



**Okong'o v Loibex Builders Limited & 5 others (Petition E088 of 2024)
[2024] KEHC 4855 (KLR) (Constitutional and Human Rights) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E088 OF 2024

LN MUGAMBI, J

APRIL 25, 2024

BETWEEN

KENNEDY MONG'ARE OKONG'O PETITIONER

AND

LOIBEX BUILDERS LIMITED 1ST RESPONDENT

BERYL APARTMENTS LIMITED 2ND RESPONDENT

COUNTY GOVERNMENT OF NAIROBI 3RD RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 4TH
RESPONDENT**

NATIONAL CONSTRUCTION AUTHORITY (NCA) 5TH RESPONDENT

**OFFICER COMMANDING POLICE DIVISION PARKLANDS 6TH
RESPONDENT**

RULING

Introduction

1. By a Notice of Motion application dated 1st March 2024 supported by an affidavit of even date, the petitioner herein seeks orders that:
 - i. Spent.
 - ii. This Court be pleased to order the transfer of this case file to the Environmental & Land Court for determination due to the issue of jurisdiction.



- iii. Upon the grant of prayer 2 above, this Court be pleased to vacate its previous orders of service upon the respondents made on the 20th February, 2024.
 - iv. This Court be pleased to make any further directions as it may deem fit so as to meet the interests of justice of this matter.
 - v. Upon notice on the e-filing error on the Judicial filing system, the petitioner did not proceed with the Court order on serving the respondent hence no prejudice will be occasioned if this Court exercises its inherent powers on discretion.
 - vi. This Court is further persuaded to take judicial notice on the gradual continuing e - filing trainings and its attended mishaps and hurdles.
 - vii. This Court be pleased to take judicial notice on the National economic/financial hard times which might prejudice the petitioner if he were to withdraw this application/Suit and file it a fresh.
 - viii. If this Court does not expeditiously hear this application and issue orders sought, the petitioner will suffer irreparable loss and damage and infringe on the petitioner's fundamental constitutional rights as there is work in progress by the respondents.
 - ix. The costs of this application be in the cause.
2. The respondents did not file any responses and submissions to this application as service upon them was not effected as directed.
 3. The Petitioner came to this Court on 20/2/2024 via a Petition, a Notice of Motion Application supported by an affidavit plus the accompanying certificate of urgency. After briefly studying the pleadings, the Court directed that service be effected within 7 days for all the parties to return Court on 11/3/2024 and address the Court on the issue of jurisdiction.
 4. The Petitioner nevertheless chose to file this ex parte application that seeks to transfer of this Petition from this Court to the Environment and Land Court.

Petitioner's Case

5. The petitioner depones that the instant suit was filed on 19th February 2024. He states that when the matter was brought before this Court on 20th February 2024, he realized that it had been erroneously filed under the High Court Constitution and Human Rights Division instead of the Environment and Land Court which has the requisite jurisdiction to entertain the petition.
6. He asserts that this mix up was caused by an e-filing error in the Judiciary system which misdirected him while filling the matter. Further the inadequate training of Advocates on use of the Judiciary e - filing system.
7. Accordingly, the petitioner implores this Court to transfer the instant petition to the Environment and Land Court in the interest of justice and fairness. He equally points out that this will also save on time and money which will be incurred if the matter is withdrawn and filed afresh in the Environment and Land Court. Correspondingly, he contends that allowing this application will not prejudice the respondents as they are yet to be served.



Petitioner's Submissions

8. The petitioner through his firm Mong'are Bw'Okong'o and Associate Advocates filed submissions dated 14th March 2024 in support of his application.
9. The petitioner submitted that the application has merit and so should be allowed. He submits that he was misled by the Judiciary e-filing system to file the matter under this Court instead of the proper forum which is the Environment and Land Court. He also made known that the system that utilizes artificial intelligence is challenging to use and advocates have not received proper training on how to use it and deal with such situations.
10. In support of his appeal for the matter to be transferred, he relied in the case of *Kithita Ngeana vs Mwaniki Kisume* (2018)eKLR where it was held that:

“...Section 18 (1) (b) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without an application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of proceedings in another court is not a sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction..... ”

11. The petitioner further asserted that this Court has the jurisdiction to grant the prayers sought. This is because this Court has jurisdiction to determine suits on human rights violations as envisaged under Article 165 of *the Constitution*, which is the substance of this suit. As such it was stressed that this Court can transfer the matter to the Environment and Land Court instead of dismissing it all together. Reliance was placed in *Abraham Mwangi Wamigwi vs Mbiriri Wanjiku & Another* (2012)eKLR where it was held that:

“The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kangenyi 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.”

