



**Irungu v Karanja (Civil Appeal E037 of 2024)
[2024] KEHC 8162 (KLR) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8162 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E037 OF 2024
FN MUCHEMI, J
JULY 4, 2024**

BETWEEN

NAOMI WANJIRU IRUNGU APPELLANT

AND

FRANCIS KIMANI KARANJA RESPONDENT

(Being an Appeal from the Ruling of Hon J. Tawai (Adjudicator/RM) delivered on 26th February 2024 in Ruiru Small Claims Court Civil Case No. E014 of 2023)

JUDGMENT

Brief facts

1. This appeal arises from the ruling of Ruiru Resident Magistrate/Adjudicator in Small Claims Court Civil Case No. E014 of 2023 arising from the issue of lack of jurisdiction of the court hear and determine claims arising from personal injury contrary to Section 12(1)(d) of the *Small Claims Court Act* 2016. The issue was raised in a preliminary objection by the respondent. In its ruling the court found that it lacked jurisdiction and struck out the suit with no order as to costs.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 3 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law in finding that the Small Claims Court lacks jurisdiction to hear and determine claims arising from personal injury claims contrary to the provisions of Section 12(1)(d) of the *Small Claims Court Act* 2016.
 - b. The learned trial magistrate erred in law and in fact in relying on the obiter dictum decision in *Ogwari vs Hersi (Civil Appeal 223 of 2022)* KEHC 20111 (KLR) (3 July 2023) (Judgment) in striking out the suit.



- c. The learned trial magistrate erred in law by failing to exercise her discretion judiciously in failing to consider the totality of the submissions by the appellant.
3. Parties put in written submissions to dispose of the appeal.

Appellant's Submissions

4. The appellant relies on Halsbury's Law of England (4 Ed. Vol 9) and the cases of Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1; Samuel Kamau Macharia vs Kenya Commercial Bank and Others [2012] eKLR and Speaker of the National Assembly vs James Njenga Karume [1992] eKLR and submits that a court's jurisdiction flows from either *the constitution* or legislation or both. Thus pursuant to Section 12(1) of the *Small Claims Court Act*, the appellant argues that the Small Claims Court has jurisdiction to determine a claim for compensation for personal injuries emanating from a road traffic accident.
5. The appellant further argues that a claim for soft tissue injuries cannot exceed the pecuniary jurisdiction of the Small Claims Court no matter which forum the claim is lodged.
6. The appellant submits that in determination of a personal injury claim, the court will determine whether a party is liable or not based on the evidence adduced by both parties. Thus, the claimant must establish a causal link between the respondent's negligence and the injuries sustained in order to succeed in the claim. It is through the establishment of the link between the respondent's negligence and the injured person's injury that liability will be established and a decision determined by the court. The appellant submits that in the said case, she sought for both special and general damages. The appellant sought general damages pursuant to Section 24 (e) of the *Small Claims Court Act* which amount is assessed by the court. Thus, the appellant submits that the law is clear that personal injury claims are covered under the court's jurisdiction and Section 12 (1)(d) of the Act did not narrow down the personal injury claims to only those caused by assault.
7. The appellant argues that the respondent raised a preliminary objection on the grounds that the Small Claims Court has no jurisdiction to hear and determine personal injury claims arising from road traffic accidents however the respondent never raised the issue of the cause of the injuries in its pleadings. To support her contentions, the appellant relies on the cases of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 and Avtar Singh Bhamra & Another vs Oriental Commercial Bank (2004) eKLR and submits that a preliminary objection must stem from the pleadings.
8. The appellant relies on the case of Kiriri Cotton Co. vs Ranchoddas K. Dewani (1958) EA 239 and submits that obiter dicta are not binding decisions and they are to be contrasted with the ratio decidendi of a judgment, which is binding. The appellant argues that the interpretation by the court in *Ogwari vs Hersi (Civil Appeal 223 of 2022)* [2023] KEHC 20111 (KLR) (3 July 2023) (Judgment) that personal injury claims cannot be heard and determined by the Small Claims Court in tandem with Section 12 (1)(d) is aimed at undermining the Small Claims Court and more so Article 48 of *the Constitution* of Kenya which provides for access to justice for all persons. Further, the appellant argues that the decision therein is obiter dictum and cannot be termed as good law as the same purports to amend Section 12(1)(d) of the Act whereas that is solely the mandate of parliament. The judgment therein cannot divest the honourable court the jurisdiction to hear matters as provided by statute. As such, the appellant submits that the decision is not binding to this court and a judicial officer cannot rewrite an express provision of the law.
9. The appellant further argues that Section 12(1)(d) of the *Small Claims Court Act* has not been declared unconstitutional neither has it been amended to include personal injury in respect to assault cases only.



