



No. 026/12

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CIVIL APPEAL NO. 56 OF 2007

RUTH NDUNI MWITHUI APPELLANT

VERSUS

1. MOMBASA LINER

2. CMC MOTORS GROUP..... RESPONDENTS

JUDGMENT

1. The singular issue raised in this appeal is whether a magistrate's court lacks jurisdiction and must strike out a suit when it is realized, at the conclusion of the trial, that the proposed award of general damages will exceed the pecuniary jurisdiction of the magistrate's court. The **Machakos Chief Magistrate** thought the court thereby lacked jurisdiction and struck out the suit. Not surprisingly, **Ruth Nduni Mwithui**, the Appellant ("*Appellant*") disagreed. Both in the court below and here, her advocates are of the view that the magistrate's court should have awarded up to the ceiling of its pecuniary jurisdiction.
2. The background to this appeal can be easily set up. On **05/04/2004**, the Appellant filed a Complaint against **Mombasa Liner and CMC Motors Group** (the "*Respondents*"). The claim arose from a road traffic accident involving the late **James Mwithui Mutua**. The Appellant is the widow and administrator of the estate of the deceased. It appears that the suit was originally filed in the High Court as **Machakos High Court Civil Suit No. 36 of 2004**. In the suit, the Appellant sought special damages in the amount of **Kshs. 105,500/=** and General damages under the **Law Reform and Fatal Accidents Acts**, and costs of the suit. The first defendant filed a Statement of Defence which is a general denial.
3. The record shows that **Ms. Katunga**, acting for the Plaintiff appeared before *Justice R.V. Wendoh* on **05/05/2005** and requested that the suit be transferred to the Chief Magistrate's court on the ground that the Chief Magistrate's court had jurisdiction. *Justice Wendoh* obliged her and ordered that the suit be so transferred and the defendants be notified.
4. After a number of adjournments, the case was finally set for hearing on **15/02/2007**. Only the Plaintiff's lawyer, this time **Mr. Makau**, was present. Mr. Makau represented to the Court that he had filed an affidavit of service showing that he had served the defendants and was allowed to proceed. He called three witnesses and closed his case. He then filed written submissions. In his submissions, he asked for special damages of Kshs. **105,500/=**. He also calculated general damages to be Kshs. **804,320/=**. In total, Mr. Makau indicated that an award of Kshs. **909,820/=** would, therefore, be the fair compensation to

give to the Plaintiff. However, he submitted that he was aware that the pecuniary jurisdiction of the subordinate court was Kshs. **800,000/=**. He therefore asked for compensation award of the maximum **Kshs. 800,000/=**.

5. In his judgment dated 02/03/2007, in material part, the Learned Magistrate, after analyzing the evidence tendered, concluded:

I have considered the evidence tendered. I have read the Plaintiff's written submissions filed in court on 01/03/2007. The total award proposed by counsel for the Plaintiff is Kshs. 909,820/= which is in excess of my jurisdiction and accordingly I dismiss the entire suit with costs to the defendants.

6. Aggrieved by the court's decision, the Appellant appealed to this Court. Basically, the Appellant argues that the Learned Magistrate erred in striking out the suit and holding that the court had no jurisdiction. The proper course, **Mr. Makau** argues, would have been for the Learned Magistrate to have entered a judgment on damages up to the ceiling of his jurisdiction.

7. The Respondents did not file any submissions or grounds opposing the appeal.

8. The basic dispositive question, then, is whether the Magistrate's Court had jurisdiction. More refined, the question is whether a Magistrate's courts can enter a judgment on general damages up to the ceiling of the magistrate's pecuniary jurisdiction when the damages ultimately claimed by the plaintiff upon finalization of the trial exceed the pecuniary jurisdiction of the court. In this case, the pecuniary jurisdiction of the court was **Kshs. 800,000/=**. Clearly, the Plaintiff had thought that her claim for general damages would be less than that hence her decision to have the case tried at the magistrate's court rather than the High Court. Indeed, the record shows that it is the Plaintiff who asked that the suit be transferred to the **Chief Magistrate's Court**. Trouble, then, arrived in the form of the general damages proposed by the Plaintiff's lawyers. Does the mere proposal of an award of general damages whose effect would be to exceed the pecuniary jurisdiction of the magistrate's court coupled with a forthright acknowledgment of that fact and an ultimate prayer that the damages be allowed up to the ceiling of the pecuniary jurisdiction of the court divest the court of jurisdiction?

9. I have answered that question in the negative. It is true that when a suit has been filed in a court without jurisdiction, nothing with legal impact can come out of such a suit; it is a nullity. Many cases have established that; the most famous being the case of *Kagenyi v Musirambo* [1968] EA 43. That position is logical enough and it applies with especially neat results in cases involving geographical jurisdiction or where a statute has divested a particular court of jurisdiction. As I see it, it can also apply quite neatly to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court's pecuniary jurisdiction. In my view, it does not apply to cases of general damages where it is the Plaintiff who appoints, through their own assessment, what the amount of damages she would claim. In my view, a Plaintiff is permitted to limit the amount of general damages she would like to claim in order to bring herself within the pecuniary jurisdiction of a particular court. Although the Appellant's counsel cited no authorities, I think the decision of Justice J.B. Ojwang in *Armitral Bagwanji Shah v Mash Express Ltd & Others* (Nairobi HCCC 1095 OF 2005 (*Unreported*)) is in accord.

10. Since I have held that the subordinate court had jurisdiction subject to the upper limit of the damages being **Kshs. 800,000/=**, I will now proceed to set aside the decision of the lower court striking out the suit. As this Court is entitled to, I will now proceed to consider the evidence *de novo* and render my judgment.

11. As the Learned Magistrate analyzes in his judgment, there was uncontroverted evidence on liability. In my view, the evidence on record is sufficient to enter judgment on liability at 100% because it was credible and uncontested.

12. How about quantum? First, my view is that having tried the case before the Chief Magistrate's Court with a pecuniary jurisdiction of **Kshs. 800,000/=** even before this Court, the Appellant cannot recover anything more than that; otherwise he would have benefitted from enhancement of jurisdiction through

the appeal. On special damages, the Plaintiff proved the claimed amount of **Kshs. 105,500/=**. On general damages, the Plaintiff produced a pay slip which clearly showed the deceased's basic salary was **Kshs. 9,140/=** per month. I think it entirely reasonable for the Plaintiff to suggest that figure as the multiplicand and then to use a multiplier of 11 years while reducing the figure by a third. I also think it was reasonable for the Plaintiff to suggest the figures she did for loss of expectation of life and pain and suffering. In the end, the Plaintiff would have been entitled to more than **Kshs. 800,000/=**. That is the figure I will now award her. I will therefore allow this appeal, set aside the judgment of the Learned Magistrate and, instead enter judgment for the Plaintiff as against the Defendants jointly and severally and award aggregate special and general damages in the sum of **Kshs. 800,000/=**.

DATED, SIGNED and DELIVERED at MACHAKOS this day 15TH day of FEBRUARY 2012.

J.M. NGUGI
JUDGE