



**Aila v Amollo (Environment & Land Miscellaneous Case
1 of 2024) [2024] KEELC 1208 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1208 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND MISCELLANEOUS CASE 1 OF 2024**

AY KOROSS, J

MARCH 7, 2024

BETWEEN

OKOTH AILA APPLICANT

AND

OTIENO AMOLLO RESPONDENT

RULING

1. Ukwala PM ELC no. 149 of 2013 that was between the parties herein was referred to this court by Hon.PM L.N.Sarapai with the learned trial magistrate issuing the following verbatim directions for determination by this court:-
 - a. Whether the process that the court order herein has been subjected to is constitutional.
 - b. If so, whether the NPS and security committees (ministry of interior security committees) are liable for undue delay in “vetting” the order.
 - c. File be transmitted to Siaya for directions before the Judge by court assistant.
 - d. For mention on 27/02/2024.
2. On the said mention date, the applicant appeared before this court as directed by the learned trial magistrate and upon hearing him, this court reserved this matter for ruling today and the issue for determination is whether a subordinate court can on its own volition, forward a file to a superior court for it to issue directions.



3. It is not in doubt that upon the gazettelement of magistrates to hear and determine ELC cases, this court transferred the matter in dispute to the lower court on 17/05/2021. It did so in pursuance to the powers bestowed upon it by Section 18 of the Civil Procedure Act. This provision provides as follows;

- “(1) 1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

4. The Supreme Court of Kenya decision of Samuel Kamau Macharia v KCB & 2 Others (2012) eKLR settles the position that a court's jurisdiction flows from either the Constitution or legislation or both by stating thus:-

“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 to itself jurisdiction exceeding that which is conferred upon it by Law.”

5. Bearing this decision in mind, I have scrutinized the Magistrates' Courts Act and there is no provision therein that clothed the learned trial magistrate with jurisdiction to remit the trial court record to this court in the manner that she did and this is in violation of the principle of hierarchy of courts.

6. It is on the basis of this principle that the constitutional architecture under Article 162(b) of the Constitution of Kenya and Section 13 (1) of the ELC Act provides that this court exercises appellate jurisdiction over subordinate courts. This section 13 (1) provides as follows: -

“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.”

7. Similarly, in exercise of supervisory jurisdiction and being a court of equal status with the high court, this court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court and it can call for a record



of any proceedings that are before such bodies, authorities and persons including subordinate courts and issue appropriate directions.

8. This matter not being an appeal and this court having not invoked its supervisory jurisdiction, I must conclude, find and hold that the learned trial magistrate was bereft of jurisdiction to remit the lower court file to this court and thus acted ultra vires.
9. Being privy that the learned trial magistrate who remitted the file to this court has been transferred to another court station, it would only be appropriate if a copy of this ruling is transmitted to her.
10. Ultimately, I find that the learned trial magistrate erred in law in remitting the lower court file to this court and I hereby issue following final disposal orders;
 - a. That Ukwala PM ELC no. 149 of 2013 be remitted back to Ukwala Law Courts for further directions.
 - b. A copy of this ruling be remitted to Ukwala Law Courts and to Hon. L.N. Sarapai.
 - c. That this file is hereby effectively closed.
- 11 It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 7TH DAY OF MARCH 2024.

HON. A. Y. KOROSS

JUDGE

07/3/2024

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Applicant acting in person

N/A for the respondent

Court assistant: Ishmael Orwa

