



**Nyakul & 2 others v Resident Magistrate, Court 4 & 2 others; Chesang (Suing on his behalf and on behalf of the members of AIC Narok Town Church) (Interested Party) (Judicial Review E005 of 2025) [2025] KEHC 12014 (KLR) (15 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12014 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
JUDICIAL REVIEW E005 OF 2025  
CM KARIUKI, J  
AUGUST 15, 2025**

**BETWEEN**

**SAMWEL NYAKUL ..... 1<sup>ST</sup> APPLICANT  
TIMOTHY KETERE ..... 2<sup>ND</sup> APPLICANT  
TUMANKA MULINKA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**RESIDENT MAGISTRATE, COURT 4 ..... 1<sup>ST</sup> RESPONDENT  
RESIDENT MAGISTRATE COURT 5 ..... 2<sup>ND</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**TOROITICH CHESANG (SUING ON HIS BEHALF AND ON BEHALF OF THE MEMBERS OF AIC NAROK TOWN CHURCH) ..... INTERESTED PARTY**

**RULING**

**Background**

1. The Applicants, Samuel Nyakul, Timothy Ketere, and Tumanka Mulinka, are respectively the Presiding Bishop of the African Inland Church Southern Region, the Chairperson of the Regional Church Council, and the Chairperson of the District Church Council. They are the 1st, 2nd, and 3rd Defendants in Narok MCCC/E120/2025.
2. By an Originating Motion dated 30th May 2025, the Applicants moved the Court seeking the following relief;



- i. Spent.
  - ii. That the Honourable Court be pleased to issue a stay of proceedings in NAROK MCCC/E120/2025 pending hearing and determination of this Application.
  - iii. That the Honourable Court be pleased to quash Order 5 of the order dated 15th May 2025 made by the 1st Respondent.
  - iv. That the Honourable Court be pleased to quash the Orders made by the 2nd Respondent during the proceedings dated 29th May 2025.
  - v. That the Honourable Court be pleased to call file number Narok MCCC/E120/2025 for reallocation.
  - vi. That the Honourable Court be pleased to declare that the proceedings in NAROK MCCC/E120/2025 were null and void.
  - vii. That the Honourable Court be pleased to order that the proceedings in NAROK MCCC/E120/2025 start afresh before another magistrate.
  - viii. The costs of the suit are to be provided.
3. The Application is premised on the contention that in Narok MCCC/E120/2025, the 1st Respondent directed that the inter partes hearing proceed before the 2nd Respondent on the basis that the 1st Respondent was seized of another matter (MCCC/E292/2025) involving the same parties. The Applicants argue that such reallocation was irregular and unlawful, as a Resident Magistrate has no jurisdiction to transfer a matter to another magistrate of equal rank—the power to reallocate files being vested exclusively in the High Court. It is alleged that the 1st Respondent thereby acted ultra vires, arrogating supervisory jurisdiction reserved for the High Court.
  4. The Applicants further aver that when the matter came before the 2nd Respondent, their counsel immediately raised a jurisdictional objection, which was dismissed on the ground that the reassignment was an ordinary administrative measure to promote efficiency. The 2nd Respondent thereafter proceeded with the inter partes hearing, directed parties to file submissions, and fixed a ruling date. The Applicants maintain that the entire proceedings before the 2nd Respondent were a nullity ab initio and infringed their right to a fair hearing.
  5. The Application is supported by a joint affidavit sworn on 30th May 2025 by the three Applicants. They depone that following an application in the lower Court, the file was placed before the 1st Respondent (Resident Magistrate, Court 4), who, on 15th May 2025, issued directions—including Order 5—transferring the matter to the 2nd Respondent (Resident Magistrate, Court 5) for an inter partes hearing. The Applicants contend, on advice of counsel, that the 1st Respondent acted without jurisdiction in purporting to reallocate the case, contrary to Sections 17 and 18 of the *Civil Procedure Act* and Article 165 of *the Constitution*.
  6. They further state that the 2nd Respondent’s decision to proceed despite the objection compounded the illegality, rendering all subsequent proceedings void. They urge the Court to quash the impugned orders and direct that the case be heard afresh before a competent court.

### **The response**

7. The Interested Party, Torotich Chesang, swore a replying affidavit on 29th July 2025 on his behalf and behalf of members of AIC Narok Town Church, opposing the Application. He avers that the motion



is frivolous, vexatious, and calculated to delay the expeditious disposal of Narok MCCC/E120/2025 to the detriment of the Interested Parties.

8. He contends that the alleged lack of jurisdiction in reallocating the file is a mere technicality devoid of legal foundation. In his view, the decision to have the matter heard by another magistrate of concurrent jurisdiction was a lawful administrative measure consistent with internal case management practices intended to ensure efficiency and impartiality. He maintains that Article 165(6) does not bar subordinate courts from organizing workflow, and that no law prohibits a magistrate from hearing a matter allocated by another magistrate of equal rank.
9. It is deponed that the orders of 15th May 2025 and the proceedings of 29th May 2025 were procedurally proper and caused no prejudice to the Applicants. The jurisdictional objection was duly considered and dismissed on valid grounds. Citing Article 159(2)(b) and (d) of *the Constitution*, the Interested Party urges the Court to shun undue technicalities and facilitate justice without delay. He further asserts that the Application seeks to obstruct the Interested Parties' constitutional right to freedom of religion under Article 32, as they have been compelled to conduct religious services outdoors in unsuitable conditions.
10. He concludes that the Applicants have not demonstrated illegality, irrationality, or procedural impropriety in the magistrates' handling of the matter to warrant judicial review intervention and prays that the Application be dismissed with costs.

#### **Directions of the Court**

11. On 30th July 2025, this Court directed that the Application be canvassed by way of written submissions. The Respondents did not file any submissions.

#### **Applicants' Submissions**

12. The Applicants submit that the 1st Respondent acted ultra vires in directing the matter to proceed before the 2nd Respondent, a court of concurrent jurisdiction, merely because the 1st Respondent was seized of another matter involving the same parties. They argue that only the High Court may transfer or reallocate cases between subordinate courts, under Sections 17 and 18 of the *Civil Procedure Act* and Article 165(6) and (7) of *the Constitution*.
13. Reliance is placed on Section 7(2)(a) of the *Fair Administrative Action Act*, which provides for review where a decision-maker acts without or more than jurisdiction. They cite *Municipal Council of Mombasa v Republic & Another* [2002] eKLR, which emphasises that judicial review is concerned with the legality of the decision-making process; *Okoiti & 3 others v Anne Waiguru & 5 others* [2021] KLR, where the Court held that an ultra vires act is inherently illegal; and *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR, where the Supreme Court held that jurisdiction flows from *the Constitution* or statute and cannot be expanded by judicial craft or practice.
14. The Applicants submit that internal case management practices cannot override constitutional or statutory provisions. They argue that the proper procedure was for the 1st Respondent to refer the file to the High Court or, administratively, to the presiding magistrate or court administrator, as provided under Sections 12 and 15 of the *Magistrates' Courts Act*. *Executive Officer/Court Administrator Bondo Law Courts v Republic* [2020] eKLR is cited to illustrate the need for compliance with established protocols.
15. They maintain that the 2nd Respondent's decision to proceed was equally a nullity, relying on *Republic v South Kisii District Land Disputes Tribunal & 2 others ex parte Pauline Bochaberi*



Omwange [2014] KLR and Eurotrucks & Trailers Ltd v Juma Abdalla Matata & another [2016] eKLR, which affirm that decisions made without jurisdiction are void ab initio and any subsequent proceedings are equally void.

16. In conclusion, the Applicants urge the Court to declare both the 1st Respondent's order and the proceedings before the 2nd Respondent unlawful, null and void, and to grant the orders sought to safeguard their constitutional rights under Articles 47, 50, and 159 of *the Constitution*.

### **Analysis And Determination.**

17. I have considered the Originating Motion dated 30th May 2025, the affidavits in support and opposition, and the Applicants' written submissions. The Respondents did not file any submissions. The central issue arising for determination is whether the 1st Respondent had the jurisdiction to direct that Narok MCCC/E120/2025 proceed before the 2nd Respondent, a magistrate of concurrent jurisdiction, and if not, what is the legal effect of the proceedings and orders that followed.
18. The Applicants' case is anchored on the proposition that the jurisdiction to transfer or reallocate a case from one subordinate Court to another is vested exclusively in the High Court under Sections 17 and 18 of the *Civil Procedure Act*. Section 18(1)(b) empowers the High Court, on its motion or Application, to withdraw any suit or proceeding from a subordinate court and transfer it to another subordinate court competent to try it. The Applicants contend that there is no equivalent statutory power conferred upon a magistrate to transfer a case to another magistrate of concurrent jurisdiction.
19. The Interested Party, on the other hand, maintains that the impugned direction was merely an internal case management measure intended to promote efficiency and impartiality, and that no prejudice has been demonstrated. He invokes Article 159(2)(b) and (d) of *the Constitution* to urge the Court to disregard undue technicalities and facilitate the expeditious determination of the dispute.
20. The starting point is that jurisdiction is everything; without it, a court has no power to make one more step. The Supreme Court in Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 others [2012] eKLR affirmed that jurisdiction flows from *the Constitution* or legislation, and a court cannot arrogate to itself jurisdiction that is not expressly conferred. Similarly, in Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, the Court of Appeal held that where a court acts without jurisdiction, its proceedings are a nullity.
21. The reallocation of a matter from one magistrate to another of equal jurisdiction is not a mere clerical task; it has the effect of altering the judicial officer seized of a dispute and potentially impacts parties' rights. Sections 17 and 18 of the *Civil Procedure Act* vest the power of transfer or withdrawal of suits squarely in the High Court. The *Magistrates' Courts Act* contains no express provision authorizing a magistrate to reallocate a matter to a colleague of equal rank, save where such reallocation is undertaken administratively by the presiding magistrate or court administrator, or by the Judiciary's internal case management guidelines.
22. In the present case, the record shows that the 1st Respondent, while seized of the matter, made an order (Order 5) transferring it to the 2nd Respondent for an inter partes hearing on the ground that he was handling a related case involving the same parties. There is no indication that this reallocation was made under a direction from the presiding magistrate or court administrator, or on the authority of the High Court. In the absence of such authority, the 1st Respondent's action amounted to an assumption of a power not conferred by law.
23. The 2nd Respondent, upon the matter being placed before him, was invited to consider a jurisdictional objection but dismissed it as an administrative practice. While efficiency in court operations is a



constitutional imperative under Article 159(2)(b), it cannot override express statutory provisions governing jurisdiction and transfer of cases. As was held in *Okoti & 3 others v Anne Waiguru & 5 others* [2021] KLR, an ultra vires act is laced with illegality and cannot be sanitized by considerations of expediency.

24. It follows that the proceedings before the 2nd Respondent, being founded on an unlawful transfer, were themselves undertaken without jurisdiction. The legal effect of such proceedings is settled: they are void ab initio. In *Republic v South Kisii District Land Disputes Tribunal & 2 others ex parte Pauline Bochaber Omwange* [2014] KLR, the Court reiterated that any decision made without jurisdiction is a nullity and cannot stand. Any further proceedings founded on it must equally collapse.
25. I therefore find and hold that—
  - a. The 1st Respondent acted ultra vires in purporting to transfer Narok MCCC/E120/2025 to the 2nd Respondent without the authority of the High Court or the presiding magistrate by established administrative procedures.
  - b. The proceedings conducted before the 2nd Respondent on 29th May 2025 and all consequential orders were undertaken without jurisdiction and are null and void.
26. On the appropriate relief, this Court is satisfied that the Applicants have demonstrated illegality and procedural impropriety, warranting the grant of judicial review orders. The impugned orders and proceedings must therefore be quashed, and the matter remitted to the Chief Magistrate's Court at Narok for reallocation before a magistrate other than the 1st and 2nd Respondents.

### **Final Orders**

27. In light of the foregoing analysis, and having found that the 1st Respondent acted ultra vires in purporting to transfer Narok MCCC/E120/2025 to the 2nd Respondent without lawful authority, and that the subsequent proceedings before the 2nd Respondent were conducted without jurisdiction, the Court makes the following orders—
  - i. An order of certiorari is hereby issued quashing Order 5 of the directions made by the 1st Respondent on 15th May 2025 in Narok MCCC/E120/2025.
  - ii. An order of certiorari is hereby issued quashing all proceedings and orders made by the 2nd Respondent in Narok MCCC/E120/2025 on and after 29th May 2025.
  - iii. The file Narok MCCC/E120/2025 shall be forthwith remitted to the Chief Magistrate's Court at Narok for reallocation to a magistrate other than the 1st and 2nd Respondents, by the law and the Judiciary's administrative procedures.
  - iv. The matter shall proceed de novo before the magistrate to whom it is reallocated.
  - v. Each party shall bear their own costs.
28. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 15<sup>TH</sup> DAY OF AUGUST, 2025.**

.....

**CHARLES KARIUKI**

**JUDGE**

