



**Omer v Mshila (Civil Appeal E097 of 2024)
[2025] KEHC 3081 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E097 OF 2024
MA OTIENO, J
MARCH 6, 2025**

BETWEEN

NELLY ADHIAMBO OMER APPELLANT

AND

EDWIN MWANYIKA MSHILA RESPONDENT

*(Being an appeal from the ruling and order of Hon. C. Maiyo (RM/Adjudicator)
delivered on 9th May 2024 in Kisumu Small Claims Civil Case No. E117 of 2024)*

JUDGMENT

Introduction

1. The appellant initiated a suit before the Small Claims Court vide a Statement of claim dated 18th March 2024, seeking orders against the Respondent for judgment in the sum of Kshs. 500,000/=, special damages of Kshs. 8,160/=, compensation for general damages and costs of the claim.
2. The appellant alleged that on or about 11th December 2023, she was a lawful passenger in motor vehicle registration number KBT 896S along Kisumu-Busia road from Busia general direction, when the Respondent's driver and or servant, representative in control of the motor vehicle registration number KCV 272Y caused the same to be negligently, recklessly and or carelessly driven, thereby causing an accident occasioning serious bodily injuries to the appellant.
3. As a result of the said accident, the appellant sustained injuries for which she sought compensation against the respondent.
4. In response, the Respondent filed a response to the statement of claim dated 5th April 2024 and a Notice of preliminary objection dated 26th April 2024, taking the position that the Small Claims Court had no jurisdiction to hear and determine personal injury claims.



5. The Trial Adjudicator, upon consideration of the preliminary objection and the submissions, delivered its ruling on 9th May 2024, upholding the Respondent's Preliminary Objection by holding that the court had no jurisdiction to entertain a claim for personal injury and therefore struck out the suit.

The Appeal

6. Being dissatisfied with the said ruling, the appellant preferred an appeal before this court vide a Memorandum of Appeal dated 16th May, 2024, raising the following grounds of appeal;
 - i. The Learned magistrate erred in law in holding that she did not have jurisdiction to hear and determine the matter.
 - ii. The Learned magistrate erred and misdirected herself when she failed to consider the Appellant's submissions on points of law raised in the Preliminary objection.
 - iii. The Learned magistrate's decision was unjust and was based on misguided points and wrong principles of law and has occasioned a miscarriage of justice.
7. The appeal was canvassed by way of written submissions. Both parties complied and filed their respective submissions in support and in opposition to the appeal herein. The appellant's submissions are dated 26th October 2024 whereas the Respondent's submissions are 12th November, 2024.

Appellant's submissions

8. The appellant submitted that Section 12 (1)(d) of the *Small Claims Court Act* clothes the Small Claims Court with the jurisdiction to hear and determine personal injury claims. According to the Appellant, the trial court erred in finding that the Small Claims Court lacks jurisdiction to hear personal injury claims. Reliance was placed on Mukisa *vs West Kenya Sugar Company Limited (Civil Appeal E006 of 2024)* (2024) KEHC 10542 (KLR) (3 September 2024)(Judgment) and Wanjiku Kiilu (Civil Appeal 90 of 2023) (2024) KEHC 8881 (KLR) (19 July 2024) (Judgment).
9. It was the position of the Appellant that the holding in the case of *Ogwari vs Hersi* (2023) KEHC 20111 (KLR), which the lower court relied on, is not good law and that in any event, the same is not binding on this court.
10. The appellant, therefore, urged this Court that the appeal be allowed with costs and the suit be reinstated to be heard to its conclusion.

Respondent's submissions

11. On his part, the Respondent supported the finding by the lower court and submitted that the subordinate court is bound by the decision of a superior court and based on the principle of judicial precedence. The Appellant, therefore, asserted that the learned magistrate was right in his finding that the court was bound by the decision in HCCA No. 223 of 2022- *Jerusha Auma Ogwari vs Ibrahim Aisha Hersi Alias Aisha Hersi Ibrahim*, which is a decision of the High Court (Magare J) on the issue.
12. The Respondent further submitted that as of 9th May 2024, the *Ogwari* case (*supra*) was the only decision rendered by the High Court on the issue, and there were no conflicting decisions from the High Court or any Court of higher status. It was submitted by the Respondent that this court can only interfere with the discretionary powers of the trial court if the trial court did not exercise the discretionary powers judiciously. Reliance was put on *Pride and another vs Hilder* (1996) KLR 95 where it was stated that the Court will not interfere with the exercise of discretion by an inferior court unless its satisfied that its decision is clearly wrong, because is has acted on matters which its should



not have acted or because it has failed to take into consideration matters it should have taken into consideration and in doing so arrived at a wrong decision.

