



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**Civil Appeal 711 of 2002**

**RAGE MOHAMMED ALI ..... APPELLANT**

**VERSUS**

**ABDULLAHIM MAASAI ..... RESPONDENT .**

**An Appeal from the Judgment of Hon.R. E. Ougo, PM  
in Milimani Commercial Courts Civil Suit No 2680 of 1999  
delivered on 28th October, 2002**

**JUDGMENT**

By a Plaintiff dated 18th March, 1999 and filed in the lower court at Milimani on 19th March, 1999, the Appellant (Plaintiff in the lower court) claimed general and special damages against the Respondent arising out of injuries he sustained in a motor vehicle accident that took place in Uganda.

There is no dispute that the accident did indeed take place in Uganda, outside the Jurisdiction of the lower court. However, the Appellant argued before this Court, and in the lower court, that the claim was based on contract, and that the Appellant had the option of suing either in Uganda or here. Therefore, he argued that the learned Magistrate misinterpreted the provisions of the Magistrates' Courts Act, Cap 10, in disallowing his claim.

The material part of the ruling of the lower court is as follows:

**“I have also considered the evidence adduced which is on record and I find as follows, there is no dispute that the said accident took place in Uganda. The issues here are:-**

**(a) Was the plaintiff an employee of the defendant as alleged?**

**(b) Was the defendant negligent as alleged?**

**(c) Is the plaintiff entitled to any damages if so how much?**

**From what is before me I find that the plaintiff has failed to prove that he was an employee of the defendant. It is evident from the defendant's driver that the plaintiff was given a lift. It was upon the plaintiff to prove that he was the plaintiff's employee and I find that he has failed to do so. As I write this judgment I note that the defence raised an issue of this court's jurisdiction. I have read further submission on the court jurisdiction and with due respect to learned counsel for the plaintiff I find that this court has no jurisdiction to entertain a matter**

**that happens outside its jurisdiction. As correctly submitted by the defendants counsel Cap 10 of the Magistrate Court Act which establishes the Magistrate court provides very specifically the courts jurisdiction and procedure Section 3 (2) of the act clearly states that the Resident Magistrate Court should have jurisdiction throughout Kenya and not outside Kenya. This court therefore lacks the jurisdiction to entertain this suit.”**

It is against the above Judgment that this appeal has been preferred on the following four grounds:

- 1. That the learned Magistrate erred in law and fact by holding that the lower court had no local jurisdiction to hear and determine the appellant’s case yet both the appellant and the Respondent are Kenyan Citizens residents and working for gain in Nairobi, Kenya.**
- 2. That the learned Magistrate erred in both law and fact by holding that Kenya law did not apply in the appellant’s case against the circumstances of the case and evidence on record.**
- 3. That the learned Magistrate erred in both law and fact by failing to appreciate the appellants evidence in regard to the circumstances surrounding the instant suit and particularly the legal regime applicable.**
- 4. That the learned Magistrate erred in law and fact by dismissing the appellant’s claim.**

Having perused the record of the proceedings of the lower court, I am satisfied that the lower court came to the correct decision that it had no jurisdiction to hear this case as the cause of action arose in Uganda. This decision is based on the lower court’s finding that the Appellant was **not** an employee of the Respondent, and had no contractual claim against the Respondent. I have no reason to interfere with that finding. The burden was on the Appellant to prove that he was an employee and that his action was based on contract. He did not discharge that burden. Indeed his pleadings are equally wanting. Nowhere in the Plaintiff has he stated with clarity exactly how he was an employee, and in what capacity he was a lawful passenger in the Respondent’s motor vehicle when it was involved in an accident in Uganda. He has not stated how his “employer” breached a duty of care owed to him as an “employee” (assuming he was an employee).

This is a simple and straight forward case of a motor vehicle accident that took place in a foreign country outside the limits of the Jurisdiction of our courts in Kenya. The learned Magistrate was, therefore, right in disallowing this claim. There is nothing the Appellant has said in his appeal before this Court to persuade it otherwise. His Counsel provided no authorities to the Court even after seeking, and being allowed extra time to submit the same. However, by a letter dated 15th June, 2005 to this Court, the Counsel for the Appellant submitted the following two cases for this court’s consideration:

- (a) C. A. No. 36 of 1983 United India Insurance Co. Ltd vs East Africa Underwriters (K) Ltd.**
- (b) C. A. No. 391 of 1980 Kanti & Co. Ltd vs South British Insurance Co. Ltd.**

I have reviewed these cases and find that they are not particularly useful. In the ***United India Insurance*** case the Court observed that it had jurisdiction over an agreement made in Kenya, even though the agreement itself conferred jurisdiction to a foreign court. In ***Kanti & Co. Ltd*** case the Court held that where there is concurrent jurisdiction in more than one country, the balance of convenience would determine where the suit should be heard. None of those situations exist in the case before this Court.

Accordingly, and for reasons outlined, this appeal is dismissed with costs.

Dated and delivered at Nairobi this 28th day of June, 2005

**ALNASHIR VISRAM**

**JUDGE**