



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCLMISC E044 OF 2025

FRANK NJUGUNA

NJAU.....APPLICANT

VERSUS

SAMUEL KAMAU NG'ANG'A.....1ST

RESPONDENT

SAMUEL NDEGWA NJORI.....2ND

RESPONDENT

GITHUNGURI CONSTITUENCY CO. LTD.....3RD

RESPONDENT

LAND REGISTRAR, RUIRU.....4TH

RESPONDENT

RULING

1) This is a Ruling in respect of Notice of Motion dated 28/05/2025 filed by the Applicant whereby he seeks the following reliefs: -

1. Spent.
2. THAT the suit filed by the Plaintiff/Applicant against the Defendants/Respondents being **ELC E002 of 2025, FRANK NJUGUNA NJAU VS SAMUEL KAMAU NG'ANG'A & OTHERS** in the Chief Magistrates Court at Ruiru be transferred therefrom to be heard and

determined by the Environment and Land Court at Thika

3. THAT the costs of this application be provided for.
- 2) The Motion is supported by the Applicant's Affidavit sworn on the instant date. A summary of the depositions in support of the Motion are that:

- a) This suit was instituted in the Chief Magistrate's Court at Ruiru relying on a valuation report placing the sit property at Kesh 19,700,000 which fell down within the Court's pecuniary jurisdiction.**
 - b) That 1st Respondent questioned the pecuniary jurisdiction by presenting a valuation report valuing the same property at Kesh 42,000,000.**
 - c) That vide a Ruling delivered on 30/04/2025 this Court declined to strike out the suit and directed the Applicant to file an application to transfer the suit appreciating that the property may appreciate; and**
 - d) That in the interest of justice to transfer the suit to the ELC Court in Thika.**
- 3) The 1st Respondent, in opposition to the application, filed a Replying Affidavit dated 30/05/2025 and averred that the Applicant filed the initial suit at the Senior Principal Magistrate Court, Ruiru whose pecuniary jurisdiction is Kesh 15,000,000 yet the land was worth Kesh 19,700,000 way out

of the jurisdiction of the Court as per the annexure marked as '**SMN1**'.

- 4) Further that in the application the Applicant has pleaded by himself that the value of the suit property which was subdivided into twelve plots being RUIRU/KIU BLOCK 2 (GITHUNGURI)/28466-28477 was placed at Kesh 3,500,000 per plot making the total value to be Kesh 42,000,000 way beyond the pecuniary jurisdiction of the Subordinate Court.
- 5) Thus, the suit filed in the Subordinate Court was filed in a Court without jurisdiction and the same cannot be transferred as it was a nullity ab initio. He has urged the Court to dismiss the application for transfer.
- 6) The Application was canvassed by way of written submissions, the Applicant's submissions are dated 18/08/2025 and the 1st Respondent's submissions are dated 20/08/2025.
- 7) I have considered the application, the Supporting Affidavit, and the rival submissions. I have also considered the relevant legal framework and jurisprudence. The single question falling for determination in this application is whether **RUIRU CMCCC No E002 OF 2025** should be transferred to the Environment and Land Court in Thika for hearing and determination in the circumstances of this application.
- 8) Section 4 of the Civil Procedure Act (CPA) and Section 7(1) of the Magistrates' Courts Act (MCA) come to the fore when one

considers the law on pecuniary jurisdiction. Section 4 of the Civil Procedure Act (CAP 21) provides as follows: -

“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.”

9) 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.”

10) From the evidential materials presented to this Court, including the filings in the **RUIRU CMCCC No E002 OF 2025**, it does emerge that the value of the suit property was

at all material times beyond Kshs 20,000,000/= and therefore outside the pecuniary jurisdiction of the Magistrate Court.

11) Can **RUIRU CMCCC No E002 OF 2025** be properly transferred to this Court in the circumstances of this application? My answer to the above question is in the negative. I say so because it does emerge from the evidential materials placed before this Court that from the outset, the Magistrate Court did not have jurisdiction over the dispute. It is trite law that where a suit is filed in a Court that does not have jurisdiction, that suit is a nullity and there would be nothing to transfer.

12) 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 and there can never be anything to transfer. 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 rendered itself on this principle as follows:

***“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.”

- 13) 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 preceding decision in **Joseph Muthee Kamau & Another v David Mwangi Gichure & Another (2013) eKLR**:

“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."

- 14) For the reasons and findings stated above, this Court finds the Motion is not merited and, as held in **Phoenix of E. A. Assurance Company Limited (Supra)**, the only remedy available to the Applicant is to withdraw the lower Court suit and file a compliant one with the Court seized with jurisdiction.
- 15) It is therefore my finding that the Magistrate's Court in Ruiru did not have jurisdiction to hear and determine the suit **RUIRU CMCCC No E002 OF 2025** and as a result, the suit was nullity ab initio. A suit filed in a Court that lacks jurisdiction is a nullity. There would be nothing to transfer. Consequently, the application dated 28/05/2025, seeking transfer of **RUIRU CMCCC No E002 OF 2025** to this Court fails.
- 16) What then is the remedy available to the Applicant? I need not say more than to reiterate the position of the Court of Appeal in **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [supra]** that:

“If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the Court seized of jurisdiction”

17) I now make the following disposal orders: -

a) The Notice of Motion dated 28/05/2025 is dismissed for lack of merit.

b) Parties shall bear their respective costs of this Miscellaneous Application.

It so ordered.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS AT THIKA ON THIS 5TH DAY OF MARCH 2026.

**MOGENI J
JUDGE**

In the presence of:

..... for the Applicant
.....for 1st Respondent
.....for 2nd Respondent
.....for 3rd Respondent
.....for 4th Respondent
Melita..... Court Assistant

MOGENI J

JUDGE

ORIGINAL