



Britam General Insurance (K) Limited v Odinga & another (Civil Appeal E305 of 2022) [2025] KEHC 4872 (KLR) (Civ) (24 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4872 (KLR)

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

CIVIL

CIVIL APPEAL E305 OF 2022

AC MRIMA, J

APRIL 24, 2025

BETWEEN

BRITAM GENERAL INSURANCE (K) LIMITED APPELLANT

AND

GEORGE OTIENO ODINGA 1ST RESPONDENT

INSURANCE REGULATORY AUTHORITY 2ND RESPONDENT

RULING

1. This is a consolidated ruling in respect of two Notices of Motion dated 25th July 2024 and 23rd January 2025 respectively; which were both taken out by the Appellant/Applicant.
2. The Notice of Motion dated 25th July 2024 sought to stay execution of the judgment rendered on 26th June 2024 pending the determination of an appeal lodged by the Applicant to the Court of Appeal whereas the Notice of Motion dated 23rd January 2025 was an attempt to nullify the warrants of attachment and sale issued in execution of the Court's decree. The Affidavits in support of both applications were sworn by one Lynette Monzi, the Appellant's Legal Manager. The Applicant also filed written submissions dated 7th March 2025.
3. The applications were opposed by the 1st Respondent who filed his Replying Affidavit and a Notice of Preliminary objection against the application dated 25th July 2024 and a Replying Affidavit in respect to the application dated 23rd January 2025. The 1st Respondent also filed separate written submissions against the applications.
4. Before considering the merits or otherwise of the applications, there are two preliminary issues which were raised by the 1st Respondent by way of an objection which this Court will, in the first instance, deal with. The issues are the competency of the appeal by dint of Rule 22(1) of the Insurance (Insurance



Appeals Tribunal) Rules [hereinafter referred to as ‘the Insurance Rules’] and the propriety of the firm of Messrs. G & G Advocates LLP in this matter. This Court will first deal with the competency of the appeal since the issue is jurisdictional in nature.

5. Rule 22(1) of the Insurance (Insurance Appeals Tribunal) Rules states as follows: -

22. Appeal to the High Court

(1) Any party to the proceedings of the Tribunal who is dissatisfied with the decision of the Tribunal, if it involves a question of law, shall appeal to the High Court within one month from the date the decision is conveyed to him and the decision following such appeal shall be final.

6. The brief background of this appeal is that the instant dispute was initiated by the 1st Respondent before the Insurance Regulatory Authority herein, the 2nd Respondent, after the Appellant refused to settle his claim over an accident involving his car. The 2nd Respondent delivered its decision on 28th January 2022 declining the claim. Dissatisfied with the verdict, the 1st Respondent appealed to the Insurance Appeals Tribunal [hereinafter referred to as ‘the Tribunal’]. The matter was heard and determined vide the verdict rendered on 4th May 2023 where the Tribunal found in favour of the 1st Respondent as against the Appellant. The Appellant then appealed to this Court pursuant to Rule 22 of the Insurance Rules. The appeal was determined by a judgment delivered on 26th June 2024.
7. It was on the basis of the foregoing chronology of events that the 1st Respondent raised the preliminary issue in consideration. Needless to say, the same issue was reiterated in the twin 1st Respondent’s Replying Affidavits.
8. As the issue rests on the jurisdiction of this Court, suffice to say the following on the doctrine of jurisdiction.
9. Jurisdiction is defined in Halsbury’s Laws of England (4th Ed.) Vol. 9 as “...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.”. Black’s Law Dictionary, 9th Edition, defines jurisdiction as the Court’s power to entertain, hear and determine a dispute before it.
10. In Words and Phrases Legally Defined Vol. 3, John Beecroft Saunders jurisdiction is defined as follows:
- By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.
11. That, jurisdiction is so central in judicial proceedings, is a well settled principle in law. A Court acting without jurisdiction is acting in vain. All it engages in is nullity. Nyarangi, JA, in Owners of Motor



Vessel 'Lillian S' v Caltex Oil (Kenya) Limited [1989] KLR 1 expressed himself as follows on the issue of jurisdiction: -

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...

12. Indeed, so determinative is the issue of jurisdiction such that it can be raised at any stage of the proceedings. The Court of Appeal in *Jamal Salim v Yusuf Abdulahi Abdi & another* Civil Appeal No. 103 of 2016 [2018] eKLR stated as follows: -

Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another vs. Ulinzi Sacco Society Limited* [2002] 1 KLR 577, as follows:

- 1)
- 2) The jurisdiction either exists or does not ab initio ...
- 3) Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4) Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.

13. On the centrality of jurisdiction, the Court of Appeal in *Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others* (2013) eKLR stated that: -

So central and determinative is the jurisdiction that it is at once fundamental and overarching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren *cui-de-sac*. Courts, like nature, must not sit in vain....

14. On the source of a Court's jurisdiction, the Supreme Court of Kenya in *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others* (2012) eKLR stated as follows: -

A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.

