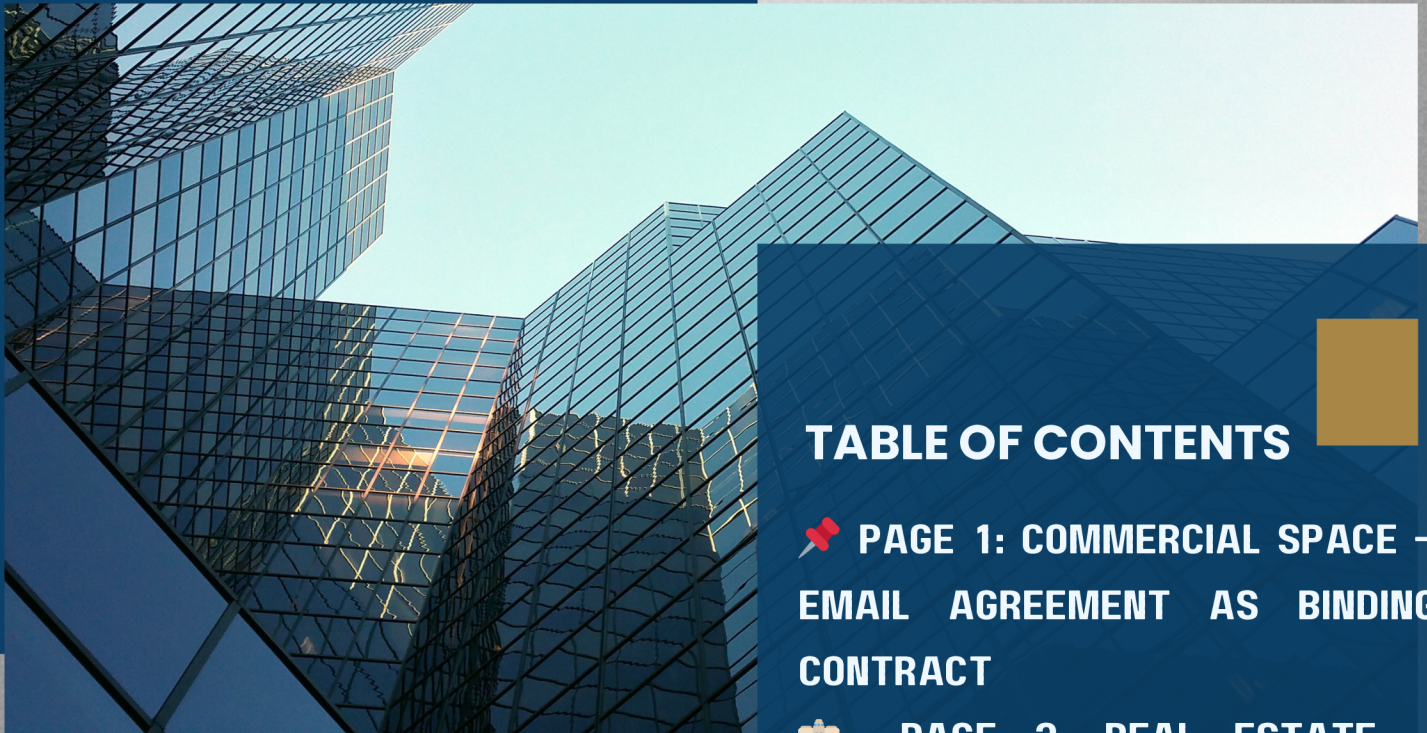


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ABOUT US

Daniel & Kenneth Advocates LLP, is an aggressive full service law firm with lawyers of vast experience specializing in corporate and commercial law, property law and dispute resolution to domestic and international clients drawn from both private and public sector.

