



**Matete v Co-operative Bank of Kenya Ltd (Civil Appeal E539 of 2024)
[2026] KEHC 1661 (KLR) (Civ) (10 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1661 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E539 OF 2024

WM MUSYOKA, J

FEBRUARY 10, 2026

BETWEEN

MARTIN JOSEPH MATETE APPELLANT

AND

THE CO-OPERATIVE BANK OF KENYA LTD RESPONDENT

*(Appeal from the ruling and orders of Hon. EN Mutie, Resident Magistrate,
RM, delivered on 18th April, 2024, in Milimani MCCC No. E568 of 2024)*

JUDGMENT

1. The original trial records, relating to the matter at the trial court, were not availed. I have a record of appeal before me, but I have no way of telling whether it is a complete record of the material that was before the trial court. I shall determine the appeal, herein, based on what I see from that record. However, I should emphasize that since I sit as a first appellate court, and also a court exercising a supervisory jurisdiction, under Article 165 (6) of *the Constitution*. The Deputy Registrar should have made an effort to cause the original trial records to be availed, prior to clearing the matter for placing before me for determination of the appeal.
2. The suit at the trial court, had been initiated by the appellant against the respondent, seeking to restrain sale of a motor vehicle, and its release to him, taking of accounts and costs.
3. I cannot tell, from the record of appeal, whether the respondent filed a defence, but a memorandum of appearance and a preliminary objection were filed, dated 5th March 2024. The main point of contention was that the suit offended section 15 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, for there was lack of the territorial jurisdiction to hear and determine the matter, for the cause of action arose within the territorial jurisdiction of the courts within Vihiga County.



4. A ruling was delivered, on 18th April 2024, on the said preliminary objection. It was ruled that the transaction, giving rise to the seizure of the motor vehicle, were made by the respondent at its Mbale branch. Mbale is in Vihiga County. The instructions to seize the vehicle emanated from the branch. The court held that it had no jurisdiction, and proceeded to strike out the suit, with costs.
5. That aggrieved the appellant, hence this appeal. The grounds are that the hire purchase contract had been entered into at in Nairobi, and the cause of action arose there; the court acted unconstitutionally; the appellant was denied a hearing, among others.
6. Directions, on the disposal of the appeal, were given on 2nd May 2025, for written submissions. I have seen the written submissions by the appellant, which I have read and noted the arguments.
7. The issue turns on territorial jurisdiction of the court. The dispute was on whether the suit was filed before a court with territorial jurisdiction or not.
8. The trial court, no doubt, had substantive jurisdiction to hear the matter. It fell within its pecuniary jurisdiction.
9. Territorial jurisdiction is not substantive. It is administrative, and, therefore, procedural. It is meant for the convenience of the parties, to have disputes settled within the areas where the cause of action arise, to facilitate easier attendance in court by witnesses, among other factors. Territorial jurisdiction cannot trump or override substantive jurisdiction. A suit could be dismissed, for being filed in a court lacking substantive jurisdiction, but not where territorial jurisdiction lacks. A court lacking territorial jurisdiction, ought not strike out a suit, but it should, instead, invite the parties to apply for transfer of the matter to the court with jurisdiction.
10. Substantive jurisdiction goes to substance, and lack of it cannot be overridden by Article 159 of *the Constitution*. Territorial jurisdiction is administrative and procedural, it is provided in the *Civil Procedure Act*, which governs procedure, and not by the Magistrate's Court Act, Cap 10, Laws of Kenya, which provides for substantive jurisdiction. Territorial jurisdiction can be overrun by Article 159 of *the Constitution*, as a technicality of procedure.
11. The trial court should have considered these issues, before it decided to strike out the suit.
12. Which court had territorial jurisdiction, for the purposes of the suit that was before the trial court? The appellant argues that a court in Nairobi would have had jurisdiction, for the hire purchase contract was entered into in Nairobi. The position by the respondent was that the instructions to seize the vehicle came from Mbale, Vihiga, hence the suit should have been filed in a court at Vihiga.
13. It would appear, from the material herein, that the transaction was done at Kawangware, Nairobi. I have no way of telling if this material was before the trial court, given that the original trial court records were not availed. It would also appear that the instructions to seize the vehicle came from a branch of the bank at Vihiga. It is not clear how the matter moved from the Kawangware branch to the Mbale branch, but what is clear is that the instant dispute would appear to have had something to do with Mbale, and not Kawangware. Consequently, I would agree with the trial court, the suit should have been filed at Vihiga.
14. On 9th June 2024, Majanja J ordered deposit of Kshs. 600,000.00, in a joint account in the names of the parties, and release of the motor vehicle, upon the deposit being made.
15. In view of everything, discussed here above, I find merit in the appeal herein. I hereby allow it. The order, of the trial court, of 18th April 202, striking out the suit at the trial court, is hereby set aside. It is substituted with an order directing that the said suit be transferred to the Vihiga Chief Magistrate's



Court, for hearing and disposal. The orders made herein, on 9th June 2024, shall remain in force, pending hearing and disposal of the matter at the trial court. The instant file shall be closed only upon finalization of the matter at the trial court, or upon further orders of the court. Each party shall bear their own costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 10TH DAY OF FEBRUARY 2026.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

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

Advocates

Mr. Wachakana, instructed by Wachakana & Company Advocates for the appellant.

Mr. Abobo, instructed by Kiruki & Kayika, Advocates for the respondent.

