



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Jamarat Apartments Limited v Mandera County Government (Civil Appeal
E013 of 2024) [2025] KEHC 9618 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CIVIL APPEAL E013 OF 2024
JN ONYIEGO, J
JUNE 30, 2025**

BETWEEN

JAMARAT APARTMENTS LIMITED APPELLANT

AND

MANDERA COUNTY GOVERNMENT RESPONDENT

*((Being an appeal from the ruling of the magistrate's court at Garissa Hon.
Jackson Omwange dated 26th June 2024 in civil case number E009 of 2024))*

JUDGMENT

1. Vide a plaint dated 25th October 2022, the appellant (plaintiff before the lower court), filed a suit against the respondent (defendant before the lower court) seeking;
 - a. Kshs. 9,567,279.35 being unpaid rent.
 - b. Kshs. 2,205,520 being cost for carrying out repairs
 - c. Interest on (a) above at Court rates until payment in full.
2. It was the appellant's claim that it entered into a contract with the respondent sometime on 24 February, 2014 after winning a tender award from the respondent wishing to lease warehouse premises from the appellant for a period of one year at a monthly rate of Kshs.180,000 per month. The said contract was further extended on 1st March 2015 at monthly rate of Kshs.185,400/=.
3. On 16th March 2018, the lease was extended for a further two years at a monthly rental rate of Kshs.185,400/=. That despite taking possession of the said premises, the respondent defaulted in paying the full rental sum amounting to Kshs.15, 017,400/= less Kshs.5,450,120.65/= being the total amount paid leaving a balance of Kshs.9,567,279.35/= which amount the appellant is seeking to be paid plus Kshs.2,205,520 being the cost of carrying out repairs after termination of the agreement.



4. Upon being served with summons to enter appearance and file defence, the respondent filed its defence dated 20th May, 2024 denying the claim. The respondent further indicated its intention to raise a preliminary objection for lack of jurisdiction by the trial court.
5. Consequently, the respondent filed a notice of preliminary objection dated 20th May 2024 arguing that the suit offends mandatory provisions of Section 12 and 15 of the *Civil Procedure Act*. The preliminary objection was canvassed through written submissions in which case the respondent/objector entirely relied on Section 12 and 15 of the *Civil Procedure Act* contending that the trial court did not have territorial jurisdiction to entertain the matter.
6. In response, the appellant submitted through its submissions dated 19th June 2024 arguing that the issue of territorial jurisdiction was not in question as the claim of the subject suit was over 10 million which pecuniary jurisdiction by the highest ranking magistrate then in Mandera did not exist. Counsel submitted that the highest ranking Judicial Officer in Mandera then was a PM whose maximum pecuniary jurisdiction was 10 million hence had no jurisdiction to hear the matter. That it was for that reason the suit was filed in Garissa CM's court which then had both territorial and pecuniary jurisdictions.
7. Upon considering the preliminary objection and submissions by both counsel, Hon. Omwange in his impugned ruling agreed with the respondent that the Principal Magistrate's Court in Mandera had territorial jurisdiction to entertain the matter hence the suit ought to have been filed in Mandera and not in Garissa.
8. Aggrieved by the said decision/ruling, the appellant filed a memorandum of appeal dated 12th July 2024 citing grounds summarized as below;
 - a. That the trial magistrate erred in law and fact by not appreciating that the Principal Magistrate then in Mandera did not have jurisdiction to handle a claim of kes11, 772, 799.35 thus exceeding the pecuniary limit of 10 million for a principal magistrate as stipulated under Section 7 of the magistrates Act, 2015.
 - b. The learned magistrate erred in law and fact by finding that Mandera magistrate court had both pecuniary and territorial jurisdictions.
 - c. That the learned magistrate erred in law and fact by not appreciating that Garissa Law Court was the nearest court with both territorial and pecuniary jurisdiction to the place where the cause of action arose.
 - d. That the learned magistrate erred in law and fact by rendering a ruling which did not contain the points for determination, the decision thereon and the reasons for that decision.
9. When the matter came for hearing, parties filed submissions in support of their respective positions.
10. The appellant filed submissions dated 25th March, 2025 thus contending that the preliminary objection was misplaced as it was based on Section 12 and 15 of *Civil Procedure Act* which did not deal with the subject of pecuniary jurisdiction. Counsel contended that Sections 12 and 15 deals with territorial jurisdiction as well as leave to file a suit outside jurisdiction. Counsel maintained that the PM's court Mandera then had no pecuniary jurisdiction and that it could not entertain the matter exceeding 10 million hence the reason for filing the suit in Garissa Law Courts.



