



**Abuto & another v Wamalwa (Civil Appeal E417 of 2024)  
[2025] KEHC 8147 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8147 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E417 OF 2024**

**TW OUYA, J  
JUNE 12, 2025**

**BETWEEN**

**MARY AOKO ABUTO ..... 1<sup>ST</sup> APPELLANT**

**EDWARD ALANYO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**TOBIAS WANYONYI WAMALWA ..... RESPONDENT**

*(Being an appeal from the ruling of honourable Manuela W. Kinyanjui  
delivered on 11th March 2024 in Milimani SCCC No. E1157 of 2024)*

**JUDGMENT**

1. This appeal arises from a ruling of the Small Claims Court where the adjudicator dismissed the Respondents' preliminary objection challenging the jurisdiction of the Small Claims Court to hear the suit being that the same is a claim for damages for injuries allegedly sustained in a road traffic accident. The appellant filed an appeal vide memorandum of appeal dated 25<sup>th</sup> March 2024 raising grounds of appeal enumerated as follows:
  - a. The learned trial adjudicator erred in law in Ruling that it had jurisdiction to hear the suit, which entails personal injury claim arising from an alleged road traffic accident based on the High Court decision in HCCA No. 223 of 2022 Jerusha Auma Ogwari vs Ibrahim Aisha Hersi alias Aisha Hersi Ibrahim, the court does not have such jurisdiction.
  - b. The learned trial Adjudicator erred in law in failing to apply the doctrine of stare decisis and abide by the High Court decision in HCCA No. 223 of 2022 Jerusha Auma Ogwari vs Ibrahim Aisha Hersi alias Aisha Hersi Ibrahim where the court held that the small claims courts have no jurisdiction to hear personal injury claims arising from road traffic accidents;



- c. The learned trial adjudicator erred in law in failing to consider and appreciate the grounds in the Appellants Preliminary Objection dated 7th March 2024;
  - d. The learned trial Adjudicator erred in law in failing to consider the appellant’s submissions on the issue of jurisdiction.
2. The appellant prays for orders that:
    - a. The Appeal be allowed with costs.
    - b. The ruling and order issued by the trial court on 11<sup>th</sup> March 2024 and consequential order made be set aside.
    - c. The Appellant’s Preliminary Objection dated 7<sup>th</sup> March 2024 and filed before the trial court be allowed and the suit against the Appellants as filed before the trial court be struck out with costs for want of jurisdiction.
  3. The matter was canvassed by way of written submissions through counsel for the rival parties. Counsel for the Appellant argued the grounds of appeal together focusing only on the issue of jurisdiction. The gist of his argument is that the small claims court has no jurisdiction to handle personal injury claims.
  4. The appellant contends that the suit instituted by the Claimants/Respondents, being Milimani SCCC E1157 of 2024 is a personal injury claim and thus not within the jurisdiction of the small claims court as per the decision of the honorable Justice Kizito Magare in HCCA No. 223 of 2022 *Jerusha Auma Ogwari vs Ibrahim Aisha Hersi alias Aisha Hersi Ibrahim*. The Appellant cites other authorities like; The Supreme Court case of *Gatirau Peter Munya V. Dickson Mwenda Kithinji & 2 others* [2014] eKLR and *Dodhia v National & Grindlays Bank Limited and Another* [1970] EA 195.
  5. The decision of Honourable Justice Magare in HCCA No 223 of 2022 (supra) was thus binding upon the trial court which therefore had no jurisdiction to hear the suit before it which entailed a personal injury claim allegedly arising from a road traffic accident.
  6. The Claimant/Respondent on the other hand contends that their claim, though of a personal injury nature, falls within the jurisdiction of the Small Claims Court as espoused in Section 12 (d) of the *Small Claims Court Act*. Moreso because the special damages or general damages prayed for in the plaint do not in any way exceed the pecuniary jurisdiction of the court, which is capped at Ksh. 1,000,000. The respondent relies on the authorities of; *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* (2012)eKLR, *Y H Wholesalers Limited v Kenya revenue Authority* (2021)eKLR and the persuasive authority of *Thika HCCA E037 of 2024 Naomi Irungu v Francis K Karanja* and Section 3 of the *Judicature Act* all holding the view that jurisdiction flows from *the Constitution* to the Courts through judicial innovation to narrow down to specialized courts for efficiency and effectiveness.
  7. As this is an Appeal from the Small Claims Court, the jurisdiction of the Court is circumscribed by section 38 of the *Small Claims Court Act* (“the SCCA”) which limits appeals to matters of law. This means the Court can only intervene if the evidence on record does not reasonably support the conclusions made by the trial Court.
  8. *Majanja J. in Katuvi & another v Kire* (Civil Appeal E187 of 2022) [2023] KEHC 25363 (KLR), remarked:

“Under section 43 of the SCCA, the court may on application of any party to the proceedings set aside any of its orders and make such orders as it thinks just. This jurisdiction, as with the



jurisdiction of the ordinary courts to set aside default judgment is wide and unfettered and the appellate court will not interfere with the decision of the trial court unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been an injustice.”

