



REPUBLIC OF KENYA



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Bunei v Rutto & another; Bugut (Interested Party) (Civil Case E004 of 2022) [2025] KEHC 4896 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE E004 OF 2022
JRA WANANDA, J
APRIL 25, 2025**

BETWEEN

EDDAH JEPCHUMBA BUNEI PLAINTIFF

AND

JOSIAH KIPNGETICH RUTTO 1ST DEFENDANT

MILKAH CHEMUTAI 2ND DEFENDANT

AND

ELIJAH KIPRUTO BUGUT INTERESTED PARTY

RULING

1. This is a Ruling on a Preliminary Objection raised on the issue of jurisdiction.
2. The background of this matter is that by the Plaint filed herein on 24/05/2022 through Messrs Kiprop Luseria & Co. Advocates (subsequently replaced by Messrs Nyambegera & Co. Advocates), the Plaintiff sought Judgment as follows:
 - i. That the Defendants/Respondents their agents, servants or any other person whatsoever acting on their behalf and or direction be restrained by way of a permanent injunction from trespassing in matrimonial home situated on land parcel No. Nandi/Ndulele/384 or otherwise interfering with of the Plaintiff's possession of the matrimonial home.
 - ii. Costs and interest.
 - iii. Any other relief deemed fit to grant in the circumstances.
3. Initially, those sued were only the 1st and 2nd Defendants. However, by my Ruling dated 5/07/2024, I allowed the Interested Party to join the suit. He is represented by Messrs Korir Lagat Advocates LLP.



4. In the body of the Plaint, the Plaintiff pleaded that she and the 1st Defendant are husband and wife residing in their matrimonial home situated on the parcel of land known as Nandi/Ndulele/384 within Ndulele, Kabiyeet location (hereinafter referred as the “suit property”), that on or about 02/12/2021, the 1st Defendant without any colour of right, brought his girlfriend, the 2nd Defendant, to the suit property home while the Plaintiff was away with the children in the United States of America (USA), that the 1st Defendant has, since then, been bringing his girlfriend, the 2nd Defendant, to the suit property and has threatened to evict the Plaintiff and their children from the suit property.
5. She pleaded that there is a risk of the Plaintiff and the children being rendered homeless and destitute unless the orders sought in the Plaint are granted. The Plaintiff further pleaded that the Defendants have denied her and the children peaceful possession and use of the property and she has been greatly injured and inconvenienced and further, that she stands to suffer irreparable loss if the prayers sought are not granted.
6. The 1st Defendant then filed the Preliminary Objection the subject hereof, seeking that the suit be struck out. The same is dated 20/09/2022 and is filed through Messrs D.K. Korir & Associates Advocates. Quoted verbatim, it is premised as follows:
 - i. That this Honourable Court lacks jurisdiction to hear and determine this suit as the same is not properly before Court as it relates to use, occupation and title to land. The Plaintiff’s suit offends the provisions of Articles 162 (2) and 162 (3) of *the Constitution* of Kenya and Section 15 (2) of the Environment and *Land Act* No. 38 of 2011.
 - ii. That the Plaintiff’s suit is frivolous, vexatious, scandalous and an abuse of the Court process and ought to be struck out with costs.
7. The Preliminary Objection was then canvassed by way of written Submissions. Both the Plaintiff’s and the 1st Defendant’s Submissions are dated 04/10/2024. I have not however come across any Submissions filed by the 2nd Defendant and the Interested Party although I note from the record that Mr. Lagat, Counsel for the 1st Defendant has consistently been also holding brief for the 1st Interested Party.

