



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC LAND APPEAL NO. E019 OF 2025**

**PAUL JUVE NGEI MAINGI.....**  
**APPELLANT**

**VERSUS**

**KCB BANK KENYA LIMITED.**  
**.....RESPONDENT**

**JUDGMENT**

**[Appeal from the ruling of Hon. Barbara Ojoo, CM,**  
**delivered on 27/02/2025 in Mavoko Magistrate's Court ELC**  
**Land Civil Suit No. E114 of 2024 between Paul Juve Ngei**  
**Maingi versus KCB Bank Kenya Limited]**

**Background**

1. To help understand the impugned ruling and the appeal, it is important to clarify the subject matter of the dispute that was originally before the trial court and is now before this court.

2. From the plaint dated 16/12/2024, the appellant sued the respondent in respect of portions of land held under Title nos. **8786/654** and **8784/654** (“**mother parcels**”), which the appellant allegedly held under share certificate nos. Q153/1, Q153/2, Q154/1, Q154/2, Q155/1, Q155/2, Q156/1, Q156/2, Q157/1, Q157/1, Q158/1, Q158/2, Q159/1, Q159/2, Q160/1, Q160/2, E727, E728, E726 and E729 (“**suit properties**”), issued to him as a member of the Lukenya West Association. He prayed for the following orders:

***a. The honourable court does declare the respondent’s acts and/or omissions unfair, unlawful and illegal.***

***b. The honourable court does issue an order compelling the respondent to register, standardise and survey the appellant’s portions of land held under the mother parcels without segregation, including plots held by the suit properties.***

***c. That in the event this honourable court is inclined to permit relocation of the appellant, such portion of land upon relocation should be equivalent to the existing portions in size and value.***

***d. That in the event this honourable court is inclined to permit compensation, the court directs that the same be done at current market value, inclusive of all developments done and***

***trees natured in the existing parcels and that the same be surveyed and valued by a certified government valuer.***

3. Of most importance is that the mother parcels have been the subject of determination by this court in the case of **East African Portland Cement Co Ltd & 6 others v Kathilu & 322 others; Kenya National Organization for Victims of Ethnic Clashes & others (Interested Party) [2024] KEELC 7095 (KLR)**, herein referred to as the "previous judgment.", which conclusively resolved issues relating to land use, occupation, and ownership of the mother parcels.
4. Upon being served with the pleadings, the respondent promptly moved the trial court in the application dated 15/01/2025, where they questioned the jurisdiction of the trial court on two grounds: the suit being frivolous, vexatious, scandalous and an abuse of court process and pecuniary jurisdiction. In his replying affidavit deposed on 23/01/2025, the appellant opposed the motion, and, on hearing the parties, the trial court, in the impugned ruling, upheld the motion and struck out the entire suit with no orders as to costs.

#### **Appeal to this court and the hearing**

5. This decision was not well received by the appellant, who exercised his right to appeal by submitting his memorandum of

appeal dated 12/03/2025 and amended on 27/03/2025, wherein he articulated seven grounds of appeal. However, it is apparent from the submissions dated 11/10/2025 filed by his legal representatives, **Ms Mukami Njeru & Associates Advocates**, that he has relinquished most of his grounds. The remaining grounds challenged the impugned ruling for erring in law and fact by: -

***a. Holding the appellant's suit to be res judicata.***

***b. Holding that the appellant's suit exceeds the pecuniary jurisdiction of the chief magistrate's court.***

6. Subsequently, this matter was presented before this court for a hearing, and as directed by the court, it was considered through comprehensive written submissions received from the appellant and from **G & A Advocates LLP**, the law firm representing the respondent, dated 24/09/2025.

### **Issues for Determination, Analysis, and Determination**

7. As this is a first appeal, **Section 78** of the **Civil Procedure Act** authorises this court to make a final decision on a case; to remand the case; to frame issues and refer them for trial; to gather additional evidence or to require that evidence be obtained; or to order a new trial. Therefore, it is expected to re-evaluate and reconsider all the evidence presented before the trial court and to reach its own conclusions. This role of an appellate court was eloquently articulated in **Selle & Another**

**v Association Motor Boat Co. Ltd & others (1968) EA 123**, as follows:

***“An appeal to this court from a trial by the High Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound to follow the trial judge’s findings of fact if it appears that either he clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence on the case generally. (Abdul Hameed Saif -Vs- Ali Mohamed Sholani (1955) 22 EACA 270).”***

This decision of **Selle (Supra)** has been cited in several court cases, including **Timsales Ltd V Wilson Libuywa [2008] Kehc 460 (KLR)**.

8. Accordingly, this court has thoroughly examined the memorandum of appeal, the record of appeal, the submissions of both the appellant and the respondent, the pertinent legal

provisions invoked, and the authorities cited therein. Consequently, in the court's considered opinion, the appeal can be adequately resolved by assessing the residual grounds of appeal, specifically **whether the learned trial magistrate erred in holding the appellant's suit was *res judicata* and/or finding the previous suit was a judgment *in rem* and whether the suit exceeded the pecuniary jurisdiction of the chief magistrate's court.** These two issues shall be addressed sequentially.