9. The main issue that commends itself for determination is whether the small claims court has jurisdiction to handle claims of personal injury emanating from a road traffic accident. It is now settled law that jurisdiction is everything and without it a court has no power to make one more step, Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989]KLR 1
10. Similarly, the Supreme court in Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others [2012] while addressing itself on the source of jurisdiction stated that:

“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.”
11. Since jurisdiction goes to the core or heart, or is at the center, of the matter, issues around it can be raised and determined at any stage of the proceedings, and in any manner.
12. Section 12 of the *Small Claims Court Act* delineates the nature of claims and pecuniary jurisdiction of the Small Claims Court thus:
  - (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.
  - (3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.
13. The claim by the Respondents is for compensation, on account of injuries sustained, allegedly in a road traffic accident. The alleged injuries were to the body or person of the respondents and, therefore, fell within the rubric of personal injury. That suggested that it was a claim that could be properly brought under the *Small Claims Court Act*.
14. Notably, the decision in HCCA No. 223 of 2022 Jerusha Auma Ogwari vs Ibrahim Aisha Hersi alias Aisha Hersi Ibrahim is not binding on this court as it is the decision of a court of concurrent jurisdiction. Justice Musyoka, in Elrons Limited v Basil (Civil Appeal E890 of 2022) [2024] KEHC 6614 (KLR) while commenting on this decision remarked that:

... the thoughts in Ogwari vs. Hersi [2023] KEHC 20111 (KLR)(Magare, J), which, in a way, with utmost respect, claws back on the design to move away from the complexities of



procedure and evidence, meant to enable ordinary citizens, with small claims, have an easier access to, and time in, the courts.

15. When faced with a similar case where the jurisdiction of the small claims to handle personal injury claims was challenged, FN Muchemi J in *Irungu v Karanja* (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR) opined that:

“27. It is important to note that a cursory look at section 12(1)(d) of the Act reveals that the provision does not specifically outline the type of personal injuries included or excluded in the provision. The provision stipulates that the Small Claims Court has jurisdiction over civil claims which relate to compensation for personal injuries without listing which injuries or their cause for that matter. Thus, from the strict literal approach in interpreting the said provision it cannot be discerned that section 12 of the Act excludes personal injuries that arise from a road traffic accident. The wording of section, 12(1)(d) of the Act in my view is plain, precise and unambiguous. It would not be correct to say that the provision of the law includes or exclude specific classes of personal injuries. Neither would it be correct to classify injuries to the effect that the same were caused by an assault or in a road traffic accident for the simple reason that the provision does not say so.”

16. In the *Irungu* case (supra) the court further noted that Section 12(d) of the *Small Claims Court Act* has not been declared unconstitutional by any superior court. Therefore, it still stands as a statute that guides on exercise of jurisdiction of the Small Claims Court to handle personal injury claims. Consequently, the judge remarked that:

“It is therefore my considered view that by interpreting Section 12(1)(d) of the Act to exclude compensation for personal injuries in road traffic accidents would have the effect of defeating access to justice. I therefore find that the Small Claims Court is possessed of the jurisdiction to hear and determine cases for compensation for injuries provided that the compensation shall be within its pecuniary jurisdiction.”

17. I associate myself with the decision of the learned judge Muchemi FN on the jurisdiction of the Small Claims Court to handle issues of personal injury. A court of law cannot deny jurisdiction that has been specifically bestowed by statute merely because submitting to the jurisdiction could be deemed too onerous, cumbersome or difficult. Without declaration of unconstitutionality of a statute by a superior court, such an act would offend the doctrine of separation of powers by usurping the role of the legislature in making laws.

18. While the courts have the mandate to interpret the law and where necessary strike out a law for being unconstitutional, this mandate does not extend to legislation or repeal of statutory provisions. In *Trusted Society of Human Rights v Attorney-General and others*, High Court Petition No 229 of 2012; [2012] eKLR, at paragraphs 63-64 it held as follows:

“Although the Kenyan Constitution contains no explicit clause on separation of powers, the Montesquieuian influence is palpable throughout the foundational document, *the Constitution*, regarding the necessity of separating the Governmental functions. *The Constitution* consciously delegates the sovereign power under it to the three branches of



Government and expects that each will carry out those functions assigned to it without interference from the other two.”

19. In *Dodhia v National & Grindlays Bank Limited and Another* [1970] EA 195, Duffus, VP. expounded the principle of stare decisis stating that:

“The adherence to the principle of judicial precedent or stare decisis is of utmost importance in the administration of justice in the Courts in East Africa, and thus to the conduct of the everyday affairs of its inhabitant; it provides a degree of certainty as to what is the law of the country, and is a basis on which individuals can regulate their behavior and transactions as between themselves and also with the State. There can be no doubt that the principle of judicial precedent must be strictly adhered to by the High Courts of each of the States and that these courts must regard themselves as bound by the decision of the Court of Appeal on any question of law, just as in the former days the Court of Appeal was bound by a decision of the Privy Council, or in England as the Court of Appeal or the High Courts are bound by the decisions of the House of Lords, and of course, similarly the magistrates courts or any other inferior court in each State are bound on questions of law by the decisions of the Court of Appeal and, subject to these decisions, also to the decisions of the High Court in the particular State.”

20. The import of the doctrine of stare decisis was further emphasized by the Supreme Court in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* Supreme Court Petition No 4 of 2012, [2013] eKLR, where the court stated:

“Adherence to precedent should be the rule and not the exception ....; the labour of judges would be increased almost to breaking-point if every past decision could be reopened in every case, and one could not lay one’s own course of bricks on the secure foundation of the courses laid by others who had gone before him.”

21. Remarkably, there exists conflicting decisions from the High Court regarding the jurisdiction of the Small Claims Court to handle personal injuries claims. In such circumstances, and in the absence of a declaration of unconstitutionality, trial courts are mandated to adhere to the provisions of the Statute establishing the Small Claims Courts and determine each case on its own merit in the spirit of the doctrine of separation of powers.

Flowing from the above, I find that this appeal lacks merit and must therefore fail.

22. Resultantly, the appeal is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>th</sup> JUNE, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Ms Omollo for 1<sup>st</sup> and 2<sup>nd</sup> Appellant

For Respondent.....Musomba

Court Assistant.....Jackline/Brian

