



**Backlite Limited v Plenser Limited (Civil Appeal E654 of 2024)
[2025] KEHC 7960 (KLR) (Civ) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7960 (KLR)

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

CIVIL

CIVIL APPEAL E654 OF 2024

AC MRIMA, J

JUNE 5, 2025

BETWEEN

BACKLITE LIMITED APPELLANT

AND

PLENSER LIMITED RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. C.A. Okumu (Resident Magistrate/ Adjudicator) delivered on 3rd May 2024 in Nairobi SCCCOMM No.E5001 of 2023)

JUDGMENT

1. The jurisdiction of the Small Claims Court has once again been tested in this appeal. This time round, the issue relates to a claim which falls within the pecuniary jurisdiction of the Small Claims Court, but based on contracts whose value exceed the jurisdiction of the Court. It is the Appellant's position that such a claim cannot find its footing in the Small Claims Court. However, the Respondent holds a contrary view, hence, this judgment.
2. The brief background of this appeal is the Respondent's claim in Nairobi Small Claims Court Comm. Case No. E5001 of 2023 [hereinafter referred to as 'the suit']. The Respondent averred that sometimes on about 8th March 2018 and 13th March 2018, the Appellant entered into two contracts with the Respondent for construction of two double sided gantry signs at Swara Crescent and Plaza 2000 respectively along Mombasa Road for a total consideration of Kshs. 10,425,228.00/=. The Appellant made payments during the contractual period and at the completion time, the sum of Kshs.1,683,113/16 was outstanding. Upon several failed attempts to recover the said monies from the Appellant, the Respondent applied a monthly interest rate of 2% for the delay period and non-payment. As at 10th November 2022, the accrued interest was Kshs.250,254/80 thereby bringing the balance to Kshs.1,933,367.96/=. Since no settlement was forthcoming, the Respondent procured the



services of a firm of Advocates as Debt Collectors to recover the outstanding sum. Consequently, the Appellant settled the principal sum of Kshs.1,683,113/16 and declined to pay the alleged monthly interest of Kshs. 250,254/80 and a further sum of Kshs.269,125.00/= which was charged as debt collection fees thereby bringing a total of Kshs. 519,379.80/=. That was the amount that was the subject of the suit.

3. The suit was vehemently opposed. The Appellant filed a Statement of Claim alongside a Notice of Preliminary Objection declining jurisdiction on the part of the Court. The objection was dismissed in a ruling rendered on 13th October 2023 and the suit was heard through viva voce evidence. At the hearing, each of the parties availed a witness and thereafter filed written submissions that led to the impugned judgment which found for the Respondent for Kshs. 250.254/80 as interest and Kshs. 93,000/= as debt collection fees. The judgement was delivered on 3rd May 2024 and it was that decision that prompted the filing of the instant appeal.
4. In a Memorandum of Appeal dated 30th May 2024, the Appellant preferred the following grounds: -
 1. That the learned magistrate erred in law in holding that it had jurisdiction to hear and determine a claim for interest and debt collection for a contract amount already paid in full of Kshs.10,425,228.00/=.
 2. That the learned magistrate erred in law in holding that a claim of interest could exist independently as a suit without a clam for the Principal amount of the contract.
 3. That the learned magistrate erred in law in holding that an Advocate’s demand letter constituted a valid claim for debt collection fees.
 4. That the learned magistrate failed to appreciate the law and submissions made on behalf of the appellant thus reaching a conclusion that was contrary to the law.
 5. That the learned magistrate failed to consider the evidence in its totality hence reaching a wrong conclusion in law.
5. On the directions of this Court, parties filed and exchanged written submissions and referred to several decisions. The gist of the submissions will be ingrained in the latter part of this decision.
6. As this is an appeal from a decision of the Small Claims Court, the jurisdiction of the High Court as the first and final appellate Court is provided for in Section 38 of the *Small Claims Court Act* where this Court only determines matters of law. As the appeal herein is on the jurisdiction of the Small Claims Court, then such an issue is a pure question of law must be determined at the earliest time. [See the Supreme Court of Kenya in *Mary Wambui Munene vs. Peter Gichuki Kingara and 6 others* (2013) eKLR]. This Court is, therefore, properly seized of this appeal in law.
7. In this appeal, two pertinent issues arise for determination. The first issue is the jurisdictional one, and if found not holding, then the other issue will be whether the suit was proved. This Court will first deal with the jurisdictional contest.
8. From the record, the trial Court rendered a ruling on the jurisdiction on 13th October 2023 where the Court found that it was properly seized of jurisdiction. That ruling was not appealed against and the suit proceeded for hearing. Be that as it may, the issue found its way to the appeal against the judgment. That anomaly notwithstanding, this Court will render itself on the issue.
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 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 cognisance 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 cognisance 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 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...

