



**Maina v Ngugi & another (Civil Appeal 785 of 2024)**  
**[2025] KEHC 16869 (KLR) (Civ) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 16869 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**CIVIL APPEAL 785 OF 2024**  
**JM CHIGITI, J**  
**OCTOBER 30, 2025**

**BETWEEN**

**JOSEPH MAINA ..... APPELLANT**

**AND**

**MARY WAMBUI NGUGI ..... 1<sup>ST</sup> RESPONDENT**

**MICHAEL NGUGI MUNGAI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Milimani Small Claims Court in  
SCCC/E2417/2023 delivered by Honorable Dorothy Aswani on 21st September 2023)*

**JUDGMENT**

**Background;**

1. On 30<sup>th</sup> May 2024, the 1<sup>st</sup> Respondent filed a Statement of Claim in SCCC No. E2417 of 2023- Mary Wambui Ngugi vs. Joseph Maina Another before the Milimani Small Claims Court seeking damages arising out of a Road Traffic Accident allegedly caused by the Appellant and/or authorized agent of Motor Vehicle Registration Number KBB 799H.
2. Ultimately the Learned Resident Magistrate proceeded to deliver judgment on 21<sup>st</sup> September 2023, awarding the 1<sup>st</sup> Respondent herein a sum of Kshs. 391,408/- in general and special damages.

**Appellant's Case;**

3. The Appellant challenges the judgment on the grounds that;

The learned Resident Magistrate erred and misdirected herself in law by hearing and delivering a final judgment on 21st September 2023, in SCCC No. E 2417 of 2023 - Mary



Wambui Ngugi vs. Joseph Maina Another whilst there was an already binding high court decision Qgwari vs. Hersi delivered on 3rd July 2023, declaring that the Small Claims Court did not have jurisdiction to hear and determine personal injury claims relating to Road Traffic Accidents.

4. On 25th April 2025, The Appellant filed an Application dated 24th April 2024, seeking orders, to set aside the Interlocutory Judgment and Consequential Decree both dated 21st September 2023 and further seeking to be allowed to unconditionally respond to the claim.
5. It is the Appellant's case that on 6th June 2024, the trial court made its ruling holding that it lacked jurisdiction to determine the Appellant's Application dated 24th April 2024, citing the decision of the High Court in Mombasa in the case of Ogwari v Hersi (Civil Appeal 223 of 2022) [20231 KEHC 20111(KLR) (3 July 2023) (Judgment) which stripped off the Court's jurisdiction to determine personal injury claims emanating from Road Traffic Accidents.
6. The Court further granted the Appellant 30 days stay of execution to allow him seek reprieve through the proper legal forum.
7. On 2<sup>nd</sup> August 2024, the Appellant herein filed a Memorandum of Appeal seeking the following orders;
  - a. That, this appeal be allowed with costs.
  - b. That, the judgment of the Small Claims Court delivered on 21st September 2023 be set aside and be substituted with an order dismissing the 1st Respondent's Claim for want of jurisdiction, with costs.
  - c. That, the Court does grant such further orders as it deems necessary for the ends of justice.
8. In arguing the appeal, the Applicant relied on the High Court in Mombasa, in the case of Ogwari v Hersi (Civil Appeal 223 of 2022) in ousting the Jurisdiction of the Small Claims Court in handling personal injury claims in Road Traffic Accident Claim stated as follows in verbatim at paragraph 26:

