



Apa Insurance Limited v Rono (Miscellaneous Civil Application E038 of 2024) [2024] KEHC 16269 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E038 OF 2024
FN MUCHEMI, J
DECEMBER 19, 2024**

BETWEEN

APA INSURANCE LIMITED APPLICANT

AND

PAULA JEPTOO RONO RESPONDENT

RULING

Brief facts

1. The application for determination dated 25th March 2024 seeks for orders of transfer of Thika Small Claims Court Case No. E765 of 2023 to the Chief Magistrates Court at Thika for trial and disposal.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 13th May 2024.

Applicant’s Case.

3. The applicant states that the respondent filed a suit against it in Thika Small Claims Court SCCC No. E765 of 2023 seeking for enforcement of an insurance contract for compensation for loss of a motor vehicle that was allegedly stolen.
4. The applicant states that it entered appearance upon service and filed an application on 20th September 2023 referring the matter to arbitration. The trial court rendered its ruling on 7th December 2023 dismissing the application and set the matter down for hearing on 27th April 2024 which was about five months from the date of the said ruling said to be the nearest date available in court’s diary.
5. The applicant argues that the Small Claims Court has already stretched its statutory jurisdiction beyond the sixty (60) days timelines provided under the law for hearing and determination of the matter. As such, raising the question of jurisdiction and the provisions relating to the timelines which have so far been grossly surpassed in total breach.



6. The applicant further argues that the matters of fact for determination by the said court are hotly contested and are of considerable complexity that require reasonable time for hearing and determination which is contrary to the spirit and intent of the *Small Claims Court Act* which does not provide for written submissions and requires that a judgment be delivered on the spot after the hearing or at least three days thereof. The applicant states that such is not possible in the instant case as the Small Claims Court is grossly congested and will not allocate adequate time for processing, hearing and determination of the matter without occasioning injustice.
7. The applicant states that it is desirous of having its day in court without any restrictions as to the strict timelines and indeed an opportunity to possibly reargue on an appeal any unfavorable findings on the issues of fact. An appeal on matters of fact is not allowed from a judgment of the Small Claims Court.
8. The applicant states that it will be seeking to call at least four witnesses at the trial including a police witness, three of whom are expert witnesses with reports on their expert opinion.
9. The applicant states that the suit was wrongly filed in the Small Claims Court simply because the value of the compensation sought is below Kshs. 1 million but that is not all about what determined the jurisdiction of the said court

The Respondent's Case.

10. The respondent states that she lodged her claim for compensation in respect of her lost motor vehicle and the Honourable Adjudicator dismissed the applicant's application which sought to rely on a non-existent arbitration clause to defeat her claim. The respondent further states that the ruling of the adjudicator was delivered on 7th December 2023 and the matter fixed for hearing on 27th March and the applicant was granted 21 days to file a response to her claim. On 26th March 2024, the applicant served the respondent's advocates with a letter indicating that they would not be able to proceed with the hearing and further served the response to the claim, a notice of objection to the suit and the list of documents. On 27th March 2024 when the matter came up for hearing, the respondent states that the applicant indicated to the court that it had filed the current application and thus the hearing could not proceed. Thus, the respondent argues that by the applicant's conduct, it is deliberately frustrating the hearing and determination of the claim by filing interlocutory applications at its whim.
11. The respondent states that there is no issue of jurisdiction that has been surpassed to warrant transfer of the suit as the sixty (60) days imposed by the Small Claims Act has been held to be directory and not mandatory. Furthermore, the delay in the hearing and determination of the claim has been occasioned by the applicant by filing interlocutory applications that have been found to lack merit. Thus, the respondent argues that the applicant cannot abuse the court process by ensuring the sixty (60) days are surpassed then file an application for transfer of the suit.
12. The respondent avers that the Small Claims Court is clothed with jurisdiction and has the capacity to handle her claim as the adjudicators are advocates who are professionally qualified to handle claims of this nature. Further, there is nothing in the application that demonstrates any complexity in the claim that cannot be adjudicated by the Small Claims court.
13. The respondent states that the number of witnesses to be called during the hearing is not one of the grounds in which a party should seek a suit to be transferred under Section 18 of the *Civil Procedure Act*.
14. The respondent further states that the current application has been brought in bad faith and is an attempt by the applicant to delay the hearing and determination of the matter. The respondent



states that she continues to suffer despite having insured her motor vehicle comprehensively with the applicant.

15. The respondent argues that the applicant has not laid out sufficient grounds to warrant grant of the orders sought.
16. Parties put in written submissions.

