



Juma & 2 others v Nakuru County Government & another (Civil Appeal E102 of 2024) [2025] KEHC 15042 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E102 OF 2024
JM NANG'EA, J
OCTOBER 22, 2025**

BETWEEN

**WESLEY OINDI JUMA 1ST APPELLANT
BENARD ARUMBA OTUMI 2ND APPELLANT
ZACHARIA NYAKUNDI IRONDIA 3RD APPELLANT**

AND

**NAKURU COUNTY GOVERNMENT 1ST RESPONDENT
HARRISON KABIA MACHARIA 2ND RESPONDENT**

JUDGMENT

1. The Appellants challenge the lower court's Ruling dated 7th May 2024 by which the Respondents' Preliminary Objection to the suit dated 14th March 2024 on the ground that the court lacks jurisdiction to entertain the claim, was upheld and the suit struck out. The Respondents contended that the lower court is bereft of jurisdiction to entertain the suit in which they claim compensation for personal injuries arising from a road traffic accident.
2. The Grounds of Appeal as per Memorandum of Appeal dated 13th May 2024 are threefold:-
 1. That the Learned Trial Magistrate/Adjudicator erred in law and in fact in striking out and/or dismissing the Appellants' claim for want of jurisdiction yet the *Small Claims Court Act* expressly provides that the aforesaid Court has jurisdiction to hear and determine claims for compensation for personal injuries.
 2. That the Learned Trial Magistrate/Adjudicator erred in law and in fact in failing to find that the doctrine of stare decisis does not override the express statutory provisions of the law.



3. That the Learned Trial Magistrate/Adjudicator erred in law and in fact in failing to find that the Honourable Judge in Civil Appeal No. 223 of 2022, Jerusha Aumma Ogwari vs Ibrahim Aisha Hersi alias Hersi Ibrahim did not nullify or declare section 12(1)(d) of the *Small Claims Court Act* unconstitutional hence the court therein had jurisdiction to hear and determine the Appellants' claim.
3. The Appellants therefore pray for judgement as follows;-
 - a. That the finding and/or holding of the Trial Magistrate/Adjudicator striking out the Appellants' claim be set aside and the claim be reinstated, heard and/or determined on merit.
 - b. That this Appeal be allowed with costs to the Appellants.
 - c. That this Honourable Court does make such further orders as it may deem fit.
4. The Appellants sued the Respondents in the lower court for Judgement in the sum of Kshs. 106,600/= being compensation for bodily injuries they sustained in a road traffic accident, involving the 2nd Respondent's motor vehicle registration number 32CG 095 A. The suit was struck out for want of jurisdiction following the stated Preliminary Objection.
5. This being a first appeal I am required to reconsider the material placed before the lower court , evaluate it and draw my own conclusions regarding both matters of fact and law{ (see Selle & Another Vs Associated Motor Boat Company Ltd & Others [1968] EA 123 }. The Court of Appeal for East Africa in Peters –vs- Sunday Post Limited [1958] EA 424 underscored the same principle delivering itself thus;"
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time."
6. Being an appeal from a decision of the Small Claims Court, this court is only required to consider arising matters of law only (see section 38 of the *Small Claims Court Act*)
7. In sustaining the objection, the trial court was guided by this court's opinion in the case of Ogware vs Hersi (Civil Appeal 223 of 2022) [2023] KEHC 2011 (KLR) in which my brother (D. K. N. Magare J) determined that the Small Claims Court that reached the impugned decision has no jurisdiction to determine claims for compensation for personal injuries from road traffic accidents such as the case in the suit before the lower court. My learned brother reasoned inter alia that traffic accident claims are unliquidated and thus complex. They are therefore said to be unsuitable for the Small Claims Court which is required to determine claims within strict timelines without adherence to the usual rules of evidence. It seems the court was of the opinion that the personal injuries contemplated by section 12(1) (d) of the *Small Claims Court Act* are those arising from assaults.
8. Learned Counsel for the Appellants submit that the trial court wrongly found that it has no jurisdiction to entertain the claim. By dint of the provisions of Section 12(1)(d) of the *Small Claims Court Act* cited by Counsel, a Small Claims Court is said to have jurisdiction to adjudicate a claim relating to compensation for personal injuries arising from a road traffic accident. It is contended that



the Statute expressly donates jurisdiction to the Small Claims Court to hear and determine such a claim.

