



**Kimingi & another v Onuko (Civil Appeal E500 of 2024)  
[2025] KEHC 6268 (KLR) (Civ) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6268 (KLR)

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

**CIVIL**

**CIVIL APPEAL E500 OF 2024**

**AC MRIMA, J**

**MAY 15, 2025**

**BETWEEN**

**DANIEL NZUMBI KIMINGI ..... 1<sup>ST</sup> APPELLANT**

**BONFACE OCHIENG JAOKO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**GATENDE PETER ONUKO ..... RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon. F. M. Mulama  
[Adjudicator/ Resident Magistrate] in Nairobi [Milimani] Small  
Claims Court Case No. E4200 of 2023 delivered on 14<sup>th</sup> March 2024)*

**JUDGMENT**

1. This appeal turns on the issue of jurisdiction of the Small Claims Court in respect to claims on compensation for personal injuries arising from road traffic accidents.
2. On 14<sup>th</sup> March 2024, Learned Counsel for parties appeared before the Hon. F. M. Mulama [Adjudicator/ Resident Magistrate] in Nairobi [Milimani] Small Claims Court Case No. E4200 of 2023 [hereinafter referred to as ‘the suit’] intending to record a consent in respect of an application by way of a Notice of Motion dated 1<sup>st</sup> March 2024. The application sought to set-aside the Court’s ex-parte judgment delivered on 24<sup>th</sup> November 2023 where the Appellants herein were held wholly liable for the accident and general damages assessed at Kshs. 500,000/=.
3. The Court then raised the issue of jurisdiction on its own motion [suo moto]. Responding to the jurisdictional enquiry, Learned Counsel for the Claimant [now Respondent] argued that the Court had jurisdiction to deal with the case by dint of the provisions of the *Small Claims Court Act*. Learned Counsel for the Respondents [now Appellants] stated that the Court lacked jurisdiction to deal with



road traffic accidents, but had jurisdiction over the application on which the two Counsel intended to record a consent on. In declining jurisdiction, the Learned Adjudicator was guided by the High Court decision in *Ogwari v Hersi (Civil Appeal 223 of 2022)* [2023] KEHC 20111 (KLR) (3 July 2023) (Judgment) wherein the Learned Judge rendered that the Small Claims Courts lacked jurisdiction over claims on injuries sustained in road traffic accidents being claims for damages at large. The Court then closed the matter.

4. It was that decision which triggered the instant appeal subject of this judgment. On the directions of this Court, the appeal was disposed of by way of written submissions. Both parties filed and exchanged their rival submissions and referred to several decisions in urging their respective cases.
5. Section 38 of the *Small Claims Court Act* [Cap. 10A of the Laws of Kenya, hereinafter referred to as ‘the Act’] provides for appeals from decisions and/or orders of the Small Claims Court. Under that provision, a party may appeal to the High Court only on matters of law and that the decision thereof is final. Whereas there has been no universally accepted definition of the term ‘matters of law’, there has been some working definitions thereto. For instance, the Supreme Court of Kenya in *Petition No. 7 of 2013 Mary Wambui Munene v. Peter Gichuki Kingara and Six Others*, [2014] eKLR held that ‘jurisdiction is a pure question of law and should be resolved on priority basis’. This Court is, therefore, properly seized of this appeal.
6. From the perusal of the record and the parties’ submissions, the only issue for determination in this matter is whether the Small Claims Court has jurisdiction over claims on compensation for personal injuries arising from road traffic accidents.
7. Jurisdiction is defined in *Halsbury’s Laws of England* (4<sup>th</sup> 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*, 9<sup>th</sup> Edition, defines jurisdiction as the Court’s power to entertain, hear and determine a dispute before it.
8. In *Words and Phrases Legally Defined* Vol. 3, John Beecroft Saunders defines jurisdiction 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.

9. 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 correctly so 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...



10. 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.

11. 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....

12. 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.

13. Butressing the jurisdictional importance, the Court of Appeal in *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* [2018] eKLR, further stated as follows: -

- (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...

