



**Uap Insurance Company Limited v Almasi Kenya Company Limited (Civil Appeal E1091 of 2023) [2025] KEHC 8683 (KLR) (Civ) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8683 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E1091 OF 2023  
WM MUSYOKA, J  
JUNE 19, 2025**

**BETWEEN**

**UAP INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**ALMASI KENYA COMPANY LIMITED ..... RESPONDENT**

*(Appeal arising from judgement and decree of Hon. JW Munene, Adjudicator, Nairobi SCCC No. E5589 of 1989, delivered and passed on 14th February 2023)*

**JUDGMENT**

1. The suit, at the primary court, was filed by the respondent. It sought to recover Kshs. 889,100.00, being repair costs incurred and Advocates fees paid. A vehicle belonging to the respondent, registration mark and number KCG 005L, had been comprehensively covered by the appellant. It had an accident, on 23<sup>rd</sup> May 2021, at Manyani, along the road from Nairobi to Mombasa. The appellant declined to pay for the repair costs, of Kshs. 874,100.00, and that is what was claimed as special damages.
2. The appellant resisted the claim. It denied the policy, and averred that, if there was a contract between it and the respondent, the same had been cancelled for breach of policy. The breach was framed as damage caused by overload on strain, on the basis that, as at the time of the accident, the motor vehicle had an excess load of 4.04 tonnes. It was also averred that the respondent had failed to provide the appellant with details of the circumstances leading to the accident, hence there was non-disclosure of material facts.
3. The matter was canvassed by way of written submissions. Judgement was delivered on 14<sup>th</sup> February 2023. The claim was allowed, at Kshs. 874,100.00. The money paid to the Advocate was disallowed, on the basis that it was not covered by the policy.



4. The appellant was aggrieved, hence the appeal. The grounds of appeal, in the memorandum of appeal, dated 6<sup>th</sup> October 2023, revolve around the trial court erring in holding that the case had been proved to the required standard; the trial court failing to find that the respondent had not produced documentary evidence to prove value of the loss suffered; the trial court failing to find that the terms and conditions of the policy of insurance had been breached.
5. The trial record is sketchy. There were only three appearances, according to it. The first was on 29<sup>th</sup> September 2022. By then, the appellant was yet to appear and respond to the claim. The respondent sought to have the matter disposed of by way of written submissions, to which the appellant agreed. The record is silent on whether the court gave any directions on the submissions, or on how the matter was to be disposed of. The other appearances were on 13<sup>th</sup> February 2023 and 14<sup>th</sup> February 2023, when the matter came up for judgment. On 13<sup>th</sup> February 2023, judgement was deferred to 14<sup>th</sup> February 2023, when it was delivered.
6. There were submissions filed though, for the trial court, in its judgement, expressed itself as having considered them.
7. Directions were given herein, on 4<sup>th</sup> March 2025, for disposal of the appeal by way of written submissions.
8. Both sides have submitted, for I have come across their respective written submissions, which I have read and considered.
9. There are two preliminary issues, though, which both parties have not addressed me on, and both of which should go to jurisdiction. That is about the jurisdiction of the trial court to deliver the judgment on 14<sup>th</sup> February 2023, and that on the competence of the appeal herein.
10. Regarding the first issue, section 34(1) of the *Small Claims Court Act*, Cap 10A, requires that claims under the Act be disposed of within sixty days of the filing of the claim.
11. It is not clear from the material in the record of appeal, given that the original trial court records were not availed, as to when the claim was lodged at the trial court. The copy of the statement of claim, in the record of appeal, is undated, but I see that the verifying affidavit was sworn on 14<sup>th</sup> September 2022, which is the date on the written statement. The response is dated 29<sup>th</sup> September 2022. The first court appearance was on 29<sup>th</sup> September 2022. Judgement was pronounced on 14<sup>th</sup> February 2023.
12. As there is no clarity on when the statement of claim was filed, I shall, for the purpose of these proceedings, treat the date when the parties first appeared in court, 29<sup>th</sup> September 2022, before the Adjudicator, as the filing date. From 29<sup>th</sup> September 2022, sixty days ought to have expired on or about 29<sup>th</sup> November 2022. Between 29<sup>th</sup> November 2022 and 14<sup>th</sup> February 2023 there were seventy-six days, which means that the judgment was delivered seventy-six days outside the sixty days allowed by section 34(1) of the *Small Claims Court Act*.
13. The High Court is conflicted, on the effect of conducting proceedings in the Small Claims Court beyond the sixty days' timeline. In *Kartar Singh Dhupar & Company Limited vs. ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J), based on *Martha Wangari Karua vs. Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and *Aprim Consultant vs. Parliamentary Service Commission & 2 others* CACA No. E039 of 2021 (unreported), it was ruled that the proceedings beyond the sixty days would be without jurisdiction, and the outcome would be null and invalid. In *Biosystems Consultants vs. Nyali Links Arcade* [2023] KEHC 21068 (Magare, J) and *Lumumba vs.*



