



Jubilee Allianz General Insurance Kenya Limited v Butiya (Civil Appeal E613 of 2024) [2025] KEHC 5170 (KLR) (Civ) (24 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5170 (KLR)

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

CIVIL

CIVIL APPEAL E613 OF 2024

JN NJAGI, J

APRIL 24, 2025

BETWEEN

JUBILEE ALLIANZ GENERAL INSURANCE KENYA LIMITED APPELLANT

AND

BENSON MUHAVI BUTIYA RESPONDENT

*(Being an appeal from the judgment and decree of Hon. J.W.Nasimiyu,
Resident Magistrate/Adjudicator, in Milimani Small Claims
Court Civil Suit No. E741 of 2024 delivered on 22/4/2024)*

JUDGMENT

1. The appeal herein challenges the jurisdiction of the Small Claims Court to hear and determine a matter concerning a declaratory suit.
2. The brief facts of the case are that the respondent herein obtained a judgment at the Small Claims Court against an insured of the appellant, one Linus Kinyua Muthinga of Ksh.839,500/=. The respondent in an attempt to enforce the decree filed a declaratory suit at the same court against the appellant herein. The appellant in response disputed the jurisdiction of the Small Claims Court to hear and determine disputes relating to declaratory suits. The trial Magistrate/Adjudicator in her judgment did not brooch on the issue of jurisdiction raised by the appellant but went ahead to enter judgment for the claimed sum against the appellant. The appellant was aggrieved by the decision of the Magistrate/Adjudicator and lodged the instant appeal.
3. The grounds of appeal are in summary that:
 1. The learned Adjudicator erred in law and applied the wrong principles in concluding that he had jurisdiction as per section 12 of the Small Claims Act on declaratory suits.



2. That the learned Adjudicator fell into error by ignoring the relevant laws, precedents, written submissions and authorities cited to him.
3. The learned Adjudicator erred in law and in fact by failing to hold the respondent's suit to be totally incompetent and a nullity in law.
4. The appellant sought for orders that the appeal herein be allowed, the judgment and decree of the trial Adjudicator in SCCC No.E741 of 2024 be set aside and the suit be struck out with costs.
5. The appeal was canvassed by way of written submissions of the respective counsels appearing for the parties.

Appellant's submissions

6. The appellant maintained their submissions at the trial court that the court had no jurisdiction over the matter. They cited section 12 of the *Small Claims Court Act* that stipulates the jurisdiction of the said court and the kind of matters that can be filed before it. It was submitted that the jurisdiction does not include matters relating to declaratory suits arising from the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* that obligates an insurance company to settle judgments decreed against their insured. In support of their submissions that a Small Claims Court has no jurisdiction to entertain such suits, the appellant relied on the case of Kenya Orient Insurance Limited v Otieno (Civil Appeal E166 of 2023 (2024) KEHC) (25 June 2024) where Aburili J. stated as follows:
 23. What then is a declaratory suit? Relevant to this case, a declaratory suit is one that seeks to compel a judgement debtor's insurer to settle the decree passed against the insured. This kind of claim is not provided for under Section 12 of the SCC Act.
 24. In the circumstances I find that declaratory suits do not fall within the mandate of the Small Claims Court. I thus find and hold that the Adjudicator erred in law in dismissing the preliminary objection raised by the appellant. I set aside the order dismissing the preliminary objection and substitute it with a finding that the Small Claims Court has no jurisdiction to hear and determine declaratory suits relevant to the matter before this court. Consequently, the declaratory suit before the Small Claims Court is hereby struck out with an order that each party shall bear their own costs of the said suit and of this appeal.
7. It was thus submitted that the Adjudicator erred in law in proceeding with the suit when the court had no jurisdiction.

Respondent's submissions

8. The respondent on the other hand submitted that the jurisdiction of the Small Claims Court under section 12(1) (a) of the *Small Claims court Act* includes determining disputes relating to "a contract for sale and supply of goods or services". It was submitted that insurance is a service rendered by an insurance company to its insured. Therefore, that a claim brought to the Small Claims Court alleging non-performance of contractual obligations owed by an insurance company is a dispute relating to a contract for sale and supply of goods and services within the meaning of section 12(1)(a) of the *Small Claims Court Act*.
9. It was submitted that the subject matter of the appeal is a declaratory suit filed by the respondent under the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* seeking to have the appellant held liable to settle the award of Ksh.556,550/= made against their insured. That the insurance policy made by the appellant to its insured, Linus Kinyua Muthinga, required the appellant



to settle the decretal amount awarded as per the provisions of section 10 of the aforesaid which was a contractual obligation on the part of the appellant.