14. From the foregoing, it is sufficiently settled that a Court's jurisdiction is derived from *the Constitution*, an Act of Parliament and/or both.
15. With the foregoing clarity on what jurisdiction is all about, the focus now turns on to the issue which has been identified for determination. The Preamble to the Act provides the purpose of the Act as 'to establish Small Claims Court; to provide for the jurisdiction and procedures of the Court and for connected purposes.' Section 3 of the Act is on the guiding principles which include that the Court shall be guided by the principles of judicial authority as prescribed under Article 159(2) of *the Constitution*.
16. Part III [Sections 11 to 16 inclusive] of the Act provides for the jurisdiction of the Court. Section 12 of the Act provides as follows: -
  12. 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.
    - (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.
17. Section 13 of the Act deals with the exclusion of the Court's jurisdiction in the following manner: -
  13. Exclusion of jurisdiction:
    1. If a claim has been lodged with the Court, no proceedings relating to the same course of action shall be brought before any other Court except where the-
      - (a) proceedings before that other Court were commenced before the claim was lodged with the Small Claims Court; or
      - (b) claim before the other Court has been withdrawn.
    2. A claim shall not be brought before the Court if proceedings relating to that claim are pending in or have been heard and determined by any other Court.
    3. Subject to section 12(3), a higher court may transfer a claim to a Small Claims Court.



4. For the purposes of this section, a claim is deemed to have been lodged with the Court in any case where section 23 has been complied with.
  - (5) 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.
18. Section 14 of the Act specifically prohibits division of claims thus ‘No claim shall be divided or pursued in parts for the sole purpose of bringing the sum claimed in each of such proceedings within the jurisdiction of the Court’.
  19. Provisions on the Parties to claims before the Court and Representative claims are in Sections 15 and 16 of the Act respectively.
  20. This Court has taken the burden of almost reproducing the entire Part III of the Act with a view to ascertain the legislative intention in respect to the jurisdiction of the Small Claims Court. The drafters of the Act were very particular and intentional in coming up with Part III of the Act. Each of the section therein was aimed at serving a certain particular and specific purpose. For instance, Section 13 of the Act excluded the matters in which the Court cannot exercise jurisdiction over. Sub-section 5 excludes claims ‘... 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.’
  21. On the flipside, Section 12[d] of the Act specifically grants jurisdiction to the Court in respect of claims on ‘compensation for personal injuries.’ Therefore, had it been the intention of the Legislature to exclude claims on compensation for personal injuries from the ambit of the Small Claims Court, nothing would have restrained the law makers from doing so. In this case, it is apparently clear that the law intended and indeed granted the Small Claims Court the powers to adjudicate over claims on compensation for personal injuries. Even in doing so, the law makers were well aware that claims on compensation for personal injuries would attract assessment of damages and were, hence, damages at large, but nevertheless, asserted their intention.
  22. Having said as much, this Court further asserts that just like the correct position taken by the Court of Appeal in *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* case [supra] that ‘... a party cannot through its pleadings confer jurisdiction to a court when none exists. .... Jurisdiction is conferred by law not through pleading and legal draftsmanship...’ equally a Court cannot decline jurisdiction through legal craftsmanship especially in instances where Parliament expressly vests jurisdiction in a Court unless that law is declared unconstitutional or is duly amended. With the said caveat at hand and in upholding the constitutional imperative of separation of powers, Courts ought to resist the temptation of usurping the role of Parliament in law-making.
  23. It is on the foregoing basis that this Court, respectfully so, break ranks with the decisions excluding the Small Claims Courts from entertaining claims on compensation for personal injuries. In saying so, this Court remains alive to the truism that indeed there are multiple challenges facing the Small Claims Courts as well as the parties in adjudicating the claims on compensation for personal injuries. To this Court, the most ideal intervention would instead be law reform.
  24. This Court now believes that it has sufficiently expressed itself on the jurisdictional contest raised by the parties in this appeal. The upshot is that the appeal is merited and the following final orders do hereby issue: -
    - (a) The appeal be and is hereby allowed.



- (b) The order of the trial Court made on 14<sup>th</sup> March 2024 declining jurisdiction is hereby set-aside and quashed.
- (c) The Notice of Motion dated 1<sup>st</sup> March 2024 shall be heard and determined.
- (d) As the jurisdictional issue on appeal was raised by the Court suo moto, each party shall bear its own costs of the appeal.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

Mr. Ochieng, Learned Counsel for the Appellant.

Mr. Chahilu, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