**a. Whether the learned trial magistrate erred in holding the appellant's suit was *res judicata* and/or finding the previous suit was a judgment *in rem***

9. In addressing this matter, which has been extensively argued in the submissions presented before this court, it is therefore essential to highlight the pertinent legal provisions and prevailing jurisprudence concerning the principles of *res judicata*. In this regard, the applicable legal framework governing this doctrine is found in our **Section 7** of the **Civil Procedure Act**, as follows:

***“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court***

***competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”***

10. In illuminating on this doctrine, the learned authors of **Mulla, Code of Civil Procedure, 18th Ed. 2012, page 293** explained the purpose of the doctrine and its exceptions in the following words: -

***“The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”***

11. In addressing this principle in the decision **Independent Electoral and Boundaries Commission v Kiai & 5 others [2017] KECA 477 (KLR)** that has been relied upon by the appellant, the Court of Appeal explicated as follows: -

***“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit,***

***the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms; (a) The suit or issue was directly and substantially in issue in the former suit. (b) That former suit was between the same parties or parties under whom they or any of them claim. (c) Those parties were litigating under the same title. (d) The issue was heard and finally determined in the former suit. (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”***

12. Although the appellant argued that both parties acquired an interest in the suit properties after the previous case, this claim is misleading. In his plaint, he stated that he acquired parcels of land that belonged to the plaintiff in the previous judgment, and it was only when that particular plaintiff defaulted on servicing its loan that the respondent, as chargee, exercised its rights of sale, which led to negotiations concerning the suit properties. Moreover, as evident from the certificates of title, the respondent's claim arose during the pendency of the previous judgment. Therefore, he cannot segregate interests that were allegedly directly derived from the plaintiff in the previous judgment.

13. Moreover, the trial magistrate employed the term “*res judicata*” and concurred with the appellant that he was not a party to the previous judgment; an analysis of the learned trial magistrate’s decision indicates that she was primarily addressing the matter of a judgment *in rem*. The relevant excerpt states as follows:

***“[12] On whether this matter is res judicata, it is not disputed that a determination was made vide judgment in Machakos ELC No. 155 of 2016 (supra) wherein Justice Christine Ochieng declared as follows:***

***“A declaration be and is hereby issued that the Plaintiff is entitled to exclusive and unhindered right of possession and occupation of parcels of land known as LR No. 12948/17, LR No. 10425, LR No. 8784, LR No. 7815/1 and LR No. 8786.”***

***[13] In arriving at the above determination, the Honourable Judge found that the property had been trespassed on by persons that had built houses, schools and churches knowing fully well that the properties did not belong to them. Whereas the plaintiff was not a “named party” in the suit, the order affected the whole suit property and all occupants thereon. The Plaintiff is therefore barred from making a claim to the***

***property in light of the judgment which determined said issue of ownership/title of the suit properties regardless of whether he was a party to the suit or not.”***

14. This court, while noting the improper use of the term "*res judicata*," reaches the same conclusion as the learned trial magistrate that the previous judgment was one *in rem* as it affirmed rights concerning the suit properties and recognised the plaintiff in the previous judgment as the lawful owner, designating all other individuals, including the appellant, as trespassers. By its very nature, the previous judgment was one against the entire world, including the appellant herein, and this decision was binding on the trial court. Consequently, this court finds this ground of appeal fails.

***b. Whether the suit exceeded the pecuniary jurisdiction of the chief magistrate's court.***

15. To start us off, this court will look at the relevant provisions of law that set the pecuniary limits of the courts, more so that of the lower court. In this regard, **Section 4** of the **Civil Procedure Act (CPA)** and **Section 7(1)** of the **Magistrates' Courts Act (MCA)** come to the fore;

**Section 4** of the **CPA** provides:

***“Save in so far as is otherwise expressly provided, nothing herein contained shall operate***

***to give any court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.”***

Whereas **Section 7(1)** of the **MCA** states: -

***“(1)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.”***

16. It is now settled law, as established in the decision of **Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd (1989)**, that once a court finds it does not have jurisdiction to hear and determine a dispute, then it has no

choice but to down its tools. This position was underscored in the Supreme Court of Kenya decision of **Samuel Kamau Macharia v Kenya Commercial Bank (2012) eKLR** when it stated as follows: -

***“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceeding.”***

17. From jurisprudence, it is trite law that where a suit is filed in a court that does not have jurisdiction, that suit is a nullity. This position was stated in the Court of Appeal decision of **Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tours & Travel [2016] eKLR**, which pronounced itself on this principle in the following manner: -

***“In numerous decided cases, courts, including this court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the Civil Procedure Act to transfer a***

***suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks, parties cannot even seek refuge under the “O2” principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer.”***

18. The Court of Appeal further rendered itself on this same principle in **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR** by citing the following principle outlined in the decision of **Joseph Muthee Kamau & another v David Mwangi Gichure & another (2013) eKLR**, thus: -

***“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being Kagenyi v Musirambo (1968) EA 43. The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court’s pecuniary jurisdiction. We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”***

19. Before the trial court, the respondent availed a valuation report showing that the value of the mother parcels was in the billions, significantly exceeding the jurisdictional limits of the lower court. In response, the appellant contended that the suit properties were portions of the mother parcel, which he valued at Kshs. 15,000,000/=, and stated his intention to engage a government valuer to determine their worth.

20. In this court’s humble opinion and in agreement with the *obiter dictum* in **Nelifa Holdings Limited v Kanee [2024] KEELC 703 (KLR)**, which was the basis of the trial court's reliance, it was incumbent upon the appellant to demonstrate, through an expert report, the sizing of the suit properties, the developments therein and establish that the properties were separable from the mother parcels which he

did not. Having failed to rebut the respondent's report and merely stating he would secure a valuer in the future, it was proper for the learned trial magistrate to arrive at the decision she did.

21. Therefore, for the above reasons and findings, the appeal is dismissed, and this court upholds the orders issued in the ruling rendered on 27/02/2025. Since it is a trite law that costs follow the event, the respondent shall have the costs of this appeal.

Judgment accordingly.

**Delivered and Dated at Machakos this 24<sup>th</sup> day of February, 2026.**

**HON. A. Y. KOROSS  
JUDGE  
24.02.2026**

**Judgment delivered virtually through Microsoft Teams  
Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant.

Mr. Simiyu for the appellant.

Mr. Maiga for respondent.

ORIGINAL