1st Defendant’s Submissions

8. On the issue of “jurisdiction”, Counsel for the 1st Defendant cited the locus classicus case of Owners of the Motor Vessel “Lilian S” vs Caltex Oil (Kenya) Ltd [1989] KLR 1 and on the nature and scope of a Preliminary Objection, he cited the equally well-known case of Mukisa Biscuit Manufacturers Ltd vs West end Distributors Ltd, (1969) E.A. 696. He then submitted that the question of jurisdiction is a pure point of law. He cited the Supreme Court case of Mary Wambui Munene vs Peter Gichuki Kingara & 6 Others [2014] eKLR. He urged that it is clear that the dispute in the instant suit relates to use, occupation and title to the suit property. He also cited the case of Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 others [2012] eKLR and also Article 165(2), Article 165(2) and (3) of *the Constitution*.
9. He further also cited Section 13 of the *Environment and Land Court Act*, No. 18 of 2011, and submitted that the Environment and Land Court (ELC) is a specialized Court with the same status as the High Court and is the one mandated to deal with disputes relating to “use, occupation of, and title to land”. He submitted that the provisions of Article 165(5) of *the Constitution* explicitly ousts the jurisdiction of the High Court from hearing and determining matters that are reserved for the Environment and Land Court (ELC). He cited the case of Lydia Nyambura Mbugua vs Diamond



Trust Bank Kenya Limited & Another [2018] eKLR and also the Court of Appeal case of Cooperative Bank of Kenya Limited vs Patrick Kang'ethe Njuguna & 5 others, [2017] eKLR.

Plaintiff's Submissions

10. On his part, Counsel for the Plaintiff submitted that the dispute herein is a “matrimonial dispute” between the Plaintiff and the 1st Defendant regarding their “matrimonial home” situated on the suit property, that the bone of contention is that the 1st Defendant has been bringing his girlfriend, the 2nd Defendant, to the “matrimonial home” and has threatened to evict the Plaintiff and their children therefrom. According to him, the issue of the “matrimonial home” being on the suit property is just but to properly describe where the home is situated for purposes of clarity but the issue of ownership use, possession, occupation administration and/or any other thing to do with the suit property where the house is built is neither here nor there. He pointed out that at Paragraph 10 of the Plaintiff, the 1st Defendant had admitted jurisdiction and reiterated that
11. the issue in dispute is the occupation of the “matrimonial home” and not where the land is built. He referred to the contents of the several pleadings filed herein. Counsel then referred to the case of LMP v TMM & another; Demsa Travel Solutions Ltd (Interested Parties) (2021) eKLR, the case of EMN vs DNN (2021) eKLR and also the case of AM v EMW (Civil Case E008 of 2022) [2023] KEHC 23420 (KLR) (Family) (6 October 2023) (Ruling). He also cited Section 6 and 17 of the *Matrimonial Property Act* and submitted that the current legal position is that concurrent jurisdiction has been given to many Courts to hear disputes relating to “matrimonial property” and that the High Court is in this regard granted original and unlimited jurisdiction in civil matters by *the Constitution*. He further cited the case of AM v EMW (Civil Case E008 of 2022) [2023] KEHC 23420 (KLR) (Family) (6 October 2023) and also AKK v PKW [2020] eKLR.

Determination

12. The issue for determination herein is “whether the jurisdiction to determine the dispute herein properly lies with this High Court or whether the proper forum is the Environment and Land Court (ELC)”.
13. The Plaintiff is right that at Paragraph 10 of his Statement of Defence, the 1st Defendant expressly admitted the jurisdiction of this Court to hear and determine the dispute. However, in my said Ruling dated 5/07/2024, I made the following comments:
 - “ 22. Before I proceed further, I get the feeling that the issues raised in this matter may give rise to the debate whether the dispute herein is properly before this civil Court or whether the same belongs to the Environment and Land Court (ELC). This is because Article 162(2) of *the Constitution* of Kenya empowered Parliament to “establish Courts with the status of the High Court to hear and determine disputes relating to:
 - (a) employment and labour relations; and
 - (b) the environment and the use and occupation of, and title to, land.
 23. Article 162(3) then authorized Parliament to “determine the jurisdiction and functions of the Courts contemplated in clause (2).” Pursuant to Article 162(3), Parliament enacted the *Environment and Land Court Act*, No. 18 of



2011, Section 13(1) which outlines the jurisdiction of the Environment and Land Court (ELC) as follows:

- “(2) In exercise of its jurisdiction under Article 162(2) (b) of *the Constitution*, the Court [the ELC] shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.