15. And, in *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* [2018] eKLR, the Court of Appeal further stated: -



- (44) a party cannot through its pleadings confer jurisdiction to a court when none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court...
16. From the foregoing, it is sufficiently settled that a Court's jurisdiction is derived from either the Constitution, an Act of Parliament or both.
 17. Returning to the matter at hand, Rule 22 of the Insurance Rules accords a party to the proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal to appeal to the High Court on questions of law. The outcome of the appeal shall, however, be final.
 18. The above should be the position in this matter. Since the Appellant's appeal was determined by this Court, then the Appellant does not have the liberty for another bite of the cherry through a further appeal to the Court of Appeal. The decision of the High Court was final for all intents and purposes. As such, the Appellant's Notice of Appeal dated 23rd July 2024 has no legal leg to stand on. Consequently, this Court's jurisdiction over the Notice of Motion dated 25th July 2024 was improperly invoked and the said application suffers a false start.
 19. Having found that this Court lacked the jurisdiction over the application seeking to stay the execution pending the alleged 'appeal', this Court, no doubt, has jurisdiction to determine whether the execution initiated by the 1st Respondent was lawful. However, before such a consideration is made, a determination on whether the firm of Messrs. G & G Advocates LLP is properly on record ought to be made.
 20. The 1st Respondent pointed out that the said firm of Messrs. G & G Advocates LLP was improperly on record since it had taken over the conduct of the matter after delivery of the judgment by this Court. To that end, he contended that the provisions of Order 9 Rule 9 of the Civil Procedure Rules 2010 ought to have been complied with by the said firm seeking and obtaining the leave of the Court before taking over the conduct of the matter from the then Advocates on record Messrs. Mwaniki Gachoka & Company Advocates. Despite this issue having been raised in the objection and the two Replying Affidavits, the Appellant surprisingly avoided it in its submissions. In other words, the Appellant opted not to address it.
 21. This Court has carefully considered the record and did not come across any such leave granted to the firm of Messrs. G & G Advocates LLP prior to appearing for the Appellant. The said firm has, therefore, been improperly appearing for the Appellant in the matter and in flagrant disregard to Order 9 Rule 9 of the Civil Procedure Rules 2010. The said firm, therefore, lacks the requisite locus standi in these proceedings.
 22. Even if it were to be assumed that the said firm of Advocates was properly on record, which is not, still the record does not wholly favour the Notice of Motion dated 23rd January 2025. This Court so finds since by the time the Warrants of Attachment and Sale were issued on 20th January 2025, the interim orders which had been issued on 26th July 2024 pursuant to the Notice of Motion dated 25th July 2024 and extended to the 30th October 2025 had not been further extended. Therefore, as at the time the warrants were issued, there were no orders of stay in place.
 23. On that score, the inevitable question that begs for an answer is the fate of the Bank Guarantee ordered by the Court on 13th May 2023 pending the determination of the appeal which had not been recalled. It



is true this Court granted orders of stay of execution against the decision of the Tribunal on condition that the then decretal sum of Kshs. 7,150,000/= be secured by a Bank Guarantee in favour of the 1st Respondent within 35 days of that order. The guarantee was eventually offered and is yet to be recalled. That is, therefore, to say that by the time the impugned warrants herein were issued there was in place the guarantee in favour of the 1st Respondent. Holding it at that, there is also another important issue worth consideration. It is the fact that after the determination of the appeal, the 1st Respondent filed a Bill of Costs which was taxed at Kshs. 509,904/= on 20th January 2025. That amount was, hence, not taken care of by the guarantee. Therefore, whereas one can contend that the 1st Respondent unlawfully took out two modes of execution simultaneously against the Appellant, the correct position is that the taxed costs of Kshs. 509,904/= had not been secured by the guarantee and since the sum were not settled, the 1st Respondent was at liberty to levy execution by way of warrants, but limited to the sum of Kshs. 509,904/=.

24. In other words, since an execution of a decree or order is sanctioned by a Court, then there should be a single mode of execution at a time. If one mode is initiated and fails to yield the desired results, there should be a return to the Court and the Court should then initiate another mode of execution. It is not desirable and fair to a judgment debtor to have more than one mode of execution running at the same time. In the instant case, therefore, had the Notice of Motion dated 23rd January 2025 been filed by a firm of Advocates which was properly on record then this Court would have found that since the decree had been secured by a bank guarantee, then it was not open to the Decree holder to unilaterally abandon the recalling of the guarantee and venture into another mode of execution thereby resulting into two simultaneous modes of execution unless the subsequent mode of execution was limited to the unsecured further costs.
25. To this Court, the above is the ideal legal position in instances of execution by more than one mode. However, that position cannot apply in this case since the applications were filed by a firm of Advocates that is improperly on record for the Appellant.
26. Deriving from the foregoing and having considered the issues raised in the twin applications, the following final orders hereby issue: -
 - a. The Notice of Motion dated 25th July 2024 is hereby struck out for want of jurisdiction on the part of the Court and also having been filed by a firm of Advocates which is improperly on record.
 - b. The Notice of Motion dated 23rd January 2025 is hereby struck out for having been filed by a firm of Advocates which is improperly on record.
 - c. The Appellant shall bear the costs of the applications.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Karanja, Learned Counsel for the Appellant/Applicant.

Mr. Njomo, Learned Counsel for the 1st Defendant/ Respondent.

Michael/Amina – Court Assistants.

