



REPUBLIC OF KENYA



**Kalebi, OGW v Cerba Healthcare SAS & 4 others (Civil Suit E019 of 2022)
[2026] KEHC 3119 (KLR) (Commercial and Tax) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E019 OF 2022
AA VISRAM, J
MARCH 5, 2026**

BETWEEN

DR AHMED YAKUB KALEBI, OGW PLAINTIFF

AND

CERBA HEALTHCARE SAS 1ST DEFENDANT

LANCET SERVICE COMPANY (PTY) LIMITED 2ND DEFENDANT

CERBA LANCET AFRICA 3RD DEFENDANT

PATHOLOGISTS LANCET KENYA LIMITED 4TH DEFENDANT

LANCET SERVICES COMPANY KENYA LIMITED 5TH DEFENDANT

RULING

A. Introduction

1. This matter is part-heard. During cross examination of the Plaintiff, issues arose touching on the jurisdiction of this Court. By directions issued on 25th September, 2025, parties filed written submissions on that question.
2. The 1st to 3rd Defendants contend that the suit improperly merges shareholder and employment claims, and that this Court lacks jurisdiction, particularly over the employment limb.
3. The 4th and 5th Defendants take the position that the employment head falls exclusively within the jurisdiction of the Employment and Labour Relations Court and should be struck out, while the commercial limb may proceed.



4. The Plaintiff submits that the dispute is predominantly commercial and that this Court has jurisdiction, the employment claims being ancillary.
5. The question for determination is therefore whether this Court has jurisdiction to entertain the suit as presently framed.

B. The Plaintiff's Evidence in Cross Examination

6. The Plaintiff testified that his claim is "both" as a shareholder and as an employee. However, on the issue of share valuation, during cross examination he clarified that he seeks confirmation of the value of his shares; and that he may liquidate his shares in future but has not decided at present.
7. He further confirmed that dividend is a right of shareholders only and that dividends are governed by the Articles and shareholder agreement.
8. Importantly, while the Plaintiff contains employment related heads, the Plaintiff's own evidence reveals that a further and central live controversy concerns his shareholding, alleged dilution, and valuation upon exit.
9. He expressly stated that he is not asking for liquidation but only confirmation of the present value.

C. Analysis and Determination

10. Article 162(2) of *the Constitution* establishes courts of equal status to the High Court to hear disputes relating to employment and labour relations.
11. Article 165(5)(b) removes from the High Court matters falling within the jurisdiction of the courts contemplated under Article 162(2).
12. Section 12(1)(a) of the *Employment and Labour Relations Court Act* grants that Court exclusive jurisdiction over disputes arising out of employment between employer and employee.
13. In *Republic v Karisa Chengo & 2 Others* [2017] eKLR, the Supreme Court underscored that the High Court and the courts established under Article 162(2) are courts of equal status but distinct jurisdiction. The Court stated:-

"(79) It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of *the Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters "reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)." (Emphasis mine)

14. This principle flows directly from Article 165(5)(b) of *the Constitution*, which expressly prohibits the High Court from exercising jurisdiction in matters falling within the courts contemplated under Article 162(2).



15. The jurisdiction of the Employment and Labour Relations Court is therefore exclusive in respect of disputes “relating to or arising out of employment between an employer and an employee” under Section 12(1)(a) of the *Employment and Labour Relations Court Act*.
16. Equally, however, the High Court retains its unlimited original jurisdiction in civil and commercial matters under Article 165(3)(a), save only to the extent constitutionally excluded.
17. The task before this Court is therefore not whether employment issues are pleaded, but whether the substance of the controversy, as now clarified by the evidence, is one falling exclusively within the Employment and Labour Relations Court.
18. It is also settled, since Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd, that jurisdiction is foundational. A court must determine it at the earliest opportunity. It is also now well settled that jurisdiction is determined not merely by the drafting of pleadings but by the true nature of the dispute. In this regard Nyarangi JA stated: -

“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 pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
19. The Court must therefore interrogate the substance of the controversy. The Plaintiff’s own testimony is instructive. He confirmed that he seeks confirmation of the value of his shares, that he has not sought liquidation, and that dividends and share value are rights attaching to his status as shareholder.
20. The commercial dimension is further reflected in the Plaintiff’s own breakdown of the claim, where the shareholder component is distinct from the employment component. Looking at the pleadings, the dispute over dilution, rights issue, capitalisation, and shareholder agreements is not incidental to employment. It arises from corporate instruments and shareholder rights. Such questions fall squarely within company law and commercial jurisdiction.
21. By contrast, claims for unpaid leave, overtime, gratuity, and bonus as employee arise from the employment contract with the 4th Defendant. Those matters are statutorily reserved to the Employment and Labour Relations Court under Section 12(1)(a).
22. *The Constitution* does not contemplate that the High Court may determine employment disputes merely because they are pleaded alongside commercial claims. The jurisdictional line must be respected.