“(3)

“24. Be that as it may, since no party raised the issue of jurisdiction, I will say no more about it for now. It is however very likely that the issue shall still arise at some stage of this suit. If and when it arises, the Court will deal with it.”

14. It is clear that it is my above comments that prompted the 1st Defendant to file the instant Preliminary Objection. Although therefore the 1st Defendant had admitted jurisdiction, it is however also true that parties cannot by their purported consent confer non-existent jurisdiction upon a Court. For this reason, the issue of jurisdiction remains at all times, a live issue for determination.
15. Before I interrogate the merits of the Preliminary Objection, I will first address the question whether the challenge raised meets the threshold for what should constitute a “Preliminary Objection”. The Supreme Court, in the case of Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others, while following the oft-cited decision of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696, restated the following:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.



16. The issue raised by the 1st Defendant being one that touches on this Court’s jurisdiction, there is no doubt that it, indeed, fits well within the circumstances contemplated as constituting a “Preliminary Objection”.
17. On the merits of the Preliminary Objection, the 1st Defendant contends that this Court is divested of jurisdiction in view of Article 162(2)(b) of *the Constitution* of Kenya 2010 and Section 13 of the *Environment and Land Court Act*, 2011.
18. Indeed, in the celebrated case of *The Owners of the Motor Vessel “Lillian’s” -V- Caltex Oil Kenya Ltd* [1989] KLR 1, Nyarangi J.A. held as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.”
19. Similarly, in the case of *Samuel Kamau Macharia and Another v. Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No. 2 of 2011, the Supreme Court held that:

“[68]. 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.”
20. Since the jurisdiction of this Court is being challenged, the Court is obligated to establish whether it has jurisdiction in this matter. The pertinent issue for determination is whether the present Application is properly before this Court.
21. As stated in my quote above, in respect to the issue of separation of jurisdiction, pursuant to Article 162(3), Parliament enacted the *Environment and Land Court Act*, No. 18 of 2011, Section 13(1) which outlines the jurisdiction of the Environment and Land Court (ELC) as already listed above.
22. In regard to the High Court, *the Constitution* under Article 165(3)(a) provides as follows:
 - (3) 3) Subject to clause (5), the High Court shall have—
 - (a) Unlimited original jurisdiction in criminal and civil matters;
23. Article 165(5) then provides that:

“The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2).”
24. In the discharge of the obligation placed on it by *the Constitution*, Parliament then enacted the *Environment and Land Court Act* and set out in detail, the jurisdiction of that Court. Section 13 of the Act outlines the jurisdiction of the Court as follows:
 - 1) 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.
 - 2)



- 3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and health environment under Articles 42, 69 and 70 of *the Constitution*.
 - 4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court
.....
 - 7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-
 - a) interim or permanent preservation orders including injunctions;
 - b) prerogative orders;
 - c) award of damages;
 - d) compensation;
 - e) specific performance;
 - f) restitution; or
 - g) declaration; or
 - h) costs”
25. In this case, although the Plaintiff has couched the claim as one seeking to prevent interference with the alleged “matrimonial home” which happens to be the suit property herein, I do not agree that it is a “matrimonial claim” as the cause of action.
 26. The crux of the claim clearly is simply to prevent the trespass or interference with her possession of the suit property. “Matrimonial claims” envisaged would, in my view, be for example those brought under the *Matrimonial Property Act* No. 49 of 2013 or the now repealed Married Women’s Property Act. These are the kind of contemplated causes of action that, although relating to land in most circumstances, would still be properly entertained by the High Court. In any event, even when such claims are filed in the High Court, they would be filed at the Family Division of the High Court, not the Civil Division as done herein. The fact that the claim was filed in the civil division is itself therefore ample proof that even the Plaintiff never considered it a “matrimonial claim” as her Counsel now alleges.
 27. Regarding “matrimonial claims” as stated above, the preamble to the *Matrimonial Property Act* No. 49 of 2013 states that the Act was enacted “to provide for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes”.
 28. Section 7 then provides as follows:

“ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved”.