11. To support his position, counsel referred to the case of *Anisminic LTD vs Foreign compensation commission* (1969)2Ac147 where the court stated that;

“A court or tribunal’s jurisdiction is not merely about its territorial reach, but encompasses all preconditions that must be satisfied for it to validly adjudicate a matter...”
12. The court was further referred to the case of *Rep –Vs- Karisa Chengo & 2 others* (2017) Eklr and *Owners of Motor Vessel Lillian “s” Vs Caltex Oil Kenya Ltd* (1989) KLR 1 where both courts emphasized that jurisdiction is everything and without it a court cannot move any further step. Counsel contended that Section 4 of the *Civil Procedure Act* provides that a court cannot exercise jurisdiction where the value of the subject matter exceeds the pecuniary limits if any of its ordinary jurisdiction. It was therefore contended that the trial court erroneously held that Mandera PM’s court had jurisdiction which it did not. As regards the ground that the court did not consider and give reasons for its decision, counsel contended that the same offends Order 21 Rule 4 of the Civil Procedure Code.
13. On the other hand, the respondent filed submissions dated 10th April, 2025 contending that the suit offended Section 12 and 15 of the *Civil Procedure Act* and that Garissa CM’s court did not have territorial jurisdiction to entertain the matter. Counsel contended that Mandera court could not entertain the matter over which it lacks both pecuniary and territorial jurisdiction. In support of that position, the court was referred to the case of *RRM Vs M aka JKM* (2019) eKLR where it was emphasized that a court could neither entertain a matter over which it lacks jurisdiction nor confer jurisdiction upon itself.
14. I have considered the grounds of appeal herein and parties’ submissions. The only issues that arise for determination are;
 - i. Whether Mandera Law Courts had jurisdiction to entertain the suit herein at the material time.
 - ii. Whether Garissa CM’s Court had jurisdiction to entertain the matter.
 - iii. Whether the trial court properly addressed its mind to the question of lack of pecuniary jurisdiction by Mandera PM’s Court.
15. The crux of the matter herein is the question of lack of jurisdiction by the CM’s court Garissa in entertaining the suit herein. It is trite law that jurisdiction is everything and without it a court cannot move any step further and therefore must down its tools. This were the wise words of Nyarangi J as he then was in the famous case of *Owners of Motor Vessel “Lillian “S” vs Caltex Oil (Kenya LMT)* (supra).
16. Equally, in the case of *Samuel Kamau Macharia v Kenya commercial Bank and 2 others* (2012) e KLR the Supreme Court held that jurisdiction is a creature of either *the constitution* or statute and a court cannot confer jurisdiction unto itself through judicial craftsmanship or innovation.
17. The issue in the matter is the claim that Mandera law courts had no jurisdiction to entertain the suit. The plaintiff/appellant is of the view that the value of the suit is 10m the maximum the highest ranking magistrate had at the material time in Mandera. The respondent contended that the CM’s court Garissa had no Jurisdiction pursuant to section 12 and 15 of the *Civil Procedure Act*. On the other hand, the appellant contended that Sections 12 and 15 of the CPA are irrelevant as they do not refer to pecuniary jurisdiction.
18. For avoidance of doubt, I wish to reproduce the two sections. Section 12 provides as follows;

“Suit to be instituted where subject matter situate



Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain”.

19. Section 15 does provide as hereunder;

“Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- (b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

20. From the above provisions, none of them makes reference to pecuniary jurisdiction. Unfortunately, even the trial court never mentioned nor address itself to the question of lack of pecuniary jurisdiction. It is trite that the maximum monetary jurisdiction of a principal magistrate under the Magistrate’s courts Act is 10m.

21. There was no dispute that at the material time, Mandera was headed by a principal magistrate whose maximum pecuniary jurisdiction was 10m. The trial magistrate acknowledged that fact. There was no dispute that the value of the subject matter was in excess of 11m. Who then would have heard the case in Mandera? The question of territorial jurisdiction was not in issue in the first place. Section 12 and 15 of the CPA was not in question either.

22. It is apparent that had the trial court set out issues for determination which he did not, he would have gotten his compass well. He was definitely in error in considering an irrelevant issue on territorial



jurisdiction instead of pecuniary jurisdiction. In fact, the hon. Magistrate being a principal magistrate himself, had no pecuniary jurisdiction in the first place to entertain the matter.

23. Having held as above that the Mandera Magistrate's court had no pecuniary jurisdiction to entertain the matter at the material time, the nearest court with both territorial and pecuniary jurisdiction was Garissa CM's court. Accordingly, it is my holding that the suit was properly filed in Garissa and that the preliminary objection was misplaced. To that extent, the appeal is hereby upheld and the impugned trial magistrate's order dismissing the suit set aside. The suit is consequently reinstated and the same transferred to Mandera court for hearing and determination before the senior principle Magistrate now heading the station.
24. Regarding costs, the same is awarded to the appellant as a matter of course.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025

J. N. ONYIEGO

JUDGE