The Applicant's Submissions

17. The applicant relies on Section 18 of the *Civil Procedure Act* and submits that this Honourable court has the requisite jurisdiction to order for the transfer of the respondent's claim from the Small Claims court to the Chief Magistrates Court.
18. The applicant submits that it entered into a contract of insurance with the respondent whereby it undertook to insure the respondent against any claims by third parties arising from the use of motor vehicle registration number KCN 781Z and against any theft or accidental loss of the subject motor vehicle. The applicant submits that the respondent alleges that on or about 5th April 2023 at around 6.50pm, her motor vehicle registration number KCN 781Z was stolen while parked within Limuru Township. The respondent reported the alleged theft at Tigoni Police Station as well as to the applicant.
19. The applicant states that it began its investigations and as part of the investigations, it required the respondent to provide her call logs to the investigators as well as the details of the client she has allegedly visited in Limuru. The applicant submits that the respondent declined to provide such details and rushed to the Small Claims Court to steal a match against it knowing the timelines for a trial at the Small Claims court does not allow pretrial procedures such as discovery and inspection of documents.
20. Upon failure to provide the aforesaid details, the applicant submits that it came to reasonable suspicion that the alleged theft was fraudulent and therefore it could not admit or honour the respondent's claim. The applicant argues that the issues of fraud raised against the respondent are issues which cannot be effectively ventilated before the Small Claims Court which is exempted from the strict rules of evidence pursuant to Section 32(1) & (2) of the Small Claims Act. The applicant further submits that the *Small Claims Court Act* and the rules do not allow for discovery and taking of cogent evidence and therefore the Honourable Adjudicator may admit the respondent's evidence or claim without requiring her to strictly prove the loss of the vehicle as already alleged. The applicant further argues that the court will only look at the fact that there was a vehicle which has been allegedly stolen and a contract protecting against such loss and end up awarding the respondent's claim yet the respondent herself admitted that she refused to give the call logs to the investigators terming them private records.
21. The applicant submits that the matters in the instant suit concern concealment of material facts and borders on fraud and criminality which cannot be effectively ventilated by the Small Claims Court. The applicant relies on the case of *Oceanic Towers Limited vs Hussein Builders Limited* [2021] eKLR and submits that the claim in the Small Claims Court ought to be transferred to the chief Magistrates Court as it has made out a strong case for the transfer.
22. The applicant submits that no prejudice will be suffered by the respondent as she will have her day in court and an adequate opportunity to present her case. Further, the respondent has not shown what prejudice she is likely to suffer if the claim is transferred to the chief Magistrates Court for hearing and determination.



The Respondent's Submissions

23. The respondent relies on Section 18 of the [Civil Procedure Act](#) and the case of Hangzhou Agrochemicals Ltd vs Panda Flowers Ltd [2012] eKLR and submits that the applicant has not laid any grounds to warrant transfer of the claim given the circumstances of the case. Pursuant to Section 12 of the [Small Claims Court Act](#), the respondent argues that the Small Claims court is clothed with the jurisdiction and has the capacity to handle her claim as the adjudicators are advocates who are professionally qualified to handle claims of this nature. The applicant has not demonstrated any complexity in the claim that cannot be adjudicated by the Small Claims Court.
24. The respondent submits that the applicant has delved into the merits and demerits of the claim which ought to be handled during the hearing. The applicant's failure to compensate her by alleging that she did not provide her call log to the investigator is a triable issue and not a ground for transfer of the matter to the Chief Magistrates Court.
25. The respondent further submits that the delay in the hearing and determination of the claim has been occasioned by the applicant filing interlocutory applications that are not merited. Thus the applicant cannot abuse the court process by ensuring the 60 days are surpassed then file an application for transfer of the suit.
26. The respondent relies on the case of Crown Beverages Limited vs MFI Document Solutions Limited [2023] eKLR and submits that the 60 days imposed on the Small Claims Court is meant to be directory and not mandatory as it is not the intention of the Small Claims Court to invalidate any proceedings that violate statutory timelines.
27. The respondent submits that any further delay in the hearing and determination of the claim would cause an injustice to her as she continues to suffer despite having insured her motor vehicle with the applicant comprehensively.

The Law

28. The relevant law governing transfer of cases is Section 18 of the [Civil Procedure Act](#) which provides:-

On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

 - a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-
 - I. Try or dispose of the same; or
 - II. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - III. Retransfer the same for trial or disposal to the court from which it was withdrawn.

Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn



29. Section 18 of the Act empowers the High Court to withdraw and transfer any case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.
30. This principle was enunciated in the Ugandan case of David Kabungu vs Zikarenga HCCC No. 36 of 1995 which held:-

Section 18(1)(b) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without the application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction....it is a well-established principle of law that onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused.....Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court which transfer is sought has no jurisdiction to try the case, transfer would be refused.....

31. In the case of Hanzhou Agrochemicals Industries Ltd vs Panda Flowers Ltd [2012] eKLR the court held:-

In my view, which view I gather from authorities and from the law. The court should consider such factors as the motive and character of the proceedings, the nature of the relief of remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.

32. In the instant case, the applicant argues that the suit in the Small Claims Court, SCCC No. E765 of 2023 ought to be transferred to the Chief Magistrates Court in Thika on ground that the Small Claims Court has failed to adhere to the sixty days rule on disposal of cases and that the claim is complex which requires reasonable time for hearing and determination.
33. The respondent herein filed a claim in the Small Claims court being SCCC No. E765 of 2023 for compensation for theft of her motor vehicle registration number KCN 781Z which occurred on 5th April 2023. The suit motor vehicle was insured comprehensively by the applicant. The applicant was served with a Notice of First Mention upon Filing and received the same on 26th July 2023 by stamping on a copy of the same. The trial court set the mention for 11th August 2023 giving the applicant 15 days in which to file a Response to the Statement of Claim.



34. The applicant then entered appearance on 20th September 2023 and filed an application referring the matter for arbitration. The trial court rendered its ruling on 7th December 2023 dismissing the said application on the premise that there was no arbitration agreement between the parties and further that an enforcement of debt arising out of a contract that contains an arbitration clause is not a dispute between parties capable of being referred to arbitration. The trial court then granted 21 days to the applicant upon request by the applicant to file a response and set the hearing of the main suit to 27th March 2024.
35. The applicant then filed its response to the statement of claim on 26th March 2024 and a Notice of Objection to the Suit. From the record it is evident that the applicant intends to delay the matter by bringing a host of applications. The suit in the lower court was filed on 25th July 2023 and despite the applicant being served, it entered appearance on 20th September 2023. Furthermore, even after the application was dismissed, the applicant requested for 21 days to put in a response to the statement of claim. It is therefore unjustified for the applicant to claim that the trial court is not adhering to the timelines yet it is evident that it is the applicant causing unnecessary delay. Furthermore although Section 34(2) of the Small Claims Court gives timelines of sixty days within which the court should hear and determine the matter, the provision has said to be directory and not mandatory as stipulated in the case of *Crown Beverages Limited vs MFI Document Solutions Limited [2023] eKLR* which provides:-

Although Section 34(2) of the SCCA is couched in mandatory terms, the court must look at the context of the provision in light of the guiding principles which include inter alia, the timely disposal of all proceedings before the court using the least expensive method. The provision as to delivery of judgment is meant to be directory and not mandatory as it is not the intention of the SCCA to invalidate any proceedings that violate the statutory timelines. To adopt such a position would undermine the statutory objects and cause injustice to the parties as the case would have to be reheard.

36. That notwithstanding, the applicant questions of the jurisdiction of the court on the premise that the matter is complex and cannot be determined by the trial court within the statutory times given as in the Act. The jurisdiction of the Small Claims Court is provided in Section 12(1) of the *Small Claims Court Act* 2016 which provides as follows:-

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.
37. The subject matter of the suit in the lower court is for compensation of theft of the subject motor vehicle that falls squarely within the ambit of Section 12 of the *Small Claims Court Act*. Furthermore, the complexity of the matter or the number of expert witnesses or the fact that a party cannot file an appeal on matters of fact does not determine the jurisdiction of the court. It is the subject matter and the pecuniary value of the suit that determines the jurisdiction of the court under Section 12 of the Act.



38. In this regard, it is my considered view that the Small Claims Court has jurisdiction to determine the suit before it. It is evident that the applicant has caused and continues to cause delay the suit. The applicant seems determined to choose the court where his case should be heard. The applicant has no business worrying about the timelines of sixty (60) days for determination of the suit. The court seized of the case has the duty to deal with all the relevant issues in the suit and make a determination.

Conclusion

39. I reach a conclusion that the applicant has failed to make a case for transfer of his case to the Chief Magistrates Court as required by Section 18 of the *Civil Procedure Act*.

40. I find no merit in this application and I hereby dismiss it with costs to the respondent.

41. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF DECEMBER 2024.

F. MUCHEMI

JUDGE