29. On its part, Section 17(1) provides that:

“ 17. Action for declaration of rights to property

(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.

(2)

30. From the foregoing, it is clear that, in the present context, the mere allegation that the claim is one for “matrimonial property” cannot at all confer jurisdiction on the High Court. The cause of action is simply one for trespass and possession of the suit property. The cause of action is not and cannot be termed as one under or for “matrimonial property” as alluded by the Plaintiff since the suit does not seek any determination of the contributions made by husband and wife, respectively, to the “matrimonial property” or entitlement of shares in the property as between the respective spouses nor does it seek any order that the property be divided or shared out between the spouses in accordance with the contributions made by each. All the suit seeks is the right of unhindered access by a wife to what she alleges to be “matrimonial property”. That is a totally different cause of action from one for “matrimonial property”.

31. In fact, the Plaintiff’s Counsel “shot himself on the foot” and/or “scored” a classic “own goal” when he cited Sections 6 and 17 of the *Matrimonial Property Act* as justification that the High Court has the jurisdiction to entertain this matter. By citing these provisions, Counsel vindicated this Court’s finding that the High Court’s jurisdiction on disputes touching on land extends only to limited causes of action such as those brought under the *Matrimonial Property Act*, which clearly this suit has not. Even the authorities cited by Counsel are easily distinguishable on this same ground. As the question in the present suit is purely in respect to the possession, and occupation of land, this Court has no jurisdiction to entertain the suit.

32. Further, the entry of the Interested Party to the suit also changes the nature of the dispute herein since he, too, now claims ownership of the same suit property claimed by the Plaintiff and the 1st Defendant. This means that the Court will now also have to determine the right owner of the property. This, again, pushes the dispute further into the realm of the Environment and Land Court. The suit not being one brought under the *Matrimonial Property Act*, it follows that this Court must immediately down its tools as it has no jurisdiction to entertain the suit.

33. Having determined that this Court is devoid of the jurisdiction to entertain this suit, the question is now whether the suit should be struck out or whether it should be transferred to the Environment and Land Court.

34. The dilemma of whether to strike out a suit filed in the wrong Court or to transfer it to the correct Court has been with us for a long time, Different Judges have taken different views of the matter. From my research however, I find that majority of Courts have embraced the view that once a suit is filed in a Court without the requisite jurisdiction, such suit is a non-starter, a nullity ab initio, as good as non-existent, and that there is therefore no mandate to transfer it. Indeed, my attention has been drawn to the Court of Appeal decision in the case of Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR, in which the Court ruled as follows.

“According to the appellant, the court had no jurisdiction and the suit was a nullity ab initio and it could not therefore be transferred to the High Court whether by consent or



otherwise. On the other hand, the respondent seems to be saying that the subordinate court had jurisdiction to hear the suit but only award damages that were within its pecuniary jurisdiction, and therefore the suit was transferable to the High Court.

19. We are not persuaded that that proposition by the respondent is correct in law. 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 compliant 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 subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject, this Court pronounced; *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989):

.....
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.” (Emphasis ours)

Decided cases on this issue are legion and we cannot cite all of them. The case of *Joseph Muthee Kamau & Another v. David Mwangi Gichure & Another* (2013) eKLR is however on all fours and addresses the issue raised by Ms. Wambua as to whether the subordinate court could still hear the suit but only allow the maximum damages allowable within its pecuniary jurisdiction. The Court succinctly settled this point in the following words:-

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20. It is clear from the foregoing that the claim by the respondent was filed before a court devoid of jurisdiction. The suit was a nullity ab initio and was not



transferable to another court; jurisdiction cannot be conferred by consent and ultimately, all orders emanating from that suit are null and void. CIVIL APPEAL NO. 6 OF 2018 PHOENIX EAST AFRICA ASSURANCE CO.LTD v. S.M. THIGA T/A NEWSPAPER SERVICES is therefore a nullity as it was based on a nullity. We have said enough to demonstrate that this appeal has merit. We allow it with costs to the appellant.”

