



Mwasawa v Directline Assurance Company Limited (Civil Case E034 of 2025) [2025] SCC 6 (KLR) (16 July 2025) (Judgment)

Neutral citation: [2025] SCC 6 (KLR)

REPUBLIC OF KENYA

IN THE SMALL CLAIMS COURT AT VOI

CIVIL CASE E034 OF 2025

FM MULAMA, RM

JULY 16, 2025

BETWEEN

OBRIEN MWANYAGHA MWASAWA CLAIMANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The claimant herein obtained a judgment in VOI SCC CC NO. E015 OF 2024 which judgement remains unsatisfied and has now moved the court by way of a declaratory suit in a bid to enforce the said judgment.
2. In a rejoinder the respondent has filed a preliminary objection which states that this court lacks jurisdiction to entertain damages that are general in nature or that are otherwise damages at large and which offend Section 24(1) and Section 12 of the *Small claims court Act*, 2016.
3. The parties agreed to proceed by way of Section 30 of the SCC Act and since a preliminary objection has been raised it is only procedural that the same be considered and determined first as it has a possibility of disposing off the suit in limine.
4. I have considered the preliminary objection, the respective parties' positions on the preliminary objection as well as the pleadings in general in the matter.
5. What I gather the preliminary objection to speak to is that fact that the claim is incurably defective for failure to plead particulars of negligence and that the claim being general in nature is thus a claim at large.

Issue For Determination.

- a. Whether the preliminary objection is merited.



- b. Whether the court can issue the orders sought in the claim
- c. Who bears costs of the claim.

Analysis And Determination.

a. Whether the preliminary objection is merited.

- 6. For starters I wish to point out that as I understand it the Respondent in the preliminary objection seems to mix issues and ought to have raised the PO in the primary suit and not in this declaratory suit since the duty of the court in such proceedings such as this is to make a declaration that the insurance company is bound to settle the decretal sum and as such it cannot be said that the claim is one that can be referred to as a claim at large since the figures have been ascertain as per the resultant decree of the primary suit and secondly in such proceedings, the claimant is not obligated to plead particulars of negligence since that has already been done and/or proved in the primary suit. On that basis alone, ground 3 of the PO must fail.
- 7. The 2nd limb of the PO is that the claim as filed is incurably and fatally defective for want of form and substance for failing to comply with the mandatory provisions of Section 24(f) of the Small Claims Court Act and particularly failure to plead particulars of negligence.
- 8. Section 24 of the Act provides as follows;

Every statement of claim shall contain the following particulars

 - a.
 - b.
 - c.
 - d.
 - e.
 - f. Other particulars of the claim as are reasonably sufficient to inform the respondent of the ground for the claim and the manner in which the amount claimed by each claimant or person represented has been calculated.
- 9. A look at the pleadings in this matter it is my considered view that the claim as pleaded and the particulars given in the statement of claim are sufficient enough and reasonably so and the amount claimed is ascertained and in fact the only issue the court is to consider is whether the respondent is obligated to settle the amount as indicated in the decree and as such it cannot be said that the claim as presented does not have sufficient particulars to prompt the respondent to defend the claim.
- 10. The respondent in his submissions has placed reliance in the case of Jerusha Auma Ogwari v Ibrahim Aisha Heri(Civil Appeal 223 OF 2022) where Justice Magare stated in paragraph 26 of the said Judgment, that jurisdiction and suitability of the Small Claims Court to handle personal injury claims arising from road traffic accidents and the court stated that such matters involving negligence and injuries arising from road traffic accidents should be filed in the Chief Magistrate's Court.
- 11. It was his submission that the court further stated that a claim for personal injury for accident cases in view of the notices to be served after filing under CAP 405 and the particulars of negligence which must be proved in common law is singularly unsuited for Small Claims Court.