9. Further reference is made to case law in Irungu vs Karanja (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR) as reiterating the law on this matter. My sister (F. N. Muchemi J) was persuaded in that case that the Small Claims Court has jurisdiction to entertain claims for compensation for personal injuries occasioned in a road traffic accident.

10. The Appellant accordingly urges the court to allow the appeal.

11. On their part, the Respondents maintain that the Small Claims Court has no jurisdiction in the matter. They rely on the case of Ogwari vs Hersi supra where it was held in a similar dispute;

“... The claim that was being dealt with is clearly beyond the scope of the Small Claims Court.

I therefore hold that such matters involving negligence and injuries arising from road traffic accidents, should be filed in the Chief Magistrate’s Court....”.

12. Counsel impresses on the Court the importance of the doctrine of stare decisis underscored in the case of Kidero & 5 Others vs Waititu & Others, Supreme Court Petition No. 18 of 2014 (Consolidated with Petition No. 20 of 2014. The apex noted as follows in relation to this legal principle;

“The principle of stare decisis in Kenya unlike other jurisdictions is a constitutional requirement aimed at enhancing certainty and predictability in the legal system.”

13. The Respondents rely on another Supreme Court decision in Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others being Supreme Court Petition No. 4 of 2012 [2013] eKLR on the importance of adhering to precedent. It was stated as follows in that case;

“Adherence to precedent should be the rule and not the exception... the labour of judges would be increased almost to breaking point if every past decision could be reopened in every case and one could not lay one’s own course of bricks on the secure formation of the courses laid by others who had gone before him.”

14. The Respondents therefore fully support the trial court’s decision as guided by precedent set in the case of Ogwari vs Hersi supra. The Respondents’ Advocates, however, acknowledge other Superior Court’s decisions that endorsed the Judgement in Irungu vs Karanja supra to the effect that the Small Claims Court is clothed with jurisdiction to deal with personal injury claims emanating from road traffic accidents. The cited cases are Akinyi vs Mshila (Civil Appeal E098 of 2024) [2025] KEHC 2659 (KLR) (6 March 2025) (Judgement) eKLR and Gichori vs Kilem (Civil Appeal E020 of 2024 [2024] KEHC 10859 (KLR) (18 September 2024) (Judgement) eKLR.

15. The Court in Irungu V. Karanja supra observed that although Section 12(1) of the Small Claims Court Act neither expressly includes nor excludes injuries arising from road traffic accidents, among claims that may be lodged in that subordinate court, the spirit of the law grants jurisdiction to the court. It was noted that the Small Claims Court was meant inter alia to ease transaction of business and reduce case backlog by employing a simple procedure of resolution of disputes, and therefore excluding compensation for personal injuries in road traffic accidents would adversely affect access to justice. The cases of Akinyi V. Mshila and Gichori V. Kilem supra.

16. None of the cited High Court decisions is binding to this court being decisions of courts of concurrent jurisdiction. I, however, fully associate myself with the opinions expressed in Irungu V. Karanja, Akinyi v. Mshila and Gichori V. Kilem supra. If the legislature intended to exclude claims arising from personal



injury claims from the jurisdiction of the Small Claims Court nothing would have been easier than for it to say so. Where the Small Claims Court establishes that it has no jurisdiction it will down its tools to enable a court with jurisdiction to take up the matter as colourfully put in the famous case of Owners of Motor Vessel 'Lillian S' V. Caltex Oil (Kenya) Ltd (1989) KLR 1.

17. The Appeal is accordingly allowed with costs to the Appellants. The lower court's Ruling is set aside and substituted with an order dismissing the Respondents' Preliminary Objection.

JUDGEMENT DELIVERED VIRTUALLY AT NAKURU THIS 22ND DAY OCTOBER, 2025.

J. M. NANG'EA, JUDGE.

In the presence of:-

Ms Nkoonge Advocate for Ms Chelang'at for the Appellants

Mr. Mwenesi Advocate for the Respondents

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