Whether the Suit is Predominantly Employment or Commercial

23. The pleadings, read together with the Plaintiff’s evidence, disclose two categories of claims:-
 - a. Employment claims: unpaid leave, overtime, bonus, gratuity, golden parachute and related benefits;
 - b. Shareholder claims: share dilution, sweat equity, dividends, and confirmation of share value.
24. The Plaintiff quantified the shareholder component at Kshs. 2.8 Billion and the employment component at Kshs. 732 Million.
25. More importantly, during cross examination, the Plaintiff clarified that the immediate controversy is valuation of his shareholding and confirmation of its worth. The dispute over dilution, rights issue, capitalization, and shareholder agreements is quintessentially a company law dispute. It concerns



inter alia: an interpretation of Articles of Association; shareholder agreements; rights issue and capital restructuring; and the alleged unfair dilution. These matters fall squarely within the jurisdiction of the High Court's Commercial & Tax Division.

26. Conversely, the employment claims, though pleaded, arise from a contract of employment with the 4th Defendant. Those claims are severable. They concern statutory and contractual employment benefits and fall within Section 12 of the *Employment and Labour Relations Court Act*. This is therefore not a case where the employment issue is the substratum of the dispute. The core controversy is ownership, value, and shareholder rights.

Can the Court sever the claims?

27. The 1st to 3rd Defendants rely on the proposition that a suit filed without jurisdiction is “dead on arrival” and incapable of rescue, citing *Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service* [2019] eKLR where the court stated: -

“...Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If the suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction upon itself..”

28. And further, *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR, where the court held: -

“Jurisdiction is a weighty fundamental matter and to allow a 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 law 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 ‘02’ principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of *the Constitution* to remedy the same. 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.”

29. Those authorities are correct in principle. A court cannot arrogate to itself jurisdiction where none exists. Nor do I think it is appropriate for a court to transfer an incompetent suit for want of jurisdiction. However, this is not a case where the entire suit is incompetent. The High Court unquestionably has jurisdiction over shareholder disputes, company law questions, and commercial claims between shareholders and corporate entities.
30. The question is whether the presence of employment heads vitiates the whole suit? In determining jurisdiction, courts examine the substance and may isolate claims falling outside their remit. Where causes of action are legally and factually severable, the court is entitled to strike out the offending heads and retain those properly before it.
31. The Plaintiff's evidence itself distinguishes between rights as shareholder and rights as employee. The pleadings categorize the heads separately. The legal foundations of the two categories are distinct: one grounded in corporate instruments, the other in an employment contract.



32. The 1st to 3rd Defendants argued that the causes of action are so subsumed that they cannot be isolated. I do not agree. The pleadings themselves categorize the heads distinctly. The Plaintiff's evidence distinguishes between rights as shareholder and rights as employee.
33. To strike out the entire suit would ignore the dominant commercial controversy now crystallized by the evidence. I am therefore of the view that the appropriate course of action is to sever the claims and to strike out the offending heads.

Conclusion

34. For completeness, I reiterate that this Court does not purport to determine the employment dispute. In line with *Karisa Chengo Supra*, the High Court must respect the constitutional architecture of specialised courts. At the same time, Article 165(3)(a) mandates this Court to exercise its unlimited civil jurisdiction in matters properly before it.
35. I therefore make the following findings: -
 - i. The dispute concerning shareholding, alleged dilution, dividend entitlement, sweat equity as shareholder, and confirmation of share value is a commercial dispute within the jurisdiction of this Court.
 - ii. The claims strictly arising from the contract of employment, including unpaid leave, overtime, gratuity, bonus and golden parachute, fall within the exclusive jurisdiction of the Employment and Labour Relations Court.

Orders

36. The employment-related heads of claim in the *Plaint* dated 19th January, 2022, are hereby struck out for want of jurisdiction.
37. The suit shall proceed before this Court solely in respect of the commercial and shareholder-related claims as stated above.
38. Costs relating to the issue of jurisdiction shall be borne by the Plaintiff.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 5TH DAY OF MARCH, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Godfrey

.....for Plaintiff
for 1st Defendant
for 2nd Defendant
for 3rd Defendant
for 4th Defendant
for 5th Defendant

