

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**CIVIL APPEAL NO. E047 OF 2023**

**FORMERLY SOTIK SENIOR PRINCIPAL MAGISTRATE CIVIL**

**APPEAL NO.82 OF 2018**

JOHN MILGO.....APPELLANT

VERSUS

JOSEPH KIPYEGON MALEL.....RESPONDENT

**19/3/2026**

Before Hon. J.K.Ng'arng'ar Judge

CA:Siele

Rono for Appellant

N/A for Respondent

**RULING**

This matter is slated for judgement.

I have however gone through the Appeal and both the Appellant's and the Respondent's submissions. The parties have each raised their own issues they deem fit for consideration.

None of them has raised a very fundamental issue that goes to the root of this appeal or matter. I have noted that in essence the background of this appeal emanates from a land transaction. It relates to parcel of land **NO. KERICHO/KAITET/679 FORMERLY (141)**. The applicable law that was in issue is the **LAND CONTROL ACT -2012**.

This is a matter that is related to land and therefore falls under **Articles 162 and 165 (5)** of the Constitution.

There are several authorities on the issue of jurisdiction. They include the following:-

1. **Nyarangi JA**, in **Motor Vessel "Lillian S"**, addressed the position that should follow when a court reaches the finding that it is without jurisdiction. In his canonical words, he held that:

**"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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

2. In **Equity Bank Limited Versus Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR**, the court addressed the issue in the following words:-

**“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 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 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 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 transfer. (Emphasis ours)”.**

I indeed agree that jurisdiction is everything. It need not be raised by the parties. It is the first duty of the Judicial Officer or Judge to consider it before proceeding with determination of a matter.

I have also noted that this appeal was not admitted as per the record.

Accordingly, I do proceed to strike out this appeal and make no orders as to costs.

**Ruling delivered, dated and signed at Bomet this 19<sup>th</sup> day of March, 2026.**

.....  
**HON. JULIUS K. NG'ARNG'AR**  
**JUDGE**

**Ruling delivered in the presence of:**

**Siele/Susan (Court Assistants)**

**Rono for the Appellant**

**N/A for the Respondent**