“The claim to that was being dealt with dearly beyond scope of the Small Claims Court. I therefore hold that such matters involving negligence and in injuries arising from road traffic accidents should be filed in the Chief Magistrate's Court.
9. It is argued that as at the time the learned Resident Magistrate Court was delivering her judgment on a personal injury claim from Road Traffic Accident on 21<sup>st</sup> September 2023, she had no jurisdiction on grounds that a determination had been made on 3rd July 2024, in a higher court ousting the Small Claims Court Jurisdiction to determine personal injury claim and the said decision Ogwari v Hersi (Civil Appeal 223 of 2022) was binding to the Small Claims Court.
10. The Appellant submits that the High Court having rendered its decision on 3<sup>rd</sup> July 2023, the Small Claims Court misdirected itself on various dates that is on 31st July 2023 in mentioning the matter and entering interlocutory judgment against the Appellant, on 21st September 2023 in entering judgment against the Respondent for general and special damages and in allowing execution of the Claim, without having jurisdiction to handle the claim by dint of the High Court decision.
11. The Appellant submits that Article 165 (6) and (7) of [the Constitution](#) of Kenya 2010 provides as follows:
  - (6) The High Court has supervision jurisdiction over the subordinate courts and over any person. Body or authority exercising a judicial or quasi-judicial function, but not over a superior court.



12. The Appellant further submits that as per Sections 3(1) and 4 (1) & 38 (1) of the Small Claims Act it is clear that the Small Claims Court is a subordinate court and, in its operation, it should adhere, promote and protect the principles of the constitution as enshrined in Article 159 (2) (e).
13. Article 159 (2) (e) of the Constitution of Kenya provides as follows:
 

In exercising judicial authority, the courts and tribunals shall be guided by the following principles -

  - (e) The purpose and principles of this Constitution shall be protected and promoted.
14. Section 3(1) of the Small Claims Act 2016 guiding principles;
  - (1) In exercise of its jurisdiction under this Act, the Court shall be guided by the principles of judicial authority prescribed under Article 159(2) of the Constitution.
15. Section 5(1) of the Small Claims Act 2016 on the establishment of the Court stipulates;
  - (1) There is established a court to be known as the Small Claims Court which shall be a subordinate Court pursuant to Article 169(1)(d) of the Constitution.
16. Section 38 of the Small Claims Act 2016 Appeals;
  - (1) A person the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
17. Reliance is also placed in the court of Appeal judgment in Kenya Hotel Properties Limited vs. Attorney & General 5 Others (Civil Appeal 404 of 2018) [2020] in buttressing the issue of the hierarchy of courts.
18. The Appellant submits that the court came to the realization that it lacked jurisdiction on 6th June 2024 while making its ruling on the Appellant's Notice of motion Application dated 24th April 2024 where it cited the decision of Ogwari vs. Hersi (Civil Appeal 223 of 2022) [2023] KEHC 20111(UR) but ironically never interfered with its proceedings dated 3rd July 2024, Judgment dated 21st September 2023.
19. In Owners of the Motor Vessel "Lilian S" vs. Caltex Oil (Kenya)Ltd [1989] KLRI, the Court of Appeal Nyacangi, JA stated as follows with regard to Jurisdiction:
 

“...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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
20. The Appellant submits that High Court decision in Ogwari v Hersi (Civil Appeal 223 of 2022) is binding to all Small Claims Court in Kenya.
21. The Appellant submits that it was until 4th July 2024, that the High Court in Irungu vs. Karanja Civil A a/ E037 of 2024, still persuasive and not binding to this court, it reinstated the jurisdiction of the Small Claims Court in personal injury claims from Road Traffic Claims stated:
 

“...It is therefore my considered view that by interpreting Section 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.”

22. The Appellant submits that as from 3rd June 2023 to 3rd July 2024, in which this matter was determined herein the Small Claims Court lacked jurisdiction to hear and determine the matter.
23. The Appellant submits that the High Court in Miscellaneous Application in Diwafa Investments Limited vs. Joakim Museki Kiiro 2019 eKLR cited with approval the following Court of Appeal decision, Law Society of Kenya vs. Attorney General Another [2009] eKLR, I am guided by the case of A v. The Governor of Arbour Hill Prison [2006] IESC 45, [2006] 4 IR 88, (at paragraph 36) where Murray a, stated as follows:

“Judicial decisions which set a precedent in law do have retrospective effect. First of all, the case which decides the point applies it retrospectively in the case being decided because obviously the wrong being remedied occurred before the case was brought. A decision in principle applies retrospectively to all persons who, prior to the decision, suffered the same or similar wrong, whether as a result of the Application of an invalid statute or otherwise, provided of course they are entitled to bring proceedings seeking the remedy in accordance with the ordinary rules of law such as a statute of limitations. It will apply to cases pending before the courts. That is to say that a judicial decision may be relied upon in matters or cases not yet finally determined. But the retrospective effect of a judicial decision is excluded from cases already finally determined. This is the common law position.”

