



**Henrie & another v Maina (Civil Appeal E1161 of 2023)
[2025] KEHC 2107 (KLR) (Civ) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1161 OF 2023

H NAMISI, J

FEBRUARY 7, 2025

BETWEEN

FLOYD COLLIN HENRIE 1ST APPELLANT

KEITH BARRY HENRIE 2ND APPELLANT

AND

GERALD MACHARIA MAINA RESPONDENT

*(Being an Appeal against the Judgement of Hon. V. Mochache, Adjudicator
delivered on 11 August 2023 in Small Claims Court Case No. 1864 of 2024)*

JUDGMENT

1. This appeal arises out of a claim in the Small Claims Court by the Respondent against the Appellants in which the Respondent sought judgement in the sum of Kshs 444,734/= as well as costs of the claim.
2. The Respondent's case was that on or about 31 October 2022, the Respondent's authorised driver was lawfully driving motor vehicle registration number KCS 812G along Langata South Road when the Appellants' motor vehicle registration number KAS 567B collided into his car. Consequently, the Respondent's vehicle was extensively damaged.
3. The Appellants entered appearance and filed a Response denying the claim in toto and attributing the negligence to the Respondent's driver.
4. In its judgement, the trial court identified the following issues for determination:
 - i. Who was to blame for the accident?
 - ii. Whether the Respondent was entitled to the reliefs sought



5. In determining liability, the trial court relied on the testimony of the Police Officer who placed the blame on the Appellants' driver for failing to give way. The trial Court opined that it was evident that the Appellants' driver encroached into the Respondent's lane, yet the Respondent had right of way. Accordingly, the trial Court held the Appellants liable.
6. On the issue of damages, the trial court referred to the receipts produced, amounting to Kshs 422,184/= and awarded the sum as special damages. Judgement was entered in favor of the Respondent as follows:
 - i. Liability at 100%
 - ii. Special Damages at Kshs 422,184/=
 - iii. Costs and interest of the suit from the date of filing the suit until payment in full.
7. Aggrieved by the judgement, the Appellants lodged an appeal on the following grounds:
 - i. That the Honourable Magistrate/Adjudicator erred in law by failing to appreciate that the Small Claims Court is a statutory creature, and being established under statute, it can only exercise powers and jurisdiction as granted within the confines of the *Small Claims Court Act*, and has no power or authority to extend its jurisdiction outside the Act;
 - ii. That the Honourable Magistrate/Adjudicator erred in law by failing to appreciate that Section 34 of the Small Claims Court grants the court a time bound and cabined jurisdiction, which in mandatory terms states that matters before the Small Claims Court shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter which shall be within 60 days from the date of filing the claim;
 - iii. That the Honourable Adjudicator/Magistrate erred in law by failing to appreciate that the Claim before the lower court was filed on 26 April 2023 and the jurisdiction of the Court, being time bound, lapsed on or about 26 June 2023, at which point, the jurisdiction being time bound and circumscribed by statute, the Court's jurisdiction ceased;
 - iv. That the learned trial Magistrate/Adjudicator erred in law in issuing a judgement on 11 August 2023 without jurisdiction, as by this time the Court's jurisdiction had lapsed pursuant to section 34 of the *Small Claims Court Act*;
 - v. That the learned trial Magistrate/Adjudicator erred in law by failing to take cognisance of the legal fact that the judgement rendered and returned outside time was without jurisdiction and thus a nullity bereft of any force of law;
 - vi. That the learned trial Magistrate/Adjudicator erred in law by failing to take into account legal and fact that the moment the sixty days ended, the jurisdiction of the court also ended;
 - vii. That the learned Magistrate/Adjudicator misdirected herself by holding the Respondents 100% liable when the Respondent's driver had admitted seeing the Appellant's car from 50m away and still colliding into the Appellant's car;
 - viii. That the learned Magistrate/Adjudicator erred in law and misdirected herself by failing to take into account the Code 114 of the Highway Code in the manner of taking a right turn at a junction, which requires that before completing a turn there should be safe distance with the approaching vehicle;



- ix. That the learned Magistrate/Adjudicator erred in law and misdirected herself by failing to take into account the duty in law of all persons driving on a road to drive in such a manner as to be able to control the vehicle to avoid collisions and accidents;
 - x. That the learned trial Magistrate/Adjudicator misdirected herself in law by failing to follow the decision of this Court in *Masembe v Sugar Corporation and Another* [2002] 2 EA 434 which held, “When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his car at any time to avoid anything he sees after he has seen it.”
 - xi. That the learned Magistrate/Adjudicator erred in law by ignoring the Appellant’s evidence;
 - xii. That the learned trial Magistrate/Adjudicator erred in law by arriving at an unfair and unjust decision.
8. The appeal was canvassed by way of written submissions.

