

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E020 OF 2024

TERESIAH NJERI KARIRU & NJOROGE MUCHOKI KANYI

APPELLANTS

VERSUS

JOSEPH MBURU GITAU 1ST

RESPONDENT

HON. ATTORNEY GENERAL 2ND

RESPONDENT

(Being an appeal from the ruling of Hon. J. Ndenger'i delivered on 27th February 2024 in Naivasha CMCC No. E085 of 2022)

JUDGMENT

1. The Appellants herein, suing on their own behalf and on behalf of the estate of the late James Maina Njoroge, instituted a suit before the trial court alleging that the deceased was assaulted by the 1st Respondent, who was sued both personally and in his official capacity as the Area Chief of Turasha Location. The 2nd Respondent was sued as the employer of the 1st Respondent.
2. After hearing the 2nd Respondent's application challenging territorial jurisdiction and joinder of the 1st Respondent to the suit, the trial court struck out the 1st Defendant from the suit on the basis that he had been wrongly enjoined in

the suit and further held that the Naivasha court lacked territorial jurisdiction to entertain the case under Section 15 of the Civil Procedure Act. The court consequently downed its tools thereby precipitating the filing of the instant appeal in which the Appellants raise the following principle grounds: -

- a) ***That the trial court erred in holding that it lacked territorial jurisdiction, arguing that jurisdiction is conferred by statute and only limited by pecuniary thresholds.***
- b) ***That the court erred in striking out the 1st Defendant, who was the alleged tortfeasor and therefore a necessary party.***
- c) ***That the trial court erred in denying the Appellants the right to be heard on the merits.***

3. The Appeal was canvassed by way of written submissions.

Appellants' Submissions

4. The Appellants argued that Section 15 of the Civil Procedure Act was misapplied by the trial court and that territorial jurisdiction for Magistrates' Courts is governed by the **Magistrates' Courts Act**, which grants jurisdiction countrywide subject only to pecuniary limits. It was therefore submitted that the trial court wrongly relied solely on Civil Procedure Act provisions, contrary to case law. Reference was made to the decision in ***Ruth Gathigia Kamunya & Another vs. George Kimani [2015] eKLR*** where it was held that: -

“...it is worth noting that the Civil Procedure Act, in its long title it is expressed that “An act of Parliament to make provision for procedure in Civil Courts. In other words, it is not the legal instrument that confers jurisdiction upon Magistrate’s Courts since the jurisdiction of Magistrate’s courts is governed by the Magistrate’s Courts Act Cap 10 Laws of Kenya which express...”

5. The Appellants also relied on ***Mohamed Sitaban vs. George Mwangi Karoki CA No. 13/2002*** and ***Doshi Enterprises Ltd vs. Oriental Steel Fabricators & Builders NRB HCC 627/2001***, arguing that the lower court indeed had jurisdiction.
6. On striking out the 1st Defendant, the Appellants argued he was the “actual tortfeasor,” and that he was therefore a necessary party to the proceedings. For this argument, reference was made to the decision in ***Zephir Holdings Ltd vs. Mimosa Plantations Ltd & Others [2014] eKLR*** where it was held that: -

“A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively... or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the

court effectively and completely adjudicate upon and settle all questions involved in the suit.”

7. The Appellants cited the case of ***Selle vs, Associated Motor Boat Co. Ltd [1968] EA 123*** and urged this court to re-evaluate the evidence while maintaining that they were denied their right to be heard,

The 1st Respondent’s Submissions

8. The 1st Respondent opposed the appeal and argued that the trial magistrate correctly found that Section 15 CPA is mandatory and that the suit ought to have been filed where the cause of action arose which was Turasha Location, Nyandarua County. The 1st Respondent noted that both the Plaintiffs and the 1st Respondent reside in Nyandarua County and thus the proper forum was Engineer Law Courts.

9. Reliance was placed on the decision in ***Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR*** and ***Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 Others [2012] eKLR*** where the centrality of jurisdiction was discussed.

The 2nd Respondent’s (Attorney General) Submissions

10. The 2nd Respondent supported the trial court’s finding, arguing that territorial jurisdiction is strictly governed by **Section 15 CPA**.

11. It was submitted that the cause of action did not arise within Naivasha and that the suit was improperly filed and constituted forum shopping.
12. The 2nd Respondent maintained that striking out the 1st Defendant was proper since proceedings against public officers in their official capacity lie against the Attorney General.

