



**Thuku v Royal Media Services Limited (Civil Appeal
E128 of 2024) [2025] KEHC 8972 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8972 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E128 OF 2024
FN MUCHEMI, J
JUNE 19, 2025**

BETWEEN

MARY WAIRIMU THUKU APPELLANT

AND

ROYAL MEDIA SERVICES LIMITED RESPONDENT

*(Being an Appeal from the Ruling and Order of Hon. Tracy Wachira (RM/Adjudicator)
delivered on 13th May 2024 in Thika Small Claims Court SCCC No. E150 of 2024)*

RULING

Brief facts

1. This appeal arises from the ruling of Thika Resident Magistrate/Adjudicator in SCCC No. E150 of 2024 whereby the trial court held that it did not have jurisdiction to hear and determine the claim.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 7 grounds of appeal summarized as follows:-
 - a. The learned adjudicator erred in law and in finding that the Small Claims Court lacked jurisdiction to determine personal injury claims yet the provisions of Section 12(1)(d) of the Small
 - b. Claims Court Act expressly allows the court to handle such claims.
 - c. The learned trial magistrate erred in law in finding that the details given in the Statement of Claim were insufficient to sustain a claim.
3. Parties disposed of the appeal by way of written submissions.



The Appellant's Submissions

4. The appellant submits that she filed a claim in the lower court seeking general and special damages for personal injuries sustained from a road traffic accident that occurred on 27th February 2023. In opposition to the claim, the respondent filed a Statement of Response and a Notice of preliminary Objection dated 7th May 2024. The respondent argued that the court lacked jurisdiction to entertain the suit and that the claim was fatally defective as it did not particularize negligence attributed to it.
5. The appellant relies on the cases of Naomi Wanjiru Irungu vs Francis Kimani Karanja [2024] eKLR and Florence Murigi Gichovi vs Adams Mwiti Kilem [2024] eKLR and submits that the Small Claims court has jurisdiction to hear and determine personal injury claims. The appellant further argues that the decision of Ogwari vs Hershi [2023] eKLR was clarified by the present court in Irungu vs Karanja [2024] eKLR and Gichovi vs Kilem [2024] eKLR.
6. The appellant submits that the issue of defectiveness of the Statement of Claim is premature considering she had initiated the process of amendment. Furthermore, the circumstances surrounding the accident and the claim in general were all set out in the Statement of Claim and its accompanying documents which exhibit negligence on the part of the respondent. The appellant argues that demanding that parties must set out the particulars similar to the requirement set out under Order 10 Rule 2 of the Civil Procedure Rules is defeatist of the true purpose of the court.

The Respondent's Submissions.

7. The respondent refers to the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank & Others (2012)eKLR and submits that the jurisdiction of the Small Claims Court is delineated by Section 12 of the Small Claims Court. The respondent further relies on the case of *Ogwari vs Hersi (Civil Appeal 223 of 2022)* [2023] KEHC 20111 (3 July 2023) and submits that personal injury claims arising from a road traffic accident should be filed in the Chief Magistrates Court and not the Small Claims Court. The respondent submits that the said decision has not been overturned and it still stands as valid position.
8. The respondent submits that the appellant has not denied that the Statement of Claim was defective for not particularizing negligence against him. It is further argued that the appellant further admits that the amendment she sought was not to introduce particulars of negligence but rather include special damages. The respondent argues that the tort of negligence is not one of strict liability claim and as such, a claimant is required to specifically plead and particularise the acts or omissions against it. It is not sufficient to merely allege that it was negligent, the claimant must go further and articulate with particularity the basis of the alleged negligence. To support its contentions, the respondent relies on the case of Noah Ouma Ogero vs Mimasa Limited [2005] eKLR.
9. The respondent submits that pursuant to Section 24 of the *Small Claims Court Act*, the appellant failed to precisely and sufficient particularize the alleged negligence to enable it respond adequately.

Issues for determination

10. The main issues for determination are:-
 - a. Whether the appeal is defective.
 - b. Whether the preliminary objection was sustainable.



The Law

11. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the *Small Claims Court Act*, set out the duty of the second appellate court in the case of *Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited* [2020] eKLR as follows:-

I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

12. In distinguishing between matters of law and fact the Court of Appeal stated in *Kenya Breweries Ltd vs Godfrey Odoyo* [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed afresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

Whether the appeal is defective.

13. Section 38 of the Act provides:-

A person aggrieved by the decision or an order of the court may appeal against that decision or order to the high Court on matters of law.

14. I have perused the grounds in the memorandum of appeal and noted that the grounds touch on the jurisdiction of the court to entertain personal injury claims and whether the failure to list particulars of negligence in the lower court rendered the claim fatally defective and untenable in law. Thus, the appeal is properly before the present court as it raises pure points of law.

15. 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.



16. 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.

17. The jurisdiction of the Small Claims Court is set out in Section 12 of the Small Claims Court Act and it provides:-

1. 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 relating to money held and received;
 - c. Liability in tort in respect of loss or damage caused 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
2. Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law.

18. 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. Upon scrutiny of the said provision, it does not specifically outline the type of personal injuries the Act includes and excludes. From a plain reading of the said section, the provision stipulates that the Small Claims Court has jurisdiction over civil claims which relate to compensation for personal injuries without listing which ones specifically or excluding some expressly. Thus, from the strict literal approach in interpreting the said provision it cannot be discerned that the act excludes personal injuries that arise from a road traffic accident. The words in section 12(1)(d) of the Act are plain, precise and unambiguous and therefore it is my considered view that the provision be construed to include or exclude specific classes of personal injuries.

19. Furthermore, Section 12(1)(d) of the Act has not been amended to specifically state which personal injuries the act covers. That notwithstanding, the said section has not been declared unconstitutional by any court of law. Referring to this court's decision in Naomi Wanjiku Irungu vs Francis Kimani Karanja (Civil Appeal No. E037 of 2024) [2024] eKLR, in interpreting the Small Claims Court Act, it is prudent to interrogate why the court was established at the outset. The aim of creating the Small Claims Court was to enhance ease of doing business in Kenya, 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 exercising 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 method, equal opportunities to access judicial services under the Act, fairness of process and simplicity of procedure. It is therefore, evident that in establishing the court, the aim was to assist in expeditious disposal of cases and provide a platform for litigants to access justice. By interpreting Section 12(1)(d) of the Act to exclude compensation for personal injuries in road traffic accidents is against the letter and spirit of the very law that establishes



the said court. I therefore find that the Small Claims Court is possessed of jurisdiction to hear and determine personal injury claims that arise from road traffic accidents that are within the pecuniary jurisdiction of the court.

20. Having found that the Small Claims Court has the requisite jurisdiction to determine the claim herein, I do not wish to decide whether the plaint was defective for not pleading the particulars of negligence. In my view this is a matter for the Small Claims Court to decide during the hearing of the case.
21. I find this appeal has merit and it is hereby allowed to the extent of the issue of jurisdiction.
22. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF JUNE 2025.

HON. F. MUCHEMI

JUDGE