35. For instance, in the case of Abraham Mwangi Wamigwi vs Simon Mbiriri Wanjiku & Another [2012] eKLR, Odunga J (as he then was) held as follows:

“The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi vs. Musiramo* (supra), Sir Udo Udoma, CJ made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it. In *Ali Abdi Sheikh vs. Edward Nderitu Wainaina & Others* (supra), Koome, J (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs. 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the suit was filed in a court without jurisdiction. A similar view was taken by the same Judge in *Rainbow Manufacturers Limited vs. National Bank of Kenya* (supra).

.....

It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other words, courts can only transfer a cause whose existence is recognised by law. It is now settled law that where a Court finds that it has no jurisdiction, it must immediately down its tools and proceed no further. That position was made clear by Nyarangi JA in *The Owners of Motor Vessel “Lillian S” vs. Caltex Oil Kenya Limited* (1989) KLR 1,

36. On the strength of the principle of stare decisis, I am bound by the Court of Appeal position and have to follow it. As that Court stated, matters of jurisdiction are not mere technicalities of procedure but matters of substance since without jurisdiction, a Court cannot be said to be seized of a dispute for determination. Lack of jurisdiction cannot therefore be cured by invoking the principle of the “overriding objective” under Article 159(2)(d) of *the Constitution* or Sections 1A and/or 1B of the *Civil Procedure Act*.
37. The High Court has also made similar decisions. For instance, in the case of *Boniface Waweru Mbiyu vs. Mary Njeri & Another* [2005] eKLR, J.B. Ojwang J (as he then was), held as follows:

“Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty



of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court”.

38. Similarly, in the case of *Wamathu Gichoya v Mary Wainoi Magu* [2015] eKLR, Bwonwonga J, found as follows:

“Furthermore, according to *Kagenyi v Musiramo and Another*, supra, the power to transfer a case to the High Court for hearing may only be exercised if the court before which it is filed is a court vested with competent jurisdiction to try and dispose of the matter. In other words, if the suit filed is incompetent, the High Court lacks jurisdiction to effect a transfer.”

39. In view of the above, it is clear that the instant suit cannot be entertained and must stand struck out. The Plaintiff will have to file a fresh suit before the correct Court.

40. Before I pen-off, I also note something else, namely, the issue of territorial jurisdiction. The Plaintiff expressly discloses that the suit property, Nandi/Ndulele/384 is situated in Kabiyet Location. From my understanding, both Kabiyet Location and Ndulele are situated in Mosop Constituency within the County of Nandi and I take judicial notice of this fact. Even the suit description, Nandi/Ndulele/384, itself betrays the location of the property.

41. The Plaintiff has not addressed the issue of the choice of the geographical forum in respect to her filing of the suit in Eldoret rather than at Kapsabet, which has up and running and fully functional High Court and Environment and Land Court stations. I however note that at Paragraph 2 and 3 of the Plaintiff, it is stated that the 1st and 2nd Defendants reside and work for gain within the jurisdiction of this Court. In matters founded on land as a cause of action, the primary determining factor on choice of where to file the suit is the place where the parcel of land in contention is located. Where the Defendant resides would thus only be a secondary factor. For this reason, this suit ought to have been filed at the Kapsabet Environment and Land Court which is the one covering the County of Nandi where the suit property is situated and which therefore possesses the territorial jurisdiction or mandate over the property.

Final Orders

42. In light of the foregoing, I rule and order as follows;

- i. The Preliminary Objection dated 20/09/2024 is found to be merited and is upheld.
- ii. Accordingly, this suit is struck out on the ground of lack of jurisdiction with costs only to the 1st Defendant who is the only one who filed and argued the Preliminary Objection.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 25TH DAY OF APRIL 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Omuya for the Plaintiff

Mr. Lagat for 1st Defendant and Interested Party

Court Assistant: Brian Kimathi

