

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELCLMISC NO. E085 OF 2025

ALEXANDER STEPHEN MAITHYA:.....APPLICANT

VERSUS

RIAKANAU COOPERATIVE SOCIETY LTD:.....1ST RESPONDENT

DANIEL MBITHI MUTAVI:.....2ND RESPONDENT

PATRICK MWENZE NZIOKA:.....3RD RESPONDENT

JEREMY KISILU MWONGA:.....4TH RESPONDENT

RULING

The application is dated 9th September 2025 and is brought under Section 1A, 1B and 18(1) (B) of the Civil Procedure Act, Article 162(2) of the Constitution, Order 51 of the Civil Procedure Rules 20210 seeking the following orders;

1. That this Honourable Court be pleased to order the transfer of NAIROBI CO-OPERATIVE TRIBUNAL CAUSE NO. 187 OF 2021 ALEXANDER STEPHEN MAITHYA VS RIAKANAU COOPERATIVE SOCIETY LIMITED & 3 OTHERS to MACHAKOS ENVIRONMENT AND LAND COURT for hearing and final determination.
2. That cost of this application be provided for.

It is premised on the grounds that the claimant in NAIROBI COOPERATIVE TRIBUNAL CAUSE NO. 187 of 2021 sought for a mandatory order compelling

the Respondents herein to release to the Applicant within a set timeline the title deeds for land parcels 20885/11 & 20855/43 measuring 23 acres each duly registered in his name. That the Respondent in their defence raised the issue of cancellation of the said title deeds. That consequently the Honourable Tribunal has no jurisdiction of hearing and determining matters relating to cancellation of Title deeds as the same is in the purview of the environment and land Court. That the issue of cancellation of title deeds brought up by the Respondents in their defence could not have been foreseen by the Applicant herein. That further with suit land being situated in MACHAKOS COUNTY it is therefore just and fair that the claim being NAIROBI CO-OPERATIVE TRIBUNAL CAUSE NO. 187 OF 2021 be transferred to MACHAKOS ENVIRONMENT AND LAND COURT for trial and final determination without further delay. That no prejudice will be occasioned to any party if the orders sought are granted. That this Honorable Court has supervisory powers over the lower Court with unlimited jurisdiction hence empowered to grant the orders sought.

The Respondents at the hearing of the Applicant's Notice of Motion dated 9th September 2025 raised a preliminary objection for determination in limine on the following grounds:

1. The application is incompetent and fatally defective as it seeks to transfer Nairobi Co-operative Tribunal Cause No. 187 Of 2021 to this Honourable Court, yet the said cause was instituted in a forum without jurisdiction to entertain disputes relating to cancellation or revocation of registered titles.
2. Jurisdiction is everything and without it a Court or Tribunal must down its tools (Owners of Motor Vessel "Lillian S" v Caltex oil (Kenya) ltd [1989] KLR1). A suit filed in a forum without jurisdiction cannot be validated or cured by transfer to another Court.
3. Section 18(1)(b) of the Civil Procedure Act only empowers the High Court to transfer suits properly instituted in subordinate Courts. It does not permit the transfer of suits filed in a court that lacked jurisdiction ab initio.
4. The present matter having been filed in the Co-operative Tribunal, which though subordinate to this Honourable Court lacks jurisdiction to entertain disputes relating to cancellation or revocation of registered titles, this Honourable Court cannot therefore transfer a matter that was a nullity ab initio.

5. The proper course is for the Applicant to institute fresh proceedings before the competent court.
6. The Applicant's motion is therefore fatally defective, misconceived, incompetent, and an abuse of the Court process, and ought to be struck out with costs

This court has considered the application together with the preliminary objection and the submissions therein. In Section 17 and 18 of the Civil Procedure Act confer on the High Court of Kenya limited jurisdiction to transfer a case instituted in a subordinate court where more than one subordinate courts have jurisdiction to try the case from one such subordinate court to the order or from the High Court to a subordinate court or vice versa. Other matters to be taken into consideration are in exercising this jurisdiction is; balance of convenience, questions of expense, interest of justice and possibilities of conduct hardship. In the case of Hangzhou Agrochemicals Industries Ltd vs Panda Flowers Ltd 2012 eKLR the court addressed conditions to be considered in determining whether or not to grant an order transferring a suit, thus:

“1. “..In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the

litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case”.

The Applicant opposed the preliminary objection and submitted that they moved the Tribunal seeking an order compelling the Respondents to release the title deeds for land parcels 20885/11 & 20855/43 measuring 23 acres each duly registered in his name. That the Respondent in their defence raised the issue of cancellation of the said title deeds. That consequently the Honourable Tribunal has no jurisdiction of hearing and determining matters relating to cancellation of Title deeds as the same is in the purview of the Environment and Land Court.

It is not in dispute that the Tribunal has no jurisdiction when it comes to revocation and cancellation of titles. In the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989) the court stated 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....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

These words were echoed by this Court in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR 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 S.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.”

In the circumstances of this case, I find that if a suit is filed without jurisdiction, the only remedy is to withdraw it and file it in the court seized of jurisdiction. A suit filed in a forum without jurisdiction is dead on arrival and cannot be revived. Without jurisdiction, the Court cannot confer jurisdiction to itself. Guided by the above statutory and case law I find that the preliminary objection is merited and I dismiss the application with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF
APRIL 2026.**

N.A. MATHEKA

JUDGE

ORIGINAL