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. Buttrressing 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...

16. From the foregoing, it is sufficiently settled that a Court's jurisdiction is derived from *the Constitution*, an Act of Parliament and/or both.

17. Part III [Sections 11 to 16 inclusive] of the *Small Claims Court 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.
18. Section 12(3) of the Act limits the pecuniary claims before the Small Claims Court to Kshs. 1,000,000/= only. On that basis, the Appellant contended that since the value of the contracts was beyond the said limit then any claim arising from such contracts cannot be subject before the Small Claims Court. The Respondent, in their submissions dated 23rd April 2025, submitted that the trial Court was vested with jurisdiction because the suit was brought under Section 12(1) (a) and (b) as it emanated from a contract for sale and supply of services.
19. The jurisdictional context in this matter is quite germane in the practise before the Small Claims Court. Many a times claims emanating from contracts whose value exceed Kshs. 1,000,000/= are filed before the Small Claims Court. Such issue, therefore, calls for proper settlement as to give appropriate guidance to the Small Claims Court. 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*. In essence, there is no doubt that the Small Claims Court aims at speedy dispensation of disputes within the sum of Kshs. 1,000,000/=.
20. At the moment, the Small Claims Act is silent on the value of primary contracts, but only focuses on the claim before Court. Whereas the argument that the value of the primary contracts should determine the jurisdiction of the Small Claims Court seems to be highly persuasive, this Court takes the contrary position. The reason is that despite the fact that the value of the primary contract is relevant, such value is not the subject before the Court, but the claim as presented. Therefore, the jurisdiction of the Small Claims Court is to be determined by the claim before Court and not the value of the primary contracts. For instance, if the value of the primary contract is say, Kshs. 3,000,000/=, but the claim before Court is for Kshs. 250,000/=, then the Small Claims Court must assume jurisdiction unless the law specifically excludes such a claim. That, hence, leads us to the other reason why the Small Claims Court should assume jurisdiction. It is on Section 13 of the Act. The provision deals with the exclusion of the Court’s jurisdiction. The section provides as follows: -

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.



21. Therefore, had it been the intention of the Legislature to exclude claims based on primary contracts whose value is more than Kshs. 1,000,000/=, nothing would have restrained the law makers from doing so. It is, hence, this Court's finding, and hereby hold, that the Small Claims Court has jurisdiction to deal with all claims, unless specifically exempted in law, whose value do not exceed the sum of Kshs. 1,000,000/=.
22. Having found as much, the next consideration is whether the suit was proved. Suffice to state that the two primary contracts were not produced in evidence. However, the claim was based on interest on alleged unpaid sums and debt collection charges. The interest rate was 2% monthly. In the judgment, the learned trial Court stated that although the primary contracts were not produced, the 2% monthly interest attached as that was not disputed in the invoices generated by the Respondent. With tremendous respect, this Court breaks rank with that finding. The reason is that despite there being no express denial by the Appellant on the issue of interest, the Appellant declined to pay it and that in itself communicated the Appellant's position. Therefore, for the claim on the interest to be sustainable, the primary contracts were paramount so that a Court would ascertain what the contracts provided for on the issue of interest more so since the Respondent charged a monthly rate which translated to a compounded rate of 24% annually. Such a rate is way beyond the contemporary market ones and it must be justified. The issue of interest was, therefore, not proved.
23. On the debt collection, the Court allowed the sum of Kshs. 93,000/= after it was guided by the Advocates Remuneration Order. Be that as it may, remuneration to Advocates is governed by the Advocates Remuneration Order which serves as a guide. In the event parties agree on the fees then such are payable without more, but in instances where there is no consensus, then such fees must be ascertained by a Court through either taxation or assessment. Such processes are separate and distinct and, respectfully, the Learned Arbitrator assumed the jurisdiction of a taxing officer; a jurisdiction that she did not have. Therefore, the assessment of the debt collection charges in the judgment was not only premature, but also without jurisdiction. Likewise, the claim fails.
24. Deriving from the foregoing, this Court finds and hold that the suit was not proved. In the end, the following final orders do hereby issue:
 - a. The appeal be and is hereby allowed.
 - b. The judgment in SCC COMM E5001 of 2023 dated 3rd May 2024 is hereby set-aside and is substituted with an order dismissing the suit with costs.
 - c. The Respondent shall bear the costs of the appeal.

Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Mbichile, Learned Counsel for the Appellant.

Mr. Muya, Learned Counsel for the Respondent.

Amina/Abdirazak – Court Assistants.