Issues for Determination

13. From the record and the submissions, I find that the following issues arise for my determination: -
- a) ***Whether the trial court erred in finding that it lacked territorial jurisdiction.***
 - b) ***Whether the striking out of the 1st Defendant was proper.***
 - c) ***Whether the Appellants were denied the right to be heard.***
 - d) ***Who should bear the costs of the appeal.***

Analysis and Determination

Territorial Jurisdiction

14. Section 15 Civil Procedure Act (CPA) provides that every suit shall be instituted where the defendant resides or carries on business, or where the cause of action wholly or in part arises.
15. A perusal of the Plaint filed in CMCC E085/2022 reveals that the alleged assault occurred at **Turasha**

Location, Nyandarua County, and that all parties reside in the said County.

16. While the Appellants argued that territorial limits were removed by the Magistrates' Courts Act, the Respondents insisted that the limits remain intact.

17. The question which arises is whether territorial jurisdiction under section 15 of the CPA still applies to Magistrates' Courts post-enactment of the Magistrates' Courts Act, 2015 (the Act). In other words, do the magistrates' courts in Kenya have unlimited territorial jurisdiction?

18. I find that the answer to the above question is to the negative. My understanding of the provisions of the Magistrates' Courts Act is that it does not, by itself, confer unlimited territorial jurisdiction to magistrates. It empowers Magistrates' Courts to hear and determine civil matters subject to statutory limits, including pecuniary and other conditions, but territorial jurisdiction remains governed by the Civil Procedure Act and related case law, unless otherwise provided by law.

19. I note that the Act primarily defines the jurisdictional limits for matters that Magistrates' Courts may decide such as pecuniary limits, subject-matter limits, and provides for the constitution, powers, practice and procedure of those courts. This is to say that the Act does not expressly provide that magistrates can hear matters from any part of Kenya without regard to territorial limits.

My take is that if the intention of the drafters of the Act was that magistrates should have unlimited territorial jurisdiction, nothing would have been easier than for the Act to state so.

20. A simple reading of Section 15 of the CPA reveals that it is the principal provision on territorial jurisdiction for civil suits. The said section states that -

***“Every suit shall be instituted in a court within the local limits of whose jurisdiction—
(a) the defendant or each of the defendants... actually and voluntarily resides or carries on business...; or
(b) the cause of action, wholly or in part, arises.”***

21. I find that the above provision still applies to civil suits unless there’s another clear statutory override.

22. Kenyan courts have consistently held that jurisdiction must be conferred by law. In ***Samuel Kamau Macharia*** case (supra) the Supreme Court stated that a court’s jurisdiction flows from either the Constitution or legislation or both and that a court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

23. My finding is that the trial court correctly invoked Section 15 CPA and properly held that it lacked territorial jurisdiction.

Whether striking out the 1st Defendant was proper

24. The Appellants maintained that the 1st Respondent was a necessary party as tortfeasor. The Respondents, on the other hand, submitted that there was improper joinder and procedural lapses including lack of limited grant ad litem.

25. The test for a necessary party was affirmed in **Zephir Holdings Ltd vs. Mimosa Plantations Ltd [2014] eKLR**, where it was held that: -

“A proper party is one who is impleaded in the suit... and whose presence is necessary or relevant for the determination of the real matter in dispute... to enable the court effectively and completely adjudicate upon and settle all questions involved.”

26. Applying the principle advanced in the above cited case to this case, I find that the 1st Respondent is the alleged actor in the actions that the Appellant complained about and would ordinarily be a necessary party. The persuasive authority in **Zephir Holdings** case (supra) emphasises that a party is necessary where their presence enables effective adjudication.

27. However, once the court found absence of territorial jurisdiction, it could not proceed to adjudicate on any other aspects including joinder.

28. Striking out of the suit flowed from lack of jurisdiction as had jurisdiction existed, striking out may have been

improper. I therefore find no error in the striking out of the 1st Respondent from the suit.

29. On whether the Appellants were denied the right to be heard, I note that the trial court's ruling shows it considered pleadings and submissions, including the impugned application.

30. The right to be heard under Article 50 of the Constitution does not prevent a court from terminating proceedings where jurisdiction is lacking. As was held in the *Lillian S* case (supra), jurisdiction is foundational. I find that the Appellants were not denied the right to be heard since the matter was concluded on a pure point of law.

Conclusion

31. Having considered the appeal, submissions, authorities and the law I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

19/03/2026

FOR APPELLANT Miss Nyambura for Mbigi

FOR RESPONDENT Wambui for Wainaina 2nd

No appearance for 1st Respondent

COURT ASSISTANT Karani

File closed

ORIGINAL