



Kinuthia v Meki & another (Suing as administrators of the Estate of Marando Ole Meki (Deceased) & 2 others (Environment and Land Appeal E007 of 2023) [2024] KEELC 5763 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E007 OF 2023
LC KOMINGOI, J
JULY 25, 2024**

BETWEEN

RACHAEL NATAAI KINUTHIA APPELLANT

AND

**KATANO ENE MARANDU MEKI AND KIPEEN ENE MARANDU (SUING AS ADMINISTRATORS OF THE ESTATE OF MARANDO OLE MEEKI (DECEASED) 1ST RESPONDENT
DISTRICT LAND REGISTRAR KAJIADO 2ND RESPONDENT
HON ATTORNEY GENERAL 3RD RESPONDENT**

(Being an Appeal against the Ruling and order of Hon. Jane Kamau (PM) in Kajiado ELC Case No. 142 of 2022 delivered on 30th March 2023)

JUDGMENT

1. On the 30th March 2023, the learned trial magistrate, stated thus;

“From the above, the Preliminary Objection by the 1st Respondent succeeds. I also find that this suit will in the interest of justice be transferred to the ELC court forthwith for it to be canvassed and a suitable determination made.”
2. Aggrieved by the said ruling the Appellant appealed seeking that the holding of paragraph 16 of that Ruling be set aside and the suit be struck out for being statute barred together with costs.
3. The grounds for appeal are:



1. The learned Magistrate erred in law in transferring the suit to the Environment and Land Court despite having made a holding that the Magistrate's court did not have pecuniary jurisdiction to hear the 1st Respondent's claim and thus it had downed its tools.
2. The learned Magistrate erred and misdirected herself in law and in fact disregarding the evidence on record in holding that none of the parties addressed the steps taken after the execution of the agreement for sale in the year 2003.
3. The learned Magistrate erred in law in failing to make a determination on whether the suit had been brought outside the statutory limitation of twelve (12) years under the provisions of Section 7 of the *Limitation of Actions Act* and therefore the claim was statute barred and should have been struck out.
4. This Appeal was canvassed by way of written submissions.

The Appellant's submissions

5. Counsel submitted that the Appellant objected to the lower court's suit filed by the 1st respondent on grounds that the court not only lacked pecuniary jurisdiction to determine the suit but the suit was equally statute barred and should be struck out. The Hon. Magistrate allowed the objection but instead of striking out the suit, she transferred it to the ELC for determination. Counsel submitted that the said transfer was invalid because only High Court had the power to transfer and the suit being transferred should be in a court clothed with jurisdiction. Therefore, the lower court erred in not downing its tool. On the issue of jurisdiction and transfer of cases from courts without jurisdiction reference was made to the following case laws: *Owners of the Motor Vessel "Lillian S" v Caltex Oil Kenya Ltd* [1989] eKLR, *Gatikia Kimani Kiarie v Peter Kimani Kiramba* [2020] eKLR, *Boniface Waweru Mbiyu v Mary Njeri & another* [2005] eKLR and *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku* [2012] eKLR.
6. On whether the magistrate erred in finding that none of the parties addressed the steps taken after execution of the sale agreement in 2003, counsel submitted that based on the evidence before the lower court including payments made, copy of mutation form, copy of title etc that finding was erroneous.
7. On the issue of the suit being statute barred, counsel submitted that the learned magistrate failed to take into consideration that the suit was brought outside the statutory limitation of Section 7 of the *Limitation of Actions Act* since the sale took place in 2003. As such the trial court was in err in not considering some issues citing *Kukal Properties Ltd v Maloo and others* [1990-1994] 1 EA 281.

The 1st Respondent's submissions

8. On the issue of jurisdiction, counsel submitted that prior to the PO being filed by the Appellant, the 1st Respondent had filed Misc. Application E011 of 2023 in this court seeking to withdraw and transfer the lower court's file to this court. This application was inadvertently withdrawn. That notwithstanding, counsel argued that pecuniary jurisdiction is a procedural issue which does not affect the root of the suit. Therefore, the lower court's decision to transfer this suit and sustain it instead of striking it out was the proper cause of action. Reference was made to *DT Dobie & Co. Ltd v Joseph Mbatia Muchina & another* Civil Appeal No 37 of 1988 and *Francis Kamande v Vanguard Electrical Services* Civil Appeal No 152 of 1996.
9. Counsel submitted that the ground that the trial court misdirected itself in holding that none of the parties addressed the steps taken after executing the agreement, was not merited because points of evidence are not considered when dealing with preliminary objections. Citing *Oraro v Mbaja* (2005) 1KLR 141 and *Quick Enterprises Ltd v Kenya Railways Corporation* Kisumu HC No 22 of 1999.



