



**Amref Health Africa v Andaya (Civil Appeal 159 of 2023)
[2023] KEHC 26073 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL 159 OF 2023
RE ABURILI, J
NOVEMBER 24, 2023**

BETWEEN

AMREF HEALTH AFRICA APPELLANT

AND

BISHOP OWIRA ANDAYA RESPONDENT

*(Arising from the Judgment and decree of Hon. G. C. Serem RM
in Kisumu SCC No. 97 of 2023 rendered on 27th July 2023)*

RULING

1. This appeal was filed on 2nd October 2023. It arises from the Judgment and decree in Kisumu Small Claims Court Case No. E097 of 2023. The Judgment was rendered on 26th July 2023 by Hon. G. C. Serem.
2. The appeal was filed nearly 4 months after the Judgment and decree. The question is whether the court herein has jurisdiction to hear and determine this appeal.
3. The Section that permits an aggrieved party to challenge the decision of the Small Claims Court adjudicator on points of law only is Section 38 (1) of the *Small Claims Court Act* which provides that:-
 1. A person aggrieved by the decision or an order of the court may appeal against the decision or order to the High Court on matters of law.
 2. An appeal from any decision or order referred to in Sub-section (1) shall be final.
4. There is no provision for the time within which an appeal ought to be filed. In such circumstances, an aggrieved party must endeavor to file an appeal within reasonable time.
5. In the alternative, Section 79 G of the *Civil Procedure Act* can be invoked since Small Claims Court is a subordinate court to the High Court and therefore decisions of the court can be appealed against or



from within 30 days or leave sought to enlarge time for filing of an appeal out of time. See Mulwa J in *Greyhound Company Limited vs Globe Trotter Limited* [2022] eKLR.

6. The Small Claims court gives very stringent timelines for determination of suits/claims or even for review which is 30 days from the date of the decision.
7. I therefore highly doubt that the legislature could have intended to leave it open-ended for the aggrieved party to decide when to file an appeal from the decision of the court.
8. For the above reasons, I find and hold that the appeal herein is fatally incompetent for being filed out of the 30 days period without leave of court.
9. I summarily reject the appeal for want of jurisdiction and strike it out with no orders as to costs. Appellant's counsel to be notified.
10. File is closed. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF NOVEMBER, 2023.

R. E. ABURILI

JUDGE