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COMMERCIAL SPACE- EMAIL AGREEMENT DEEMED BINDING CONTRACT

In the case of Uba Kenya Bank Limited v Top Image Africa Limited (Civil Appeal E162 of 2022) [2025] KEHC 254 (KLR), the High Court addressed the enforceability of agreements formed via email



Inside The Issues

- The dispute arose from a foreign exchange transaction where currency was exchanged at a rate 1% lower than the Central Bank's indicative rate, leading to a financial loss of Kshs 12,300,000 for the respondent.
- The court stated that the email correspondence essentially constituted a contract between the appellant and the respondent for the sale and purchase of Kenyan Shillings. Since none of the parties complained of any vitiating factors that they could have relied on to have avoided the contract between them, they were accordingly bound by the terms in the email correspondence.
- The trial court found that Uba Kenya Bank had failed to disclose the basis for its exchange rate, both when requested by Top Image Africa and during the proceedings. This omission was deemed a breach of the bank's duty of care, as transparency could have mitigated the respondent's losses. On appeal, the High Court ruled that the email correspondence between the parties constituted a legally binding contract. The court emphasized that mutual agreement on the exchange rate was evident and enforceable under contract law principles.
- This judgment underscores the legal weight of email communications in commercial transactions and highlights the importance of transparency in financial dealings to avoid liability. Businesses are advised to exercise due diligence and clarity in their contractual engagements.



REAL ESTATE: Nairobi Land Court Suspends Kileleshwa High-Rise Developments, Imposes 16-Story Limit

Inside The Issues

- The Nairobi Environment and Land Court has set a maximum height limit of 16 floors for high-rise developments in Kileleshwa and nearby areas, effectively nullifying many previously granted permits for taller structures. This ruling by Justice Oscar Angote highlights violations of zoning regulations in the 2021 Nairobi City Development Control Policy. All developments within Zone 4B, which is categorized as Muthangari and it includes areas between Waiyaki Way, Riverside drive, Ring Road Westlands & Mahiga Mairu Avenue, must adhere to the 16-floor cap and a maximum ground coverage of 75 percent.
- the court found that the allowable height of the 16th to the 21st respondents development should and cannot exceed 16 levels, with a maximum ground coverage of 75% as provided for in the 2021 Nairobi City County Development Control Policy. the court further held that until the county assembly of Nairobi amends the policy to state otherwise, the allowable height for developments within zone 4B remains 16 levels with a maximum ground coverage of 75%.
- The ruling halts several ongoing construction projects, leaving some developers in a difficult position. Local residents initiated the case, claiming the county government neglected urban planning principles, leading to increased congestion and environmental harm. Respondents included the Nairobi County Government, the National Environment Management Authority (NEMA), and affected property developers.
- In its defense, the Nairobi County Government asserted that zoning policies had evolved and that their approvals followed due process. NEMA confirmed that all Environmental Impact Assessment (EIA) licenses were comprehensively reviewed. The ruling compels the Nairobi County government to enforce zoning regulations and reassess permits exceeding the new 16-floor limit.

Inside The Issues

CONVEYANCING : Jurisdiction of Magistrates' Courts in Adverse Possession Claims: A Legal Analysis

- The question of whether Magistrates' Courts in Kenya have jurisdiction to adjudicate adverse possession claims has been a contentious issue in the country's legal discourse. Adverse possession refers to a legal doctrine that allows a person to claim ownership of land if they have occupied it openly, continuously, and without the permission of the owner for a prescribed statutory period.
- While the Environment and Land Court Act and the Magistrates' Courts Act grant magistrates jurisdiction over various land-related disputes, Section 38 of the Limitation of Actions Act explicitly designates the "High Court" as the forum for adverse possession claims. This has resulted in conflicting judicial interpretations—some courts argue that magistrates have jurisdiction under their expanded land-related mandates, while others maintain that adverse possession claims are exclusively within the purview of the Environment and Land Court.
- Advocates for magistrates' jurisdiction, as seen in *Patrick Ndegwa Munyua vs Benjamin Kiiru Mwangi* [2020], contend that properly gazetted magistrates with adequate pecuniary jurisdiction can adjudicate adverse possession cases, emphasizing the principle of access to justice. On the other hand, rulings such as *Jesse Njoroge Gitau vs Kibuthu Macharia* [2019] assert that adverse possession claims must adhere to Section 38, which reserves such matters for the Environment and Land Court, functioning as an extension of the High Court's jurisdiction under Article 162(2)(b) of the Constitution. This position was further reinforced by the Court of Appeal in *Sugawara v Kiruti* (2024) KECA 1417.
- The dominant interpretation is that Parliament's deliberate exclusion of adverse possession claims from magistrates' jurisdiction signals their intent to limit such cases to the Environment and Land Court. Until legislative amendments address this ambiguity, the Environment and Land Court, in the High Court, retains the exclusive mandate to hear and determine adverse possession claims.