10. On the issue of statute limitation, counsel argued that whereas the trial court did not make a determination on that issue, this court had powers to render itself on the same. Adding that the issue was on fraud and time started running when it was discovered as stipulated by Section 26 of the *Limitation of Actions Act*. Reference was made to the case of *Justus Tureti Obara v Peter Koipeitai* [2014] eKLR and *Kimani Ruchine & another v Swift Rutherford & Co. Ltd and another* (1980) KLR 10.
11. Counsel therefore sought that: that the 1st ground in the P.O dated 6th march 2023 be dismissed; the trial court's holding that the suit be transferred be set aside and grant the 1st Respondent time to move this court properly under Section 18(1) (b) of the *Civil Procedure Act* or this court issues an order for reinstatement of Misc. Application E011 of 2023; or this court in its own motion do invoke the transfer of Kajjado CM ELC case No E142 of 2022 to this court for final disposal and with costs of the appeal in the cause.

Analysis and Determination

12. Having considered the grounds of appeal, the record of appeal, and the authorities cited. The issues for determination are:
 - i. Whether the Learned Trial Magistrate erred in transferring the suit to the ELC.
 - ii. Whether the Learned Trial Magistrate erred by failing to make a determination under Section 7 of the *Limitation of Actions Act*.
 - iii. Who should bear costs of the appeal?
13. The Appellant states that the learned trial Magistrate erred in transferring this suit to the ELC when she had determined that she did not have jurisdiction.
14. The 1st Respondent acknowledged that the learned trial magistrate devoid of jurisdiction should not have transferred the lower court suit to the ELC. However, the 1st Respondent sought that this Court does order the file to be transferred or reinstate Misc. Application E011 of 2023 which was seeking transfer of the lower court file.
15. It is a fundamental principle of law that where a court lacks jurisdiction, it must cease any further proceedings and refrain from addressing the merits of the case. Jurisdiction is the cornerstone of judicial authority, granting a court the power to hear and determine matters brought before it. The absence of jurisdiction renders any judicial decision or order legally ineffective and unenforceable. The Court of Appeal in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR held:

“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 complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.... The suit was a nullity ab initio and was not transferable to another court...”
16. The learned trial Magistrate in the ruling dated 30th March 2023 held that the pecuniary jurisdiction of the Chief Magistrate was Kshs 20 million and for Principal Magistrate was Kshs 10 million as stipulated by Section 7(11) of the *Magistrates Courts Act*. She stated that the valuation report before her indicated that the property was valued at Kshs 46 million. And while that fact had not been canvassed, she stated “... the jurisdiction of this court has been tested and that it is prudent that the court downs its tools



and the court is deterred from taking any further steps herein...I find that this suit will in the interest of justice be transferred to the ELC court forthwith...”

17. Having determined that she did not have jurisdiction to make a further move, the learned trial Magistrate should have ordered the parties to move the suitable forum appropriately and not transfer the suit.
18. On the issue of whether the learned trial Magistrate erred in not determining whether the suit was statute barred and that she misdirected herself in disregarding evidence on record, the 1st Respondent submitted that the learned trial Magistrate did not err because in preliminary objections courts consider issues and not facts.
19. Indeed Preliminary Objections should be determined on the face of the pleadings without considering the evidence. Therefore, the learned trial Magistrate was not required to consider any evidence at that juncture. However, having found that the trial court was not clothed with jurisdiction, she did not pronounce herself on the issue of limitation. The ruling reads:
 - “ 14. The contract was drawn in the year 2003, however, none of the parties addressed the steps taken after the said execution...
 15. Be that as it may, having considered the foregoing I find that the jurisdiction of this court has been tested and that it is prudent that the court downs its tools...”
20. Consequently, I find that the learned trial magistrate did not err in abstaining from pronouncing herself on the issue of whether the suit was time barred.
21. The Appeal therefore succeeds only in part, that the learned Magistrate erred in transferring the lower court file to the ELC.
22. Section 18 of the *Civil Procedure Act* grants this court the authority to transfer suits from subordinate courts either upon application by parties or on its own motion. It provides that;
 - “ 18 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—
 - (1) 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.”

23. I hereby order that CM ELC Case No E142 of 2022 be transferred to the Environment and Land Court for hearing and determination.

24. As the Appeal succeeds partly, each party do bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF JULY 2024.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mrs. Ahomo for the Appellant.

N/A for the Respondent

Court Assistant – Mutisya.