13. The Respondent contended that the issue before court is not whether the Small Claims Court has jurisdiction to hear and determine personal injury matters but whether the Honourable Adjudicator failed to exercise her discretion judiciously and reasonably thus arriving at a wrong decision.

Analysis and Determination

14. I have considered the grounds of appeal, the submissions by both parties, and the cited authorities. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the *Small Claims Court Act* provides for the jurisdiction of this court in determining appeals from the Small Claims Court. It provides thus; -

1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
2. An appeal from any decision or order referred to in subsection (1) shall be final.”

15. It is clear from the aforementioned provision that jurisdiction of this Court from the Small Claims Court will only be on matters of law and not factual issues. In this appeal, the question for determination by this court is whether the trial court, being a Small Claims Court, had jurisdiction to hear and determine personal injury claims. The question of jurisdiction is obviously one of law, in respect of which this court has jurisdiction.

16. It is trite law that jurisdiction flows from either a Statute or *the Constitution*, and no court assumes jurisdiction on its own. In the case of Owners of Motor Vessel “Lilian S” vs Caltex Oil (Kenya) Ltd (1989) eKLR, the Court held that;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

17. The jurisdiction of the Small Claims Court is anchored under Section 12 of the *Small Claims Court Act*. It stipulates that;-

1. 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 relating to money held and received;
 - c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
 - d. compensation for personal injuries; and
 - e. set-off and counterclaim under any contract.
2. Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law.



3. The pecuniary jurisdiction of the court shall be limited to one million shillings.
 4. Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the court as the Chief Justice thinks fit.
18. From the above provisions of the law, it follows that the Small Claims Court has jurisdiction of to determine matter relating to contracts for sale and supply of goods, relating to money held and received, liability in tort in respect to loss or damage caused to any property or for delivery of movable property, compensation for personal injuries and set off and counter claim under any contract. The pecuniary jurisdiction is fixed at one million shillings.
19. Section 13 of the Small Claims Act provides for the matters which the Small Claims Court has no jurisdiction to entertain. These matters are particularly listed under Section 13 (5) of the Act. It provides as follows:
- “A claim shall not be brought before the court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.” [emphasis added].
20. From the above, it is evident that Section 13(5) of the Act is very clear on the matters which the Small Claims Court has no jurisdiction to entertain. The matters include cause of action founded on defamation, libel, slander, malicious prosecution or dispute over a title or possession of land or employment and labour relations.
21. The appellants’ claim before the trial court relates to personal injury and not among the exclusions under Section 13 (5) of the Act. To the contrary, Section 12(1) (d) of the Act clearly provides that the Court has jurisdiction over personal injury claims. I therefore find that the Trial Adjudicator erred in making a finding that it had no jurisdiction to hear and determine the claim.
22. This Court takes the position that the Small Claims Court has jurisdiction over all civil suits where the amount claimed is not more than one million shillings and does not fall among those specifically excluded under Section 13(5) of the Act.
23. I concur with the decision of this Court in the case of *Gichovi v Kilem* (Civil Appeal E020 of 2024) [2024] KEHC 10859 (KLR) (18 September 2024) (Judgment), where Njuguna J stated as follows:
- “I do not associate myself with the arguments by the court in the case of *Ogwari v. Hersi* (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR) where it reasoned that the personal injury claims only relate to assault. Further, the decision of the court in that matter is not binding to this court since both are courts of concurrent jurisdiction. Being a claim in negligence resulting in personal injury, the adjudicator has the jurisdiction to consider the evidence placed before her and assess compensation for the injuries. In the case of *Irungu v Karanja* (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR), the court was faced with a similar appeal and it declined to be guided by the case of *Ogwari v. Hersi* (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR), being a court of concurrent jurisdiction as itself. The court found that the Small Claims Court bore the relevant jurisdiction under section 12(1)(d) of the *Small Claims Court Act*.”
24. In the circumstances, I find and hold that the trial court indeed had the jurisdiction to determine the case pursuant to section 12(1)(d) of the *Small Claims Court Act*.
25. Accordingly, I allow the appeal with costs to the Appellant, which is hereby assessed at Kshs. 20,000/-.



26. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 6TH DAY OF MARCH 2025

ADO MOSES

JUDGE

In the presence of:

Moses – Court Assistant

.....for the Appellant

.....for the Respondent