Neither has the Act been amended to incorporate the orders rendered by the honourable Judge in Civil Appeal No. 223 of 2022.

10. The appellant submits that the decision in Civil Appeal No. 223 of 2022 is not binding to this court for it is a court of concurrent jurisdiction and of equal status. To support her contentions, the appellant relies on the cases of Orji Uzor Kalu vs Federal Republic of Nigeria; Udeh Jones Udeogu and Slok Nigeria Limited (2016) and Re Estate of Alfred Mutuku (Deceased) [2020] eKLR and submits that a decision of a court on concurrent jurisdiction is not binding on this honourable court as the court is entitled to arrive at its own decision on this matter and on merit.

The Respondent's Submissions

11. The respondent relies on the cases of Samuel Kamau Macharia vs Kenya Commercial Bank & Another (2012) eKLR and Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd (1989) KLR 1 and submits that the Small Claims Court has no jurisdiction to determine claims arising from personal injury whose damages are unquantified. The respondent based his preliminary objection on the determination by the High Court in Ogwari vs Hersi (2023) KEHC 20111 (KLR) and Section 24(d) of the Small Claims Act. The respondent argues that pursuant to Section 24 of the Act, the court can only cater for claims for specific or quantified claims. Further, Section 12 of the Act gives the Small Claims Court jurisdiction to handle personal injuries which does not encompass personal injuries arising from road traffic accidents as the claims are not quantifiable.
12. The respondent further argues that the small claims court is unsuitable to handle unquantifiable claims such as negligence leading to personal injury because such claims require a more thorough review of medical evidence including having a second medical examination. Thus to be able to fully and properly defend such claims, sixty (60) days will definitely be insufficient.
13. The respondent submits that when a claim is unquantified, it ceases to be a small claim but it is a claim at large. Relying on the case of Nyambati Nyawasabu Erick vs Toyota Kenya Ltd & 2 Others (2019) eKLR, the respondent submits that general damages are damages at large and the court does its best at reaching an award that reflects the nature and gravity of the injuries.
14. The respondent submits that the purpose of the Small Claims Act is to handle simple matters and not complex cases where strict proof is necessary. As such, the court has only jurisdiction for quantified claims as opposed to unquantified claims which cannot be liquidated. Therefore, the respondent argues that the Small Claims Court does not have jurisdiction to hear and determine claims for personal injury arising from road traffic accidents as these are unquantifiable claims.
15. Relying on the case of Republic vs Kenya Bureau of Standards & 4 Others ex parte United Millers Limited; Department of Health Services, Nakuru County (Interested Party) (2019) eKLR, the respondent urges the court to hold in favour of the trial court in striking out the suit for want of jurisdiction.

Issue for determination

The main issue for determination is whether the Small Claims Court is possessed of the jurisdiction to determine a claim for general and special damages



The Law

16. Being a first Appeal, the court relies on a number of principles as set out in Selle and Another vs Associated Motor Boat Company Ltd & Others [1968] 1EA 123:

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

17. In Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR the Court of Appeal stated that:-

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

18. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-

- a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- b. That 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 it; and
- c. That 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.

Whether the Small Claims Court had jurisdiction to determine the claim of the appellant.

19. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989] KLR 1 where the court held:-

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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

20. Jurisdiction is a very fundamental issue that it can be raised at any time including on appeal. This principle was stated by the Court of Appeal in Kenya Ports Authority vs Modern Holding [EA] Limited [2017] eKLR as follows:-

We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva



voce and indeed, even by the court itself provided that where the court raises it suo motu parties are to be accorded the opportunity to be heard.

21. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR that:-

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.

22. The jurisdiction of the Small Claims Court is provided in Section 12(1) of the Small Claims Court Act 2016 which provides:-

Subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to-

- a. A contract for sale and supply of goods or services;
- b. A contract to money held and received;
- c. Liability in tort in respect of loss or damage cause to any property or for the delivery or recovery of moveable property;
- d. Compensation for personal injuries; and
- e. Set off and counterclaim under any contract.

23. According to the appellant, the matter in the Small Claims Court being Small Claims Court Civil Case No. E014 OF 2023 arose from a road traffic accident whereby she sustained personal injuries. The appellant argues that her claim was well within the purview of claims listed under Section 12 (1)(d) particularly compensation for personal injuries and therefore the court had jurisdiction to determine her claim. The respondent relied on the decision in High Court Mombasa Ogwari vs Hersi (2023) KEHC 20111(KLR) and argued that the Small Claims Court lacked jurisdiction to determine the claim as the court does not entertain personal injury cases whose damages are unquantified.