12. The respondent ended his argument by stating that in a claim that has no monetary value which is a claim at large, where damages have to be assessed is not a small claim. Therefore, this Honourable court has no jurisdiction to hear and determine this matter.
13. As I have already observed, the claim as presented is not a claim at large and the court at this moment is not about to involve itself with how much the claimant is to be awarded however, the court is simply enforcing its orders as issued in the parent suit that gave rise to this matter under consideration.
14. I am alive to the fact that there are a lot of conflicting decisions of the high court on the issues relating to this court especially on jurisdiction to hear personal injury claims from road traffic accidents, claims being heard within/without 60 days and declaratory suits. There are atleast more than 1 conflicting decisions on each of these 3 issues and the high court being the last port of call, adjudicators are left to go with whichever decision that agrees with their philosophy and understanding of the law.
15. On the issue of jurisdiction of this court to hear and determine claims arising out of road traffic accidents, I am of the considered view that if the legislators wanted to exclude road traffic accident from the broad category of personal injuries, nothing would have stopped them from expressly stating so. Consequently, I am in agreement with all those decisions that state that the SCC has jurisdiction to hear and determine personal injuries arising out of road traffic accidents. Such cases include but not limited to Jane Zighe v Danson Bongoli Runga (Civil Appeal E034 of 2024) [2024] KEHC 11036 (KLR) (18 September 2024) (Judgment) as relied upon by the claimant and also the case of Kimimgi & another v Onuko (Civil Appeal E500 of 2024) [2025] KEHC 6268 (KLR) (Civ) (15 May 2025) (Judgment) the learned Justice A.C.Mrima at paragraphs 21,22 and 23 observed as follows;
 - “ 21. On the flipside, Section 12[d] of the Act specifically grants jurisdiction to the Court in respect of claims on ‘compensation for personal injuries.’ Therefore, had it been the intention of the Legislature to exclude claims on compensation for personal injuries from the ambit of the Small Claims Court, nothing would have restrained the law makers from doing so. In this case, it is apparently clear that the law intended and indeed granted the Small Claims Court the powers to adjudicate over claims on compensation for personal injuries. Even in doing so, the law makers were well aware that claims on compensation for personal injuries would attract assessment of damages and were, hence, damages at large, but nevertheless, asserted their intention.
 22. Having said as much, this Court further asserts that just like the correct position taken by the Court of Appeal in Orange Democratic Movement v Yusuf Ali Mohamed & 5 others case [*supra*] that ‘... a party cannot through its pleadings confer jurisdiction to a court when none exists. Jurisdiction is conferred by law not through pleading and legal draftsmanship....’ equally a Court cannot decline jurisdiction through legal craftsmanship especially in instances where Parliament expressly vests jurisdiction in a Court unless that law is declared unconstitutional or is duly amended. With the said caveat at hand and in upholding the constitutional imperative of separation of powers, Courts ought to resist the temptation of usurping the role of Parliament in law-making.
 23. It is on the foregoing basis that this Court, respectfully so, break ranks with the decisions excluding the Small Claims Courts from entertaining claims on compensation for personal injuries. In saying so, this Court remains alive to



the truism that indeed there are multiple challenges facing the Small Claims Courts as well as the parties in adjudicating the claims on compensation for personal injuries. To this Court, the most ideal intervention would instead be law reform.”

16. I should point out however, that the aforementioned case was an appeal against my own decision in [Milimani] Small Claims Court Case No. E4200 of 2023 delivered on 14th March 2024 that I had relied on the case of Jerusha Auma Ogwari v Ibrahim Aisha Heri(Civil Appeal 223 OF 2022) in dismissing the claim for want of jurisdiction. Other than agreeing wholly with the reasoning of the judge, the same is binding on me and moreso that its over my own decision.
17. The upshot is that the preliminary objection is not without merit and it is dismissed in limine and this paves way for the determination of the claim.

b. Whether the court can issue the orders sought in the claim

18. With that out of the way I now proceed to determine the claim as filed by the claimant. The claimant’s prayer is a declaration that the respondent is liable to satisfy the judgment sum in SCCC NO. E015 OF 2024.
19. Just like the issue of jurisdiction of the court to hear and determine personal injuries arising out of road traffic accidents, this issue of declaratory suits has also attracted some fair share of conflicting decisions and since the claimant has raised it in his submissions, I am of the view that for avoidance of any doubt state from the onset that I am of the view and school of thought that this court has power and jurisdiction to entertain declaratory suits.
20. I am of the same school of thought as justice J. N. Njagi in the case of Jubilee Allianz General Insurance Kenya Limited v Buti ya (Civil Appeal E613 of 2024) [2025] KEHC 5170 (KLR) (Civ) (24 April 2025) (Judgment) which stated as follows:

“ Rule 25(1) of the Small Claims Court Act Rules, 2019 requires the orders or decrees of that court to be enforced in accordance with the civil procedure rules. Section 38 of the Civil Procedure Act provides the various modes of executing decrees including -a.by delivery of any property specifically decreed; b.by attachment and sale, or by sale without attachment, of any property; c.by attachment of debts; d.by arrest and detention in prison of any person; e.by appointing a receiver; or f.in such other manner as the nature of the relief granted may require.

Though declaratory suits are not expressly stated in the said section, they are a mode of execution of decrees and can be placed under section 38 (f) of the Civil Procedure Act. In my view Rule 25 of the Small Claims Court Act Rules cannot have meant that such declaratory suits had to be filed in another court other than the Small Claims Court. It is my understanding that declaratory suits had to be filed in that same court for purposes of the court executing its own orders. In my view, the Rule grants the Small Claims Court the power to execute its own decrees through making orders in declaratory suits.”

21. Section 10(1) of the Insurance (Motor Vehicles Third Party Risks) Act, Cap 405, mandates that an insurer shall satisfy any judgment against its insured in respect of third-party liabilities, provided the requirements of Section 10(2) are met.
22. The Claimant submits that he complied with Section 10(2) by serving a statutory notice on 20th November 2024, followed by a notice of entry of judgment on 23rd April, 2025, demanding payment.



23. It was and still is the assertion of the claimant that the respondent herein was the insurer of motor vehicle registration number KDD 064B under policy number P/N:000224912. A fact that has not been disputed by the respondent by way of evidence save for the mere denial in the response to statement of claim.
24. On the other hand, the respondent strongly submits that there is no proof that the respondent herein was the insurer of Joseph Njeru Ireri and that the abstract that was produced indicated Naekana Sacco as being the insured and that the primary suit was not against Naekana sacco. A look at the abstract that was produced in evidence is as clear as the word clear itself that the insurer was direct line assurance co ltd and even details of the cover including but not limited to the expiry date of the cover given. The respondent cannot therefore state otherwise.
25. I have also confirmed that indeed the respondent was duly served and acknowledged service of the notice of entry of judgment and statutory notice and as such the claimant complied with the law as required.
26. To hit the point home the court is guided by the Court of Appeal in the case of *Blue Shield Insurance Co. Ltd. =v= Martin Bundi* C.A. NO. 73 of 1997 as was quoted in the case of Nyamodi Ochieng Nyamogo & Another v Co-Operative Insurance Company (K) Limited [2010] KEHC 1492 (KLR) in which the Court of Appeal stated at page 3 inter alia as follows:

“It is obvious therefore that under the aforesaid provision of the Act (i.e. S. 10(1) and (2) of Cap. 405 L.O.K. emphasis mine) the appellant is obliged to satisfy the judgment entered against its insured, the defendants, and we agree with the learned judge that under the statutory provisions of the Act the respondent was entitled to judgment requiring the appellant to satisfy the judgment against the defendants so long as it stands and has not been set aside or varied on appeal.”

27. It is therefore the finding of the court that the respondent indeed was the insurer and he is thus bound to settle the decretal sum so claimed by the claimant having been served with the required notices.

c. Who bears costs of the claim?

28. The claimant having been successful in the matter and that costs follow events he is awarded costs of the claim.

Conclusion and Disposition

29. The upshot of the foregoing I make the following final orders;
 - a. The preliminary objection dated 10th June 2025 is dismissed in its entirety.
 - b. The claim contained in the statement of claim dated 26th May 2025 is allowed and a declaration be and is hereby issued that the respondent is liable to satisfy the judgment of the court in SCC NO. E015 OF 2024 dated 21st February 2025.
 - c. For avoidance of any doubt the respondent is obligated to settle the decretal sum of Kshs.229,850/= together with interest from the date of judgement to wit 21st February 2025 until payment in full.
 - d. The claimant is awarded costs of this suit.
 - e. Let the file be closed forthwith.



30. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT
THIS....16th.....DAY OF ...July...2025**

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Fathiya Loo.

Mr. Kiwinga for the Claimant

Mr. Ndolo for the respondent.

