had fully heard was irregular. That since the parties had submitted themselves to the pecuniary jurisdiction of the court, the least the trial court would have done is to award the maximum amount as per its pecuniary jurisdiction. Further, that it was irregular for a court to write a judgment where they

did not hear the witnesses and take evidence when the court that actually took evidence was present and fully operational.

28. On the other hand, the Respondent submitted that the decision of the Chief Magistrate to deliver a ruling instead of judgement was lawful and necessary. That reallocation of the matter to the Chief Magistrate was justified on grounds of pecuniary jurisdiction, and the exercise of judicial discretion to ensure full compliance with the Law of Succession Act, particularly in safeguarding the interests of a minor dependent, was proper.

29. Jurisdiction, including pecuniary jurisdiction, is conferred by statute and cannot be enlarged or validated by administrative discretion. **Section 7** of the **Magistrates' Courts Act, 2015** sets the monetary limits within which each category of magistrate may adjudicate. Exceeding those limits renders a court without jurisdiction. As held in

**Owners of the Motor Vessel “Lillian S” v
Caltex Oil (Kenya) Ltd [1989] KLR 1,**

jurisdiction is fundamental, and a court lacking jurisdiction must cease to act. The Resident Magistrate was therefore right in not purporting to write a judgement in which he would exceed his pecuniary jurisdiction.

30. **Section 17 of the Civil Procedure Act** provides for transfer of suits among subordinate courts. It states as follows: -

“Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the

objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.”

31. This proviso acknowledges, in principle that a civil suit originally filed in a subordinate court may be validly transferred including mid-proceedings if jurisdictional competence, convenience, or capacity considerations make another subordinate court more appropriate. This Section empowers the High Court alone to transfer suits between subordinate courts. These provisions do not authorize a Chief Magistrate or any magistrate to transfer a suit mid-proceeding to another magistrate on grounds of pecuniary jurisdiction. The Court of Appeal in **Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR** held that proceedings conducted in a court lacking jurisdiction cannot be validated by transfer or consent.

32. In **Kahia Transporters Ltd v Chunky Ltd (Civil [2025] KECA 183 KLR**, the Court of Appeal emphasized the broad discretion courts have to ensure that cases are heard in the forum best able to deliver just and convenient adjudication. The court held as follows: -

“The Court has a wide and flexible discretion to order that a case be tried in a particular place ... the more convenient administration of justice may warrant transfer or allocation to a suitable forum.”

33. In this case, the Resident Magistrate heard all evidence and reserved judgement. The subsequent reallocation to the Chief Magistrate, who had not heard the witnesses, lacked statutory foundation and was irregular. A successor magistrate may only write judgment where the trial magistrate is

unavailable, as contemplated under Order 18 rule 8 of the Civil Procedure Rules, which provides:-

“18. (1) Where a judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of any application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his direction under the said rules, and may proceed with the suit or application from the stage at which his predecessor left it.

(2) The provisions of subrule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Act.”

34. The intention of the rule is to ensure continuity of matters where the Judge or magistrate who heard the case was no longer available.

35. In this case, parties have argued that the trial magistrate Hon. Kinyua (R.M) was still in the station. Circumstances have however since changed and Hon. Kinyua (R.M) was no longer in the station having been long transferred. With respect to pecuniary jurisdiction, I am of the considered view that the trial magistrate having realized that the award was beyond his pecuniary jurisdiction was right to halt further proceedings before him for to continue would compromise justice.

36. In light of the above, I find that the Chief Magistrate acted without statutory authority in reallocating the matter for purposes of judgment writing by a different court while the trial

magistrate was still at the station and in issuing directions outside the scope of the pleadings.

37. In the end, the appeal partially succeeds. I set aside the ruling of Hon. Gandani (C.M) and direct that the case proceed for the writing of judgement before Chief Magistrate Hon. Wambilyanga.

38. Each party shall bear their costs.

Judgement delivered, dated and signed at Chuka this 19th day of February, 2026.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Muthomi for the Respondent and N/A for the Applicant, Muriuki (Court Assistant.)