- Gift Gas Limited [2023] KEHC 25998 (Majanja, J), it was held that the same would be of no effect, the provision on the sixty-day limitation was not mandatory, but directory.
14. I agree with the position taken by the court in *Kartar Singh Dhupar & Company Limited vs. ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J). Section 34(1) of the *Small Claims Court Act* is in mandatory terms. Proceedings conducted outside the sixty days would be by a court without jurisdiction. There is no provision, in the *Small Claims Court Act*, for extension of that time.
  15. The effect of the above then would be that the trial court lost jurisdiction on or about 29<sup>th</sup> November 2022, which meant that it had no jurisdiction to render judgement on 14<sup>th</sup> February 2023, seventy-six days after it had lost jurisdiction. The judgement of 14<sup>th</sup> February 2023 was a nullity.
  16. Regarding the competence of the appeal, section 38 of the *Small Claims Court Act* provides for appeal against a decision of the Small Claims Court, on matters of law. The time, within which such appeals could be filed, is not provided for in the *Small Claims Court Act*. Rule 30 of the Small Claims Court Rules refers to Order 42 of the Civil Procedure Rules, with respect to appeals.
  17. In the absence of provisions, in the *Small Claims Court Act*, on the time within an appeal ought to be proffered, recourse has to be to the *Civil Procedure Act*, Cap 21, Laws of Kenya, which is designed “to make provision for procedure in civil court,” of which the Small Claims Court is one. The special jurisdiction, conferred on the Small Claims Court, by the *Small Claims Court Act*, is contemplated and saved by section 3 of the *Civil Procedure Act*.
  18. Section 79G of the *Civil Procedure Act*, provides for time for filing appeals from subordinate courts, of which Small Claims Court is one, to the High Court. The appeal should be filed within thirty days from the date of the decree or order appealed against, excluding any time certified by the court as having been required for the preparation and delivery of the copy of the decree or order.
  19. Judgement herein was delivered on 14<sup>th</sup> February 2023. Thirty days from 14<sup>th</sup> February 2023 expired on or about 16<sup>th</sup> March 2023. The memorandum of appeal herein, dated 6<sup>th</sup> October 2023, was filed outside that period. Between 16<sup>th</sup> March 2023 and 6<sup>th</sup> October 2023 are two hundred and four days. So, the appeal was filed two hundred and four days after the thirty days allowed by section 79G of the *Civil Procedure Act* had lapsed. I have not seen a certificate of delay, from the lower court, indicating the time taken to process the decree. Neither have I seen copy of an order, from the High Court, extending time to file appeal. One of the documents required to be filed on appeal, under Order 42 Rule 13(4) (f) of the Civil Procedure Rules, is a copy of the order or decree appealed from, and, if any, the order giving leave to appeal. Leave to appeal out of time was required in this case. There is no evidence that any was filed.
  20. The conclusion that ought to be drawn from the above, is that the appeal herein was filed outside the thirty days allowed by section 79G of the *Civil Procedure Act*, and without leave of the court, to appeal out of time. The appeal is, accordingly, incompetent. I have no jurisdiction to determine an incompetent appeal.
  21. In view of the above, there is nothing for me to determine. The appeal herein is, accordingly, struck out. As the decree appealed from was passed without jurisdiction, I shall not make an award on costs.

**DELIVERED, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**WM MUSYOKA**

**JUDGE**



Mr. Arthur Etyang, Court Assistant.

Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Chegecha, instructed by Wangai Nyuthe & Company, Advocates for the appellant.

Mr. Omemo, instructed by JM Kiriimi & Company, Advocates for the respondent.