12. Like dependence was placed in *Pamoja Women Development Programme & 3 others vs Jackson Kihumbu Wang'ombe & another* (2016) eKLR and *Rose Mbithe Ndambuki vs Peter Kimatu Wambua, & 2 others* (2019) eKLR.
13. Finally, the petitioner submitted that while the general rule under Section 27 of the *Civil Procedure Act* is that costs follow the event, he prayed that there be no orders as to cost, owing to the stated circumstances.

Analysis and Determination

14. The issues that arises for determination are:
 1. Whether this court has jurisdiction?



2. Whether this Court can transfer the instant suit to the Environment and Land Court, as prayed by the petitioner.
15. Jurisdiction is what gives the Court the power to hear a dispute and is given by law. The Supreme Court in *Samuel Kamau Macharia & another vs Kenya Commercial Bank Limited & 2 others* (2012)eKLR while discussing the issue of jurisdiction rendered itself as follows:

“(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 to itself jurisdiction exceeding that which is conferred upon it by law... the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.... Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

16. The jurisdiction of the High Court is granted by Article 165 of *the Constitution* as follows:

- (3) Subject to clause (5), the High Court shall have--
- a. unlimited original jurisdiction in criminal and civil matters;
 - b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - c. jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - d. jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - i. the question whether any law is inconsistent with or in contravention of this Constitution;
 - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - e. any other jurisdiction, original or appellate, conferred on it by legislation.



- (4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
 - (5) The High Court matters—
 - a. reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - b. falling within the jurisdiction of the courts contemplated in Article 162 (2).
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
17. Further in adjudication of Constitutional disputes, the High Court procedure is provided for in [the Constitution](#) of Kenya (Protection and Fundamental Freedoms) Practice and Procedure Rules, 2013. These Rules are silent on the transfer of suits from this Court to the Environment and Land Court or courts of equal status. The only transfers contemplated are under Rule 8 and Rule 31 are as follows:

Rule 8 provides:

Place of filing-

- 8 Every case shall be instituted in the High Court within whose jurisdiction the
 - (1) alleged violation took place.
- 8 Despite sub-rule (1), the High Court may order that a Petition be transferred
 - (2) to another Court of competent jurisdiction either on its own motion or on the application of a party.

Rule 31

‘The Court may refer a matter for hearing and determination by alternative dispute resolution mechanism.’

- 18. It is instructive to note that the transfer alluded to in Rule 8 (2) is restrictive and does not extend to Court of equal status going by definition of ‘Court’ under Rule 2, which states: “Court” means the High Court of Kenya and includes a Subordinate Court under Article 23(2) of [the Constitution](#).” The transfer under Rule 8(2) does not therefore, include transfer to court of equal status.
- 19. In *Karl Wehner Claasen vs Commissioner of Lands & 4 others* (2019)eKLR, the Court of Appeal noting such loopholes in the rules guided as follows in dealing with instances where situations are not expressly provided for in the rules.

“...in the absence of express provisions in the Practice Procedure Rules, an application for substitution may be based on the applicable Civil Procedure Rules. However, we add that Rule 3(8) of the Practice and Procedure Rules gives the court inherent power to make such orders as may be necessary for the ends of justice and that Article 159(2) (d) and (e) respectively obliges a court to administer justice without undue regard to procedural technicalities and to protect and promote the purpose and principles of [the Constitution](#).”



20. The *Civil Procedure Act* however does not contemplate a transfer of suits between courts of equal status. Section 18, the transfer is coached in the following terms:

Power of High Court to withdraw and transfer case instituted in subordinate court

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.

21. The Court of Appeal in *Equity bank Limited vs Bruce Mutie Mutuku T/A Diani Tour & Travel (2016)eKLR* observed as follows:

“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 Section 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 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 situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer. In *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another [2012] eKLR*, it was held as follows: -

“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.”

22. Adopting the Court of Appeal’s guidance in *Honey Creepers Investment Limited vs Cab Investments Company Ltd & 4 others* [2020] eKLR, the Court determined as follows:

“42. At this juncture, I should, as I normally do direct that the matter be transferred to the E&LC for hearing and determination. I normally put reliance on Daniel N. Mugendi (*supra*). The 2nd Respondent has, however, submitted that based on the decision of the Court of Appeal in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR, a court without jurisdiction has no power to transfer a case to a court with jurisdiction. In the stated case, the Court of Appeal held that...

43. In retrospect, I now realize that transfer in the Daniel N. Mugendi case was based on the reasons that:-

“Believing as we do that the approach taken by Majanja J is the correct one, and in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”

44. It seems the transfer of matters between courts was a temporary measure to take care of the changes introduced by *the Constitution*, 2010 and to allow parties to familiarize themselves with the new litigation terrain. I do not think that ten years after the promulgation of the current Constitution, a litigant can still be allowed to majestically march to the wrong court and expect that the court without jurisdiction will transfer the matter to the court with jurisdiction. The *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* case which was decided by the Court of Appeal after its decision in



the Daniel N. Mugendi case is the decision that should guide this Court on what to do.”

23. Correspondingly the Court in *Sam Kinyua vs Yusuf Mbuno & 4 others; Tolbert Manyage (Interested party)* (2022)eKLR echoed this position as follows:

“26. On issue of the transfer the 3rd and 4th respondents places reliance in the case of *Honey Creepers Investment Limited* case, (supra) where the learned Judge also made a substantive finding that the Court, as a consequence, lacked the requisite jurisdiction to transfer the incompetent Petition to the Court with the requisite jurisdiction, which in that case was the Environment and land Court. Inter alia Justice Korir relied on the Court of Appeal decision in *Equity Bank Limited v. Bruce Mutie Mutuku t/a Diani Tour & Travel* (2016) eKLR, the High Court decision in *Republic vs. Chief Land Registrar & another* (2019) eKLR and *Delmonte Kenya Limited vs. County Government of Murang’a & another* (2019) eKLR where the Courts reached a similar decision. The Learned Judge quotes, and agrees with, Justice Mativo that:-

“...the jurisdiction of the Environment and Land Court is limited to the disputes contemplated under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and land Court Act*. In this regard, my view is that the intention of *the Constitution* is that if an issue arises touching on land in respect of its use, possession, control, title, compulsory acquisition or any other dispute touching on land, then this Court has no jurisdiction. My strong view is that this suit ought to have been transferred to the proper court the moment *the Constitution* of Kenya 2010 divested this Court the jurisdiction to hear the case. Buttressed by the provisions of *the Constitution* and Section 13 of the *Environment and Land Court Act*, I am clear in my mind that his Court cannot properly entertain the application before me. ... Even with that clear-cut jurisdictional demarcation on paper, sometimes matter camouflaged in what may on the surface appear to be a serious constitutional issues or Judicial Review applications or other matters falling in other High Court division may, on a closer scrutiny reveal otherwise – that the germane of the application is actually a labour dispute or land issue falling squarely in the forbidden sphere of the specialized courts! Such is the nature of the application before me. A boundary dispute or enforcing an order relating to a boundary dispute falls squarely in the forbidden sphere of the specialized courts, namely, the Environment and Labour Court. The drafters of *the Constitution* were very clear on the limits of this Court’s jurisdiction and the jurisdiction of the Courts of equal status.”

27. Further reliance is placed in the Court of Appeal holding in *Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour & Travel* (Supra), that where a case is placed before the wrong Court, the same is incompetent. Further that, it cannot be redeemed through a transfer of the same to the right court, to do so would be to muddle up the waters and allow confusion to reign. He also



concluded that 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 Court lacks jurisdiction, 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 situation. In the same way, a Court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer.

28. Similarly in Phoenix of E.A Assurance Company Limited vs. S. M. Thiga t/ a Newspaper Service [2019] eKLR the Court of Appeal at paras. 19 and 20, reaffirmed in the following words the right position of the law – in respect to suits filed before Courts which have no requisite jurisdiction:-

“We are not persuaded that the 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...”

29. Equally the Supreme Court of Kenya in Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) & Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs). Petition No. 3 of 2016 also reached the conclusion that suits filed before Courts without jurisdiction, the courts have no powers to transfer the same to courts of competent jurisdiction.”

24. In the present Petition, the Petitioner argued that the Petition contains issues of human rights violations hence this court has the power to transfer the matter to the Environment and Land Court. He wrote in his submissions as follows:

“... It is our submission that this Court has jurisdiction to determine this matter, since it contains issues of Human Rights violations under Chapter 4 of *the Constitution* of Kenya, 2010 and as such this Court is competent enough to effect the transfer of the same to the Environment and Land Court, rather than dismissing it...”

25. The nature of the Petition before the Court has to be scrutinized vis-à-vis the relevant legal provisions in order to determine whether this Court has jurisdiction over this matter or not.
26. A gist of the Petition can be gleaned from paragraphs 8, 9 and, 11 which allege the facts upon which the Petition is founded. The said paragraphs are set out below:

- “8. That the 2nd Respondent has continually contravened the rights of the Petitioner as well as neighbouring residents of City Park Estate herein by commencing construction of a would be high storey apartment without



the relevant approvals for construction, which include, architectural plan approval, Environmental Impact Assessment/NEMA, approval NCA project approval and structural plan approval”

9. That the noise emanating from the on-going construction at plot no. NAIROBI/BLOCK 37/72 (L.R. 209/11092/17) affects the Petitioner and the neighbouring residents of City Park, as they are excessively loud and with dangerous vibrations, thereby offending and interfering with the comfort, repose, health and safety of the residents and the Petitioner.”
11. That the 1st and 2nd Respondents Actions constitute noise pollution and environmental degradation, pursuant to the Environmental Management and Coordination (Noise and Excessive Vibration (Control) Regulations, 2009.”

27. Consequently, the Petitioner sought the following prayers:

- a. This Honourable Court does make a declaration that the 3rd, 4th and 5th Respondent have ignored to perform their mandatory and fiduciary duties in providing requisite construction approvals and preventing noise pollution and have failed to uphold the rights and interests of the Petitioner and the affected Residents of City Park Estate.
 - b. Conservatory and mandatory injunctive orders do hereby issue restraining 1st and 2nd Respondent from continuing with the construction on plot no. NAIROBI/BLOCK/37/72 (L.R NO. 209/11092/17) pending their receipt of necessary construction and environmental approvals.
 - c. A declaration that as a result of the breach and/or violation of rights of the Petitioner herein, the Petitioner suffered damage, pain and suffering and he is therefore entitled to special, general and exemplary damages against the respondents herein jointly and/or severally.
 - d. The 6th respondent be compelled by this Honourable Court by way of injunctive relief to ensure compliance of (a) and (b) above.
 - e. Costs of the Petition be provided for.
28. I have already set out extensively the jurisdiction of the High Court elsewhere in this ruling but I need to emphasize Article 165 (5) of *the Constitution* which ousts the Jurisdiction of the High Court in the following area:

165 (5) The High Court shall not have jurisdiction in respect of matters—

- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution;
- Or
- (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

29. Article 162 (2) (a) and (b) authorizes Parliament to establish Courts with the status of the High Court and Article 162 (3) authorizes Parliament to determine their jurisdiction.

162 (2) states: Parliament shall 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.



3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
30. As a result, the *Environment and Land Court Act* No.19 of 2011 was enacted to set up the Environment and Land Court conferring upon it exclusive jurisdiction over disputes relating to the environment and use and occupation of, and title to land. The scope of the Jurisdiction of the Environment and Land Court is circumscribed in Section 13 (2) of the Act which provides thus:

In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court 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.
31. It is instructive to note that under Section 13 (2) (a) the Environment and Land Court has jurisdiction to hear disputes “relating to environmental planning and protection, climate issues, land use planning, title while “Section 13 (2) (e) expands jurisdiction to “any other dispute relating to environment and land.” Essentially, it means that matter environment cannot be available for determination before the High Court. This Petition is hinged on allegations of complaint about environmental pollution. Also land use and planning as one of the petitioner’s complaint is lack of planning approvals from the relevant bodies. This Court does not therefore have jurisdiction whatsoever to deal with the matters raised in this Petition. As was held by the Supreme Court in *Republic vs Karisa Chengo & 2 others* [2017] eKLR,

“...Article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of *the Constitution* intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts... The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”

32. Without jurisdiction this Court is incapable of making an order for transfer. This has been confirmed in the various authorities I have made reference to in the foregoing. Indeed, as was famously held in the *Owners of Motor Vessel ‘Lilian S’ v Caltex Oil (Kenya) Ltd* [1989] eKLR without jurisdiction, the Court can not make any more step forward. Nyarangi J.A stated:

“...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 a continuation of proceedings



pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”

33. Concerning the claim that the Petitioner filed this Petition due to an error occasioned by the Judiciary e-filing system which was not working properly as he had intended to file the matter before the ELC Court and not the High Court, I do not think the Petitioner is forthright about this issue. An examination of the title of the Petition clearly indicates “the High Court at Milimani”, not the Environment and Land Court. I reject this flimsy excuse.
34. The petitioner had also argued that this court has jurisdiction because the petition raises issue of human rights violations. This, however cannot grant the court jurisdiction as the Environment & Land Court has jurisdiction to interpret and apply *the constitution* on issues that arise in the context of disputes that specifically fall under their jurisdiction. This was confirmed by the Court of Appeal in Attorney General & 2 Others Vs Okiya Omatata & 14 Others (2020) eKLR where the court held:
- “We have no doubt that the ELRC and the ELC have jurisdiction to interpret and apply *the Constitution* as held by the High Court in United States International University (USIU) v. The Attorney General & Others [2012] eKLR and this Court in Daniel N. Mugendi v. Kenyatta University & 3 Others (2013) eKLR. However, the jurisdiction of those specialized courts to interpret and apply *the Constitution* is not original or unlimited like that of the High Court. It is limited to constitutional issues that arise in the context of disputes on employment and labour relations or environment and land matters.”
35. The Petition having been filed in a Court that has no jurisdiction, the same cannot survive. I hereby strike out the same. As the Respondents were not served, they did not participate in these proceedings; I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF APRIL, 2024.

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L N MUGAMBI
JUDGE