10. The respondent in submitting that the SCC has jurisdiction to hear declaratory suits relied on the case of the case of Njogine v Pioneer General Insurance (Civil Appeal E073 of 2022) (2024) KEHC 8976 (KLR) (27 June 2024) where the court held that:

The Hon. Adjudicator erred on the side caution in finding that the Small Claims Court did not have jurisdiction. However, the matters involved in the Appellant's Statement of Claim dated 27th October, 2022 most certainly fall within the ambit of Section 12(1)(a) of the *Small Claims Court Act*, 2016.

Insurance is a service rendered by an insurance company such as the Respondent to an insured person such as the Appellant. The policy document is a contract between those two parties. Thus, a claim brought before the Small Claims Court alleging the non-performance of contractual obligations owed to the claimant by an insurance company that is the respondent fits is a dispute relating to a contract for sale and supply of goods and services within the meaning of Section 12(1)(a) of the Act.

11. Reliance was also placed in the case of APA Insurance Limited v Njenga (Civil Appeal E084 of 2023) (2024) KEHC 7002 (KLR) where the High Court upheld an award on a declaratory suit made pursuant to the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*.
12. The respondent submitted that declaratory suits are a form of execution of the judgment and decrees of the court. Accordingly, that Rule 25 of the Small Claims Court Rules provides for the procedure for enforcement of orders of decrees from the said court and states that:
 25. (1) Any order or decree of the court shall be enforceable in accordance with the civil procedure rules.
13. It was submitted that the Civil Procedure Rules provides for various ways of enforcing and realising the orders and decrees of the court, which includes filing of declaratory suits (see Order 22 and 23 of the Civil Procedure Rules, 2010).
14. Consequently, it was submitted that the trial court had the requisite jurisdiction to determine the declaratory suit. The respondent urged the court to dismiss the appeal with costs.

Analysis and determination

15. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, bear in mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the court stated as follows-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

16. The appellant is challenging the jurisdiction of the Small Claims Court to hear disputes relating to declaratory suits pursuant to the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* which section obligates an insurance company to satisfy decrees made against its insured.



A decree made against an insured is usually enforced by filing a declaratory suit against the insured's insurance company. The issue for determination is whether the Small Claims Court has jurisdiction to determine such declaratory suits.

17. It has to be observed in the first place that jurisdiction of a court of law is such an important aspect that for a court to act on a matter when it has no jurisdiction will amount to an exercise in futility. In the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. (1989) EA, 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 downs its 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 judgement is given."

18. The Supreme Court in the case of Samuel Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others, Civil Appeal (Application) No. 2 of 2011, stated as follows regarding a Court's jurisdiction:

"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 itself jurisdiction exceeding that which is conferred upon it by law. 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."

19. The jurisdiction of the Small Claims Court is set out in section 12 of the Small Claims Court (herein the Act) which provides as follows:

"Nature of claims and pecuniary jurisdiction

- (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...."

20. Under the aforesaid section, among the claims that may be filed before the Small Claims Court is a claim relating to a contract for sale and supply of goods or services. It is usual for insurance companies to enter into contracts with their clients to offer insurance cover to them. In my view, these kinds of contracts are for supply of services. I am therefore in agreement with the observation of Justice Bahati Mwamuye in the case of Njogine v Pioneer General Insurance (supra) that insurance is a service rendered by an insurance company to an insured person and therefore a claim brought before the



Small Claims Court alleging the non-performance of contractual obligations owed to a claimant by an insurance company fits a dispute relating to a contract for sale and supply of goods and services within the meaning of Section 12(1)(a) of the Small Claims Act.

21. Rule 25(1) of the *Small Claims Court Act* Rules, 2019 requires the orders or decrees of that court to be enforced in accordance with the civil procedure rules. Section 38 of the *Civil Procedure Act* provides the various modes of executing decrees including -
 - a. by delivery of any property specifically decreed;
 - b. by attachment and sale, or by sale without attachment, of any property;
 - c. by attachment of debts;
 - d. by arrest and detention in prison of any person;
 - e. by appointing a receiver; or
 - f. in such other manner as the nature of the relief granted may require.
22. Though declaratory suits are not expressly stated in the said section, they are a mode of execution of decrees and can be placed under section 38 (f) of the *Civil Procedure Act*. In my view Rule 25 of the *Small Claims Court Act* Rules cannot have meant that such declaratory suits had to be filed in another court other than the Small Claims Court. It is my understanding that declaratory suits had to be filed in that same court for purposes of the court executing its own orders. In my view, the Rule grants the Small Claims Court the power to execute its own decrees through making orders in declaratory suits.
23. In view of the foregoing, it is my finding that the Hon. Adjudicator had jurisdiction to determine a dispute relating to declaratory suits filed pursuant to the provisions of section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*. Consequently, the appeal herein is dismissed with costs to the respondent.

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

J. N. NJAGI

JUDGE

In the presence of:

Mr. Diru for Appellant

Mr. Odhiambo for Respondent

Court Assistant - Dennis

