

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 868 OF 2025**

**MARILYN MUTHONI KAMURU** .....1ST  
APPELLANT

**KENTRACK AUCTIONEERS** ..... 2ND  
APPELLANT

**VERSUS**

**JONES M. AYUB** .....  
RESPONDENT

**RULING**

1. The Respondent instituted proceedings before the Chief Magistrate’s Court seeking reliefs arising from distress for rent and the attachment of a motor vehicle.
2. The Chief Magistrate (Civil Division) held that the dispute involved issues of ownership and possessory rights and consequently transferred the matter to the Environment and Land Court (ELC) Division.
3. The matter proceeded before the Magistrate’s Court sitting as an ELC court and was determined.
4. The Appellants were dissatisfied with the trial court’s decision and filed the present appeal before this Court being the Civil Appellate Division.
5. The Respondent objected to the appeal contending that this Court lacks jurisdiction and that the appeal ought to

have been filed before the **Environment and Land Court (ELC)**.

6. The sole issue for determination is whether this Court (High Court Civil Appellate Division) has jurisdiction to hear and determine this appeal.
7. The law on jurisdiction is settled and admits no ambiguity. Indeed, jurisdiction is foundational and without it, a court has no power to make one more step. This is the position that was taken in the oft-cited case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1**.
8. Similarly, in **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 Others [2012] eKLR** the Supreme Court held:

***"A court's jurisdiction flows from either the Constitution or legislation or both. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law."***

9. This Court must therefore at the outset determine if it has jurisdiction to entertain the appeal.
10. Article 162(2)(b) of the Constitution provides that:

***"...Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land."***

11. Pursuant to the above Article, Parliament enacted the **Environment and Land Court Act** (the Act), which at Section 13(2) thereof provides that:

***“The Court shall have power to hear and determine disputes relating to... land use, title, tenure... rents...”***

12. Further, Section 13(4) of the Act provides that:

***“Appeals from subordinate courts or local tribunals shall lie to the Environment and Land Court.”***

13. In the instant case, the Appellants argued that the dispute is purely contractual as it relates to rent arrears and distress. The lower court record however reveals that the dispute involved ownership and possessory rights over property which the trial court specifically found to be within the domain of the Environment and Land Court. Indeed, the matter proceeded to full hearing before the Magistrate’s Court exercising ELC jurisdiction.

14. It is trite that in determining jurisdiction, the Court is guided by the substance of the dispute and not by superficial labels. The real question is whether the claim is about use or occupation. (See ***Co-operative Bank of Kenya Ltd vs. Patrick Kang’ethe Njuguna & 5 Others [2017] eKLR***).

15. In the present case, the lower court determined that the dispute involved ownership and possessory rights,

thereby bringing it within the ambit of Article 162(2)(b) of the Constitution.

16. On Appellate jurisdiction, the critical question is not merely the nature of the dispute, but the appellate pathway. Section 13(4) of the Environment and Land Court Act is explicit that appeals from the subordinate courts shall lie to the Environment and Land Court.

17. Further, in ***Carol Silcock vs. Kassim Sharrif Mohamed*** [2013] eKLR, the Court held that:

***“Appeals from magistrates sitting in ELC jurisdiction must be filed in the Environment and Land Court and not in the ordinary High Court.”***

18. Similarly, in ***Republic vs. Karisa Chengo & 2 Others*** [2017] eKLR the Supreme Court emphasized that:

***“The High Court, the Environment and Land Court, and the Employment and Labour Relations Court are courts of equal status, and none can exercise appellate or supervisory jurisdiction over the other.”***

19. The question that this court has to grapple with is the effect of filing the appeal in the wrong forum. Courts have taken the position that where a matter is filed before a court without jurisdiction, the consequence is fatal. In ***Phoenix of East Africa Assurance Company Limited vs. S. M. Thiga t/a Newspaper Service*** [2019] eKLR, the Court of Appeal held that a suit filed without

jurisdiction is dead on arrival and cannot be remedied. This principle applies with equal force to appeals.

20. The Appellants urged this Court to invoke its supervisory jurisdiction. I however find that jurisdiction cannot be conferred by convenience, acquiescence, or procedural manoeuvre. I am guided by the decision in ***Samuel Kamau Macharia*** (supra), where it was held that a court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. This means that this Court cannot assume jurisdiction where none exists.

21. Having considered the submissions, the record, and the applicable law, I find that:

- a) The appeal arises from a decision of the Chief Magistrate's Court sitting as an Environment and Land Court.***
- b) Appeals from such decisions lie exclusively to the Environment and Land Court pursuant to Section 13(4) of the ELC Act.***
- c) This Court (Civil Appellate Division) is a court of equal status and lacks jurisdiction over such appeals.***
- d) The present appeal has therefore been filed in the wrong forum and is incompetent ab initio.***

22. I therefore make the following final orders: -

- a) The Respondent's preliminary objection is hereby upheld.***
- b) This Court declines jurisdiction to hear and determine the appeal.***
- c) The appeal is hereby struck out for want of jurisdiction.***

**d) *Costs of the appeal are awarded to the Respondent.***

23. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup>  
DAY OF MAY 2026.**

**HON W. A. OKWANY  
JUDGE**

**In the presence of  
No appearance for Appellant  
Mukoya for Respondent  
Abdirzak - Court Assistant**