



**Towett v Cheruiyot & 3 others (Civil Suit E004 of 2025)
[2026] KEHC 5945 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL SUIT E004 OF 2025
JK NG'ARNG'AR, J
MAY 5, 2026**

BETWEEN

SIMON KIPROTICH TOWETT PLAINTIFF

AND

SAMWEL KIMISOI CHERUIYOT 1ST DEFENDANT

THE INSPECTOR GENERAL OF POLICE 2ND DEFENDANT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS .. 3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Through his Complaint dated 5th August 2025, the Plaintiff brought a malicious prosecution suit against the Defendants. The Plaintiff stated that on 4th November 2011, the Defendants caused him to be arrested and maliciously charged in *Sotik Law Courts in Criminal Case Number E2072 of 2021* where he was charged with forgery contrary to section 345 as read with section 349 of the [Penal Code](#), uttering false documents contrary to section 353 as read with section 357(b) of the [Penal Code](#) and giving false information to a person employed in the public service contrary to section 129(a)(b) of the [Penal Code](#).
2. It was the Plaintiff's case that he was acquitted on 23rd October 2024 under section 215 of the [Criminal Procedure Code](#). It was the Plaintiff's further case that he faulted the Defendants for their shallow and shoddy investigations which could not sustain a conviction. He prayed for general damages and special damages of Kshs 158,000/=.

Response

3. The 2nd, 3rd and 4th Defendants filed their Grounds of Opposition dated 11th September 2025. They challenged this court's jurisdiction to hear and determine the suit. They stated that the matter fell



squarely within the pecuniary and territorial jurisdiction of Sotik Magistrate’s Court and further that the Plaintiff filed the matter in this court to curtail their appellate rights and would cause backlog.

Analysis

4. The Court of Appeal in *Public Service Commission & 4 others v Cheruiyot & 20 others* (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment) discussed the issue of jurisdiction to wit: -

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1. Nyarangi, JA relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:

“...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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

The Supreme Court *In the Matter of Interim Independent Electoral Commission* [2011] eKLR, Constitutional Application No 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the Constitution, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:

“...a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.”

In *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No 2 of 2011, the Supreme Court reiterated its holding on a court’s jurisdiction. In the matter of the Interim Independent Electoral Commission (*supra*) at paragraph 68 of its ruling, the Supreme Court held as follows:



“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.”

5. I have gone through the record and I have noted that the present suit between the parties emanated from the *Criminal Case Number E2072 of 2021* which was conducted and concluded at the Magistrate’s Court in Sotik. The Applicant’s suit against the Respondent’s was that of malicious prosecution. The Applicant sought aggravated and exemplary damages and special damages of Kshs 158,000/=.
6. Having gone through the record, I agree with the Respondents that the pecuniary jurisdiction of the suit lay with the Magistrate’s Court. Further, for proper procedure, the Magistrate’s court at Sotik would be better placed to hear and determine the Applicant’s suit. Filing the matter here directly denies the Respondent the right to appeal. It is my finding therefore that this Court lacks the jurisdiction to hear and determine the Applicant’s suit at the moment and I down my tools.
7. In the end, the Plaint dated 5th August 2025 is struck out. Each party to bear its own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 5TH DAY OF MAY, 2026.

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HON. JULIUS K. NG’ARNG’AR
JUDGE

Ruling Delivered in the presence of;
Susan/Siele Court Assistant
Jepkorir for the Plaintiff
Ojwang for the Defendants

