



**Mutisya & another (Being the legal representatives of the Estate of Julius Muia  
Kisio - Deceased) v London Distillers (K) Ltd (Miscellaneous Application  
E311 of 2025) [2026] KEELRC 1139 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1139 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E311 OF 2025**

**BOM MANANI, J**

**APRIL 30, 2026**

**BETWEEN**

**ELIZABETH KANINI MUTISYA AND AGNES MUNYIVA MUTISYA (BEING  
THE LEGAL REPRESENTATIVES OF THE ESTATE OF JULIUS MUIA KISIO -  
DECEASED) ..... APPLICANT**

**AND**

**LONDON DISTILLERS (K) LTD ..... RESPONDENT**

**RULING**

**Background**

1. Julius Muia Kisio (hereafter referred to as the deceased) instituted proceedings against the Respondent vide Mavoko CMELRC Case No. 33 of 2019 claiming that he had an employment relationship with the Respondent. He contended that he retired from the relationship on 31<sup>st</sup> March 2018.
2. The deceased claimed that during the term of his service to the Respondent, he took up membership with the Kenya Union of Commercial Food and Allied Workers. He averred that the said trade union negotiated and signed two Collective Bargaining Agreements with the Respondent which covered the period between 1<sup>st</sup> May 2015 to 30<sup>th</sup> April 2017 and 14<sup>th</sup> July 2017 to 30<sup>th</sup> May 2019.
3. The deceased asserted that upon his retirement, he expected the Respondent to pay him service pay of Ksh. 1,481,844.00 as per the prevailing Collective Bargaining Agreement between the trade union and the Respondent. However, he contended that the Respondent declined to make good the payments. And hence the decision to file the aforesaid case to recover the benefit.
4. During the pendency of the case, Julius passed on. Hence the bringing on board of the two Applicants in their capacities as the legal representatives of his estate.



5. Before trial of the case commenced, the Respondent objected to the trial court's jurisdiction to entertain the claim. According to the notice of objection dated 15<sup>th</sup> August 2025 which is attached to the affidavit in support of the instant application, the Respondent, inter alia, expressed the position that the trial court did not have jurisdiction to entertain a suit which is premised on a Collective Bargaining Agreement negotiated under the [Labour Relations Act](#).
6. The Respondent's position is anchored on Gazette Notice No. 6024 of 2018 which was issued by the Chief Justice pursuant to the powers donated to that office under section 29 of the [Employment and Labour Relations Court Act](#). The section empowers the Chief Justice to appoint certain magistrates to adjudicate on cases arising from employment relations.
7. Through the Gazette Notice, the Chief Justice appointed magistrates of the rank of Senior Resident Magistrate and above to hear certain employment disputes where the monthly salary of the affected employee does not exceed Ksh. 80,000.00. However, the Gazette Notice excluded trade disputes under the [Labour Relations Act](#) from among the matters which the magistrates could handle.
8. Based on the foregoing, the Respondent contends that the trial court is not entitled to entertain the dispute between the parties because it is a trade dispute which is founded on a Collective Bargaining Agreement which was negotiated under the [Labour Relations Act](#). The Respondent contends that the dispute is expressly excluded from the Magistrate's Court's jurisdiction by the aforesaid Gazette Notice.
9. When the Applicants were served with the notice of objection to the trial court's jurisdiction, they filed the instant application before this court seeking the following orders:-
  - a. Spent.
  - b. Spent.
  - c. That the court be pleased to withdraw and transfer to itself the cause filed as Mavoko CMELRC Case No. 33 of 2019 for trial and disposal.
  - d. That the court issues directions on who is to bear costs of the application.
10. The Applicants contend that when the suit came up for hearing, the Respondent objected to the trial court's jurisdiction. They contend that the objection was informed by a decision of this court (differently constituted) in Kenga Equatorial Hotels Limited t/a Mombasa Continental Resort v Wanjiru [2025] KEELRC 2321 (KLR) where the court observed that the Magistrate's Court does not have jurisdiction to adjudicate on trade disputes under the [Labour Relations Act](#). As a result of that decision, the Applicants contend that the trial court will sustain the preliminary objection and dismiss the claim for want of jurisdiction. As such, they pray that this court transfers the matter to itself before this eventuality.
11. The Respondent has opposed the application. It has filed Grounds of Opposition dated 10<sup>th</sup> September 2025 through which it contends that the claim before the magistrate's court is a nullity ab initio as it was filed in court without jurisdiction. As such, it (the Respondent) avers that the matter cannot be transferred to this court.

## **Analysis**

12. From the averments in the application and the affidavit in support thereof, it is apparent that the reason why the Applicants have approached this court with the request to transfer the impugned suit is that the matter is before a court which has no jurisdiction to handle it and is likely to be dismissed because



of this. In order to avoid this eventuality, the Applicants pray that this court transfers the matter to a court with jurisdiction to entertain it.

13. It is this request which the Respondent has strenuously opposed. The Respondent's position is that this court has no jurisdiction to transfer a matter which the Applicants admit was presented to a court which has no jurisdiction to entertain it. According to the Respondent, such suit is a nullity and therefore incapable of being transferred.

14. The question whether a court can transfer a suit from a court which has no jurisdiction over it to a court with jurisdiction has been addressed in a myriad decisions. In *Joseph Muthee Kamau & Another v David Mwangi Gichure & Another* (2013) eKLR, the Court of Appeal described a suit which is filed in a court which has no jurisdiction as a nullity. The learned Judges of the court expressed themselves on the subject as follows:-

When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being the case of *Kagenyi v Musirambo* [1968] EA 43.... Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

15. In the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR, the Court of Appeal observed on the subject 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.”

16. The aforesaid decision, which is binding on this court, is categorical that the court is not entitled to transfer a suit which was filed in a court which has no jurisdiction over it to a court with jurisdiction. In the view of the Court of Appeal, to do so would be tantamount to sanctifying an otherwise incompetent suit through judicial craft.

17. The Applicants have invited the court to adopt the position which was expressed in *Francis Kibugi Wanjohi v Kenya Railways Corporation* [2021] KEELRC 793 (KLR) and order the transfer of their suit. However, it is to be noted that in the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (supra), the Court of Appeal was emphatic that the High Court (and Courts of Equal Status) have no power to transfer a suit which was filed in a court which has no jurisdiction over it. The Court of Appeal emphasized that such an endeavor will be contrary to law.

18. What then is the option available to a party who has filed suit in a court which has no jurisdiction? This question was answered by the Court of Appeal in the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR). The court observed that the only option which was open to the parties in the circumstances was to withdraw the incompetent suit



and file a fresh one in the court with jurisdiction. This is on the assumption that the proposed suit is not time barred. The court expressed itself on the matter as follows:-

Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. 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. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied.”

19. From the foregoing, it is apparent that the Applicants having conceded that the suit before the trial court was filed in a court without jurisdiction, were required to withdraw it (the suit) and file a competent claim before the proper court. It was not open to them to file the instant application for transfer of the incompetent suit to a court with jurisdiction.

**Determination**

20. The foregoing being the case, it follows that the instant application is misguided.
21. As such, it is dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF APRIL, 2026**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

.....for the Applicants

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