Analysis & Determination

9. This being an appeal from the Small Claims Court, the jurisdiction of the Court is circumscribed in section 38 of the *Small Claims Court Act*. Section 38 of the *Small Claims Court Act* provides as follows:
1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an 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
10. The above provision means that this Court can only intervene if the evidence on record does not reasonably support the conclusions made by the trial court. More specifically, an appeal before this Court is essentially limited to points of law. In the case of *Mwita v Woodventure (K) Limited & another* (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:
- “This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR in which it was held that: “In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”
11. I have keenly read the Record of Appeal and rival submissions by the parties. The issues for determination herein can be summarised as follows:
- i. Whether the jurisdiction of the Small Claims Court ended upon the lapse of 60 days;
 - ii. Whether the trial court erred in its determination on liability
12. On the first issue, section 34 of the *Small Claims Court Act* provides for the expeditious disposal of matters as follows:



1. All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.
2. Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.
13. The Statement of Claim is dated 26 April 2023. In the absence of proceedings from the trial court, I presume that the claim was filed on the same day. Judgement was delivered on 11 August 2023. Pursuant to the provisions of Section 34, 60 days lapsed on 26 June 2023.
14. The Appellant contended that it is trite law that a court's jurisdiction can only be from *The Constitution* and statute and that a court cannot arrogate itself jurisdiction not expressly granted by statute or *The Constitution*. The Appellant further contended that whether the jurisdiction of a court or tribunal is time bound then the same jurisdiction ends upon the lapse of the time and any decision rendered outside the timelines is a nullity.
15. The Respondent submitted that the interpretation of statutory timelines must be reasonable and in the context of the circumstances of each case. Reliance was placed on the case of Biosystems Consultants v Nyali Links Arcade Limited Mombasa Civil Appeal No E195 of 2023, in which the Court held that statutory timelines are directory rather than mandatory, and failure to adhere strictly to these timelines does not necessarily invalidate the proceedings or decisions made. The Court stated thus:

“The purpose of the *Small Claims Court Act* was to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result was that balancing the two may result at times to overshooting the 60 days. The 60 days did not have penal consequences for good reason. They were aspirational. That was part of having access to justice over amounts that needed not be in the normal system. Allowing the application would open floodgates that would eventually defeat the purpose of the Act.”
16. The Respondent further submitted that any delay beyond the stipulated period was not prejudicial to the Appellant, and there was no evidence to suggest that the delay affected the fairness of the proceedings or the substantive outcome of the case. The Appellant participated in the proceedings without raising any objections regarding the timeline until the judgment was delivered. In their view, this active participation without objection until an unfavourable judgment was rendered indicated that the Appellant accepted the process.
17. I have had opportunity to read the decision of Justice Kizito Magare in the Biosystems Consultants case (supra) in which the learned Judge opines thus:

“The legislative intent of section 34 of the *Small Claims Court Act* was not to impose unnecessary bottlenecks. Even tax statutes had timelines for paying or declaring taxes. It was never that non-payment made those taxes void. There should be consequences. In the *Income Tax Act*, the non-compliance with deadlines did not vitiate the taxes. It attracted known penalties. What were the consequences under section 34 of the small claims court?

... A purposive interpretation should be given to statutes so as to reveal the intention of the statute. The purpose of the *Small Claims Court Act* was to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result was that balancing the two may result at times to overshooting the 60 days. The 60 days did not have penal consequences for good reason. They were aspirational. That was part of having access



to justice over amounts that needed not be in the normal system. Allowing the application would open floodgates that would eventually defeat the purpose of the Act.”

18. I have also read decisions in which the Court expressed similar views. In *Wekesa v Karumbu* (Civil Appeal E682 of 2022) [2024] KEHC 8283 (KLR), JN Njagi, J. opined thus:

“The court has to look into what the intention of the legislature was when it passed the section. I do not think that the legislature intended to mean that the court ceased to exercise jurisdiction over a matter filed in that court which was not finalized within 60 days. If that were the case, it would defeat the purpose of the whole Act. I thereby dismiss the argument that the judgment of the Adjudicator in this matter was a nullity.”

19. Justice R.E.A Ougo agreed with this position in the case of *Good Living Properties v Pearl Garden Management Limited* (Civil Appeal E353 of 2022) [2024] KEHC 4548 (KLR).

20. I hold a similar view on the issue as stated in the cited cases and have nothing further to add.

21. On the second issue of liability, the Respondent and CW1, the Police Officer, both testified that the Appellants’ motor vehicle was to blame for failing to give way. The Police Officer produced a Police Abstract confirming the occurrence of the accident and blaming the Respondents’ motor vehicle for the same. The Appellants called the driver of the motor vehicle, Melanie Clair Andrade, and one eye witness, Peter Kioko Mumo, who both testified, placing blame on the Respondent.

22. I do not have the benefit of hearing the testimonies of the witnesses or reading the proceedings, since the same are not contained in the Record of Appeal. Further, the trial court file was not placed before me. I am, therefore, left to rely on the witness statements filed and analysis by the trial court which noted that from the totality of the evidence adduced, there is no doubt that the Appellants’ motor vehicle was negligent hence the reason as to why the accident occurred.

23. Since this is a point of fact and not one of law, this Court is not empowered to sit on appeal on the same. In addressing a point of law and point of fact, in the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

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24. Based on the foregoing, the appeal does not succeed. The same is dismissed with costs to the Respondent assessed at Kshs 40,000/=.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF FEBRUARY 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:



Mr. Kasimu h/b Mr. Muli for the Appellants

Ms. Ataka h/b Mr. Ogara for the Respondent

Libertine AchiengCourt Assistant

