Muiruri v Mkalama (Civil Appeal E119 of 2024)
[2025] KEHC 10689 (KLR) (Civ) (18 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10689 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E119 OF 2024

WM MUSYOKA, J

JULY 18, 2025

BETWEEN

TIM NDAGURI MUIRURI ..... APPELLANT

AND

LYNDA MWISIWA MKALAMA ..... RESPONDENT

(Appeal from judgement and decree of Hon. V Momanyi, Resident Magistrate, in Nairobi SCCC No. E4108 of 2023, of 8th December 2023)

JUDGMENT

1. The matter before the trial court had been initiated by the respondent against the appellant. It was a claim for Kshs. 252,465.48, in respect of moneys lent, but not repaid. The appellant resisted the claim. He acknowledged the interaction with the respondent but denied ever being lent the money the subject of the dispute. He counterclaimed for Kshs. 350,543.00. A trial was conducted. Both parties testified. A judgement was delivered on 8th December 2023, in favour of the respondent.

2. The appellant was aggrieved; hence he filed this appeal, vide a memorandum of appeal, dated 25th January 2024. The grounds are that the trial court erred in finding that the agreement, the subject of the dispute, was enforceable; awarding double compensation; dismissing the counterclaim without considering the evidence; awarding general damages in a case of breach of contract; making an award of Kshs. 252,465.48 without basis; failing to find that the agreement had an arbitration clause; and filling in the gaps in the case.

3. Directions were taken, before the Judge, on an undisclosed date, for canvassing of the appeal by way of written submissions.

4. Both sides have complied, by filing their respective written submissions. The parties have argued around the trial court lacking jurisdiction, in view of the arbitration clause in the subject agreement; failing to consider all the facts presented; and awarding general damages for breach of contract.

5. Before I consider the appeal, on its merits, if at all I will get to do so, let me first deal with an issue that the parties have not raised, which did not arise at trial, but which ought to be at the core of this matter. That is whether the trial court had jurisdiction, as of 8th December 2023, when it determined the matter before it. For if there was no jurisdiction, as of 8th December 2023, the appeal herein would have no foundation, for it would be based on an invalid judgement.

6. The matter before the trial court was initiated and determined as a small claim, under the *Small Claims Court Act*, Cap 10 A, Laws of Kenya. The judicial officer, or officers, who handled the matter, presided over a Small Claims Court, established under the *Small Claims Court Act*.

7. The jurisdiction of the Small Claims Court is set out in Parts III and IV of the *Small Claims Court Act*. Part III sets out the geographical jurisdiction of the court, at section 11; jurisdiction with respect to the nature of the claims handleable by the court, at section 12(1); and the pecuniary jurisdiction, at section 12(3). Part IV sets out the procedural jurisdiction of the court. It covers such areas as, control of its own procedures, at section 17; adoption of alternative resolution mechanisms, at section 18; permitting representation of the parties, at section 20; entry of default judgement, at section 28; proceeding by electronic means, at section 30; consolidation of claims, at section 31; exclusion of strict rules of evidence, at section 32; expeditious disposal of matters, at section 34; and orders that the court may make, at section 36.

8. The principal features of the Small Claims Court are the key jurisdiction areas around the value of the claim, the duration within which the claims should be resolved, the nature of the claims themselves and relaxation of the rules of evidence and procedure. It is these jurisdictional features that ought to mark what the Small Claims Court should be, that is, a court designed to handle small claims, with expedition, and, to achieve that, certain rules of evidence and procedure must be relaxed, while others must be tightened.

9. The object, essence and character of the court, imagined by the *Small Claims Court Act*, comes out in section 3 of the Act, through what is legislated as the "guiding principles." Section 3(1) envisages a court anchored on the principles of judicial authority prescribed under Article 159(2) of *the Constitution*; while section 3(2) requires the court to adopt procedures which ensure timely disposal of proceedings, use of the least expensive methods, equal opportunity of access to justice for all, fairness in the process and simplicity of procedure.

10. The said provision, section 3, states as follows:

> " 3. Guiding principles
>
> (1) In exercise of its jurisdiction under this Act, the Court shall be guided by the principles of judicial authority prescribed under Article 159(2) of *the Constitution*.
>
> (2) The parties and their duly authorized representatives, as the case may be, shall assist the Court to facilitate the observance of the guiding principles set out in this section, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of that Court.

(3) Without prejudice to the generality of subsection (1) the Court shall adopt such procedures as the Court deems appropriate to ensure—

(a) the timely disposal of all proceedings before the Court using the least expensive method;

(b) equal opportunity to access judicial services under this Act;

(c) fairness of process; and

(d) simplicity of procedure."

11. Article 159(2) is about justice being done to all irrespective of status, not being delayed, promotion of alternative modes of dispute resolution, eschewing of procedural technicalities and promotion of the purposes of *the Constitution*. The principal themes, captured in section 3 of the *Small Claims Court Act*, are access to justice for all irrespective of status, expeditious disposal of matters, alternative modes of dispute resolution, and avoidance of technicalities of procedure.

12. For avoidance of doubt, Article 159(2) of *the Constitution* provides:

" 159. Judicial authority

(1) ...

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted ...;

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted."

13. With respect to access to justice for all, focus is on small claims. People of small means also tend to have small claims. The court, envisaged by the *Small Claims Court Act*, is one that would be accessible to persons in that social stratum. The *Small Claims Court Act* seeks to devolve the courts to the lowest level, in terms of claims of very low economic value. There is a coincidence of low social stratum and low economic means, on the one hand, and low standards of education on the other. Individuals, who have low formal education, would, often, find navigating around the technicalities, associated with the rules of procedure and evidence in the court, inhibitive, and such technicalities limit their access to justice. The *Small Claims Court Act* seeks to ease access to the courts and the justice system for such persons, by giving them a court which eschews technicalities of procedure, and which has jurisdiction

to fashion its own rules of procedure, to suit the needs of its class of litigants, tailored to ease their access to justice.

14. Emphasis is given to simplicity of procedures and avoidance of procedural technicalities. Simplification of procedures and relaxation of the rules of evidence are meant to make the proceedings of the court inexpensive and the court more accessible, for the cohort of litigants, for whom the court, designed by the *Small Claims Court Act*, is meant. Delays in disposal translates to expense for those with limited resources, hence the need to have the matters disposed of as soon as possible, to the extent of them being heard and decided the same day. There is also encouragement, to the court, to adopt modes of dispute resolution that that cohort is familiar with.

15. The provisions of the *Small Claims Court Act* should be seen in that light, of a court that handles small claims, speedily, using the simplest of procedures. The jurisdiction of the Small Claims Court is exercised within those parameters: small claims, simple procedure, and determination within very short timespans. The pecuniary jurisdiction is set at a maximum of Kshs. 1,000,000.00. The period within which the jurisdiction is to be exercised is set at 60 days. Jurisdiction is granted to relax the rules of evidence and procedure. It is these elements that ought to characterize the court envisaged by the *Small Claims Court Act*. They create a special jurisdiction for that court.

16. From the appeals that have come my way, from that court, the Small Claims Court, the jurisdiction relating to that court, for handling claims whose value does not go beyond Kshs. 1,000,000.00, is being strictly adhered to. However, I doubt that the other jurisdictions are being respected. The one that is obviously least observed is that relating to the 60-day rule, for determining the claims. In almost all the appeals that I