24. From the onset it is important to point out that the decision in Ogwari vs Hersi (2023) KEHC 20111 (KLR) is not binding on this court as the decision was rendered in Mombasa High Court which is court of concurrent jurisdiction to this court. For avoidance of doubt, that decision is not binding to this court. Such a decision can only be persuasive but not binding.

25. From the record, the appellant instituted a suit in Ruiru Small Claims Court Civil Claim No. E014 of 2023 vide a Statement of Claim filed on 4th December 2023. The claim arose from a road traffic accident on 14th September whereby the appellant was a passenger in motor vehicle registration number KCJ 431M. The appellant's claim arose from the negligence of the respondent and she pleaded and listed the particulars of negligence on part of the respondent and her driver. The respondent raised a preliminary objection on jurisdiction of the court motivated by the decision of Kizito J in Ogwari vs Hersi (2023) eKLR and argued that the court was devoid of jurisdiction. The trial court held in favour of the respondent finding that it has no jurisdiction to entertain the claim on the premises that it was bound by the decision of the High Court including the Ogwari case.

26. The jurisdiction of the Small Claims Court is outlined in Section 12 of the Act. Section 12 (1)(d) provides that the court has jurisdiction to determine any civil claim relating to compensation for personal injuries. In construing a statutory provision, the first and foremost rule of construction is that of literal construction. In Law Society of Kenya vs Kenya Revenue Authority & Another [2017] eKLR



and Alcoholic Beverages Association of Kenya vs Kenya Film and Classification Board & 2 Others [2017] eKLR Mativo J (as he then was) stated:-

There are numerous rules on interpreting a statute, but in my view and without demeaning others, the most important rule is the rule dealing with the statutes in plain language. The starting point of interpreting a statute is the language itself. In the absence of an expressed legislative intention to the contrary, the language must ordinarily be taken as conclusive. Thus, when the words of a statute are unambiguous, then this first canon is also the last, judicial inquiry is complete.

In my view, it is not the duty of the Court either to enlarge the scope of the legislation when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court cannot go to its aid to correct or make up the deficiency. Courts decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but cannot legislate itself.

27. It is important to note that a cursory look at section 12(1)(d) of the Act reveals that the provision does not specifically outline the type of personal injuries included or excluded in the provision. The provision stipulates that the Small Claims Court has jurisdiction over civil claims which relate to compensation for personal injuries without listing which injuries or their cause for that matter. Thus, from the strict literal approach in interpreting the said provision it cannot be discerned that section 12 of the Act excludes personal injuries that arise from a road traffic accident. The wording of section, 12(1)(d) of the Act in my view is plain, precise and unambiguous. It would not be correct to say that the provision of the law includes or exclude specific classes of personal injuries. Neither would it be correct to classify injuries to the effect that the same were caused by an assault or in a road traffic accident for the simple reason that the provision does not say so.
28. That notwithstanding, the said section has not been declared unconstitutional by any superior court. In interpreting the provision of the *Small Claims Court Act*, it is prudent to interrogate why the court was established. Some of the main reasons include the enhancement of ease of doing business, to reduce backlog of cases by having disputes resolved through simple, inexpensive and expeditious procedures thereby enhancing access to justice. Section 3 of the Act provides for that the court in exercise its jurisdiction shall be guided by the principles of judicial authority prescribed under Article 159(2) of *the Constitution*. The provision further stipulates that the courts shall adopt procedures which shall ensure the timely disposal of all proceedings before the court using the least expensive methods, equal opportunities to access judicial services under the Act, fairness of process and simplicity of procedure. Therefore, it is evident that in establishing the court, the main aim was to expeditiously dispose of cases and provide a platform for litigants to access justice. It is therefore my considered view that by interpreting Section 12(1)(d) of the Act to exclude compensation for personal injuries in road traffic accidents would have the effect of defeating access to justice. I therefore find that the Small Claims Court is possessed of the jurisdiction to hear and determine cases for compensation for injuries provided that the compensation shall be within its pecuniary jurisdiction.
29. I find that the appeal has merit and it is hereby allowed. The ruling of the Resident Magistrate/ Adjudicator Hon. Is hereby set aside.
30. The appellant shall have the costs of this appeal.
31. It is hereby so ordered.



JUDGMENT DELIVERED, DATED AND SIGNED AT THIKA THIS 4TH DAY OF JULY 2024.

F. MUCHEMI

JUDGE



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