24. Similarly, in the South African case of Sias Moise v. Transitional Local Council of Greater Germiston Case CCT 54/00, Justice Kriegler (for the majority) held:

“If a statute enacted after the inception of the Constitution is found to be inconsistent, the inconsistency will date back to the date on which the statute came into operation in the face of the inconsistent constitutional norms. As a matter of law, therefore, an order declaring a provision in a statute such as that in question here invalid reason of its inconsistent with the Constitution automatic all operates retrospectively to the date of inception of the Constitution.”

25. The Appellant submits that since the trial court had not determined the matter herein as at 3rd July 2023 it ought to have observed strict rules pertaining to the rule of law and downed its tools at the earliest time possible.
26. The current decision in Irungu vs. Karanja (Civil Appeal E037 of 2024) [2024] cannot salvage the lack of jurisdiction in SCCC No. F2417 OF 2023- Macy Wambui Ngugi vs. Joseph Maina Another as it commenced operations as from 4th July 2024 onwards (progressively).
27. The Appellant submits that upholding such a judgment would amount to endorsing a clear usurpation of judicial authority and would fundamentally undermine the rule of law, as well as the constitutional guarantees under Article 50(1) of the Constitution of Kenya, 2010, which entitles every person to a fair hearing before a court that is properly vested with competent jurisdiction.
28. In Kiumi Another v New Tekangu Farmers’ Co-operative Society Limited Another; Weru Interested Party) Judicial Review E002 of 2025 [2025] KEHC 4308(KLR) ao March 2025) (Ruling) the Court



Macfoy v United Africa Co. Ltd (7961) A.L.L ER 1169, Lord Denning while delivering the opinion of the Privy Council at page 1172(1) said:

“..... If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse...”

29. The Appellant is asking this Court to exercise its supervisory jurisdiction under Article 165(7) to nullify the proceedings and judgment rendered without jurisdiction, and to substitute the same with an order dismissing the claim for want of jurisdiction, in the interest of preserving the constitutional integrity of judicial authority.
30. It further submits that this Honourable Court should take note of the chronology of proceedings in the Small Claims Courts after the decision in Ogwari v Hersi (Civil Appeal 223 of 2022) [2023] and in particular that;
  - a. On 31<sup>st</sup> July 2023 – Second mention when interlocutory judgment was entered.
  - b. On 21<sup>st</sup> September 2023 – Judgment entered against the Respondents.
  - c. On 24<sup>th</sup> April 2024 – The Notice of Motion Application under certificate of urgency brought by the Appellant herein seeking orders to set aside the interlocutory Judgment and consequential decree both dated 21<sup>st</sup> September 2023 and further be allowed to unconditionally respond to the claim dated 25<sup>th</sup> May 2023.
  - d. The Application dated 24<sup>th</sup> April 2024 was anchored on the following grounds, inter alia; that the Appellant herein only became aware of the Claim after service by the Auctioneers with the following documents; warrants of attachment, warrants of sale of movable property and proclamation notice all dated 3rd April 2024 and that he had a triable response to the Claim dated 25th May 2023. Attached to the said Application was a copy of the draft statement of response.
  - e. On 8th May 2024 – Inter-partes hearing took place.
  - f. On 6th June 2024 – The court made a ruling only addressing the issue of service and noted that it lacked jurisdiction in the matter herein and completely downed its tools. The court granted 30 days stay of execution .It argues that the judgment was entered without the requisite jurisdiction.
31. To the Appellant a classic example of the High Court decision binding Small Claims Court is illustrated SCCC/E2417/2023, Mary Wambui Ngugi vs Joseph Maina and Another where it recognized it lacked jurisdiction and downed its tools by not determining the Application dated 24<sup>th</sup> April 2024, and further acknowledged that Judicial decisions from the High Court in Ogwari v Hersi (Civil Appeal 223 of 2022), binds it. A reference is made to the ruling dated 25<sup>th</sup> June 2024 where the court stated:

“Noting however, that the court lack jurisdiction to determine the claim herein, in the interest of justice and convenience, the court knowing how it came to be stripped of jurisdiction grants 30 days stay of execution to allow parties seek reprieve through the proper legal forum.”



32. The Appellant has brought out the chronology of the decisions are as follows:
- a. Ogwari v Hersi (Civil Appeal 223 of 2022) – judgment issued on 3rd July 2023 stripping off the jurisdiction of Small Claims Court from hearing and determining Road Traffic Accident Claims. Precedence that declared the Small Claims Court Jurisdiction to hear and determine personal injury claims as submitted by the 1st Respondent;
  - b. Irungu v Karanja (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR) – where judgment entered and issued on 4th July 2024.
  - c. Gichovi v Kilem (Civil Appeal E020 of 2024) [2024] where judgment was entered was issued on 18<sup>th</sup> September 2024.
  - d. Jane v Runga (Civil Appeal E034 of 2024) [2024] KEHC 11036 (KLR) – where judgment was entered and issued on 18th September 2024.
  - e. Omer v Mshila (Civil Appeal E097 of 2024) - where Judgment entered and issued on 6th March 2025.
  - f. Thuku V Royal Media Service Limited (Civil Appeal E128 of 2024) – where Judgment was entered and issued on 19th June 2025.
33. It submits that in the above cases the Small Claims Court acknowledged the binding precedence of the high court decision in Ogwari v Hersi (Civil Appeal 223 of 2022), which was the binding precedence at the time and they downed their tools.
34. The Appellant further submits that as of 3rd July 2023 to 3rd July 2024, the binding precedence to all Small Claims Court in Kenya, was the precedence set in Ogwari v Hersi (Civil Appeal 223 of 2022).

#### **The Respondent's Case;**

35. It is the Respondent's case that the Small Claims Court is indeed clothed with the requisite jurisdiction, both under the express provisions of the governing statute and pursuant to persuasive jurisprudence emanating from superior courts, particularly the High Court of Kenya.
36. It is its case that the *Small Claims Court Act*, 2016, particularly Section 12(1) (d), empowers the Court to adjudicate matters involving compensation for personal injuries provided such claims fall within the pecuniary limits set out under the Act.
37. It argues that the intention of Parliament, judicial interpretation, and the access to justice ethos all support the view that the Small Claims Court is competent to adjudicate such claims.
38. It argues that Section 12(1)(d) of the *Small Claims Court Act* provides as follows:
- “12. Jurisdiction of the Court
- (1) Subject to this Act, the Court shall have jurisdiction to determine any civil claim relating to...
- (d) Compensation for personal injuries.”
39. It is clear from the plain wording of this provision that Parliament intended to grant the Small Claims Court jurisdiction over all claims relating to compensation for personal injuries, without limiting the category of personal injury, nor qualifying the cause or source of such injuries. It is therefore improper to attempt to read into the statute limitations which are neither express nor implied.





40. In *Joseph Njuguna Irungu v David Karanja* [2024] KEHC 8162 (Thika High Court, Civil Appeal No. E037 of 2024), the Court (Muchemi, J.) expressly held:
- “There is nothing discernible in section 12(1) (d) to exclude personal injuries arising from a road traffic accident. 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.”
41. The Court proceeded to overturn the decision of the trial Adjudicator who had struck out a claim on jurisdictional grounds. In doing so, the High Court underscored that the statutory wording is to be applied as it stands, without imposing restrictive judicial glosses that defeat legislative intent.
42. In *Mercy Muthoni Gichovi v Jane Wanjiku Kilem* [2024] KEHC 10859 (Embu High Court, Civil Appeal No. E020 of 2024), Njuguna J. held:
- “The trial court indeed bore the jurisdiction to determine the case as bestowed upon it by section 12(1) (d) of the *Small Claims Court Act*. The claim arose from a negligence claim for compensation for personal injury, and it was rightly before that court.”
43. It is submitted that the High Court rightly found that denying her access to the Small Claims Court would obstruct the objectives of the Act, which include facilitating the expeditious disposal of civil claims of modest value.
44. Section 12 of the Small Claims Court it is submitted has not been repealed nor rendered unconstitutional hence continue to be in full effect. Section 13 of the *Small Claims Court Act* sets out the exclusions to jurisdiction, including matters such as defamation, land ownership, and constitutional interpretation.
45. Reliance is placed in the case of *Ahmed Omer v James Mshila* [2025] KEHC 3081 (Nairobi High Court, Civil Appeal No. E097 of 2024), where Ado M. Wendo J. held:
- “The Trial Adjudicator erred in making a finding that it had no jurisdiction to hear and determine the claim. The exclusion list in section 13 does not mention personal injuries, and the trial court indeed had the jurisdiction to determine the case pursuant to section 12(1) (d).”
46. In *George Thuku v Royal Media Services Ltd* [2025] KEHC 8972 (Thika High Court, Civil Appeal No. E128 of 2024), where Muchemi J. reiterated:
- “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. Any reading that excludes such claims from section 12(1) (d) would defeat the letter and spirit of the Act.”
47. In its case that *Ogwari v Hersi* [2023] KEHC 20111, which excluded certain types of personal injury from Small Claims Court jurisdiction, has been uniformly disapproved and declined to be followed by subsequent High Court decisions. The High Court has repeatedly clarified that *Ogwari* does not represent binding precedent and contradicts the plain wording and purpose of the *Small Claims Court Act*.



48. On costs it is submitted that costs follow the event. Reliance is placed in Justice (Retired) Richard Kuloba in the earlier cited book states as follows:-

“The words “the event” mean the result of all the proceedings to the litigation. The event is the result of the entire litigation. It is clear however, that the word “event” is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the “events” of separate issues in an action. Thus the expression “the costs shall follow the event” means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite event in defeating the claim to judgment in the whole or in part”

### **Analysis and Determination;**

49. In *Selle & Another vs. Associated Motor Boat Co Ltd & Others* [1968] EA the court held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
50. The Supreme Court of India in the case of *K. Anbazhagan v. State of Karnataka and Others*, as follows;

“The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely....The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasoning in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind - sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test.”

51. Section 12(1)(d) of the [\*Small Claims Court Act\*](#) provides as follows:

“12. Jurisdiction of the Court

- (1) Subject to this Act, the Court shall have jurisdiction to determine any civil claim relating to...

...

- (d) Compensation for personal injuries.”





52. In Ahmed Omer v James Mshila [2025] KEHC 3081 (Nairobi High Court, Civil Appeal No. E097 of 2024), Ado M. Wendo J. held:

“The Trial Adjudicator erred in making a finding that it had no jurisdiction to hear and determine the claim. The exclusion list in section 13 does not mention personal injuries, and the trial court indeed had the jurisdiction to determine the case pursuant to section 12(1) (d).”

53. The case before the Small Claims Court came up for judgment on 21st September 2023, wherein the 1<sup>st</sup> Respondent was awarded the sum of Kshs. 391,408/- in general and special damages. This court is satisfied that indeed the trial court had the requisite jurisdiction to hear and determine the suit.

**Disposition:**

54. The appeal Lacks merit. The prayer that, the judgment of the Small Claims Court delivered on 21<sup>st</sup> September 2023 be set aside and be substituted with an order dismissing the 1<sup>st</sup> Respondent's Claim for want of jurisdiction, with costs cannot be granted.

**Costs;**

55. This court is of the view that the Respondent is entitled to costs.
56. In so holding, I am guided by the Halsbury's Laws of England, 4th Ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether cost are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

57. In Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR [13] it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, Judicial Hints on Civil Procedure, 2nd ed. (Nairobi: Law Africa, 2011), p. 94: “Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.

Order;

The Appeal lacks merit and the same here is dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

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**J. CHIGITI (SC)**

**JUDGE**