DISPUTE RESOLUTION: COURT CLARIFIES PRINCIPLES FOR INTERIM MEASURES

Inside The Issues

- In the case of **Glee Hotel Limited v Dclick & Another**, the plaintiff sought interim orders pending arbitration over a sale agreement and a temporary injunction to restrain the defendants from dealing with specified shares and property.
- The Court referenced the Court of Appeal's decision in **Safaricom Limited v. Ocean View Beach Hotel & 2 Others (2010) eKLR**, which established four critical criteria for granting interim measures pending arbitration proceedings: the existence of a valid arbitration agreement between the parties, a genuine threat to the subject matter of the dispute, the necessity and appropriateness of protective measures, and the duration for which such measures should remain in effect.
- Upon examination, the Court found that all these conditions were satisfied. Consequently, it issued an injunction restraining the defendants from engaging in any transactions involving the disputed shares and property until the conclusion of mediation or arbitration proceedings.
- This decision underscores the judiciary's essential role in safeguarding the arbitration process by preserving the integrity of the subject matter under dispute. It serves as a reminder to businesses and individuals entering arbitration agreements to carefully consider these principles when seeking interim relief. The ruling further emphasizes the importance of interim measures in protecting parties' rights and preventing irreparable harm during the resolution of disputes.

Inside The Issues

- Jurisdiction is a cornerstone of judicial proceedings, and its absence renders any suit filed in an incompetent court a nullity. The recent decision in *Coastal Bottlers Limited v Acqualine Distributors Limited* [2024] KECA 1806 (KLR) reaffirms this principle, emphasizing that transferring a suit from a court lacking jurisdiction to one with jurisdiction cannot cure the inherent defect of incompetence.
- Section 18 of the Civil Procedure Act empowers the High Court to transfer suits, appeals, or proceedings to a competent subordinate court or withdraw them for trial at the High Court. This discretionary power is exercised upon application by any party and must be applied judicially. Once transferred, the court receiving the suit may either retry the matter or proceed from the point at which it was transferred. However, this power is not without limitations, as highlighted in recent jurisprudence.
- The Supreme Court has unequivocally held that an order to transfer a suit from a court without jurisdiction to one with jurisdiction is impermissible. A suit filed in a court lacking jurisdiction is considered a nullity and cannot be salvaged by any subsequent transfer. This principle was reinforced in *Equity Bank Limited v Bruce Mutie Mutuku*, where the Court overturned a judge's decision to transfer a case from a magistrate's court that lacked jurisdiction to the High Court. The Court reasoned that such a transfer does not breathe life into an inherently defective suit.
- When a suit is filed in a court without jurisdiction, it is void from the outset. This principle is particularly relevant when an amendment to a claim exceeds the pecuniary jurisdiction of the initial court. In such cases, the doctrine of "relation back" cannot be invoked to validate the proceedings. As seen in the *Coastal Bottlers* case, once a suit is deemed incompetent due to lack of jurisdiction, no legal maneuver—whether transfer or amendment—can rectify its nullity.
- These rulings underscore the critical importance of filing suits in courts with proper jurisdiction. Legal practitioners must exercise due diligence in assessing both territorial and pecuniary jurisdiction before instituting proceedings. Failure to do so could result in wasted time, resources, and an inevitable dismissal of the suit.
- The judiciary's consistent stance on jurisdiction serves as a cautionary tale for litigants and legal professionals alike. A suit filed in an incompetent court is irredeemably void, and no subsequent transfer can confer validity upon it. The message is clear: jurisdiction is not merely procedural—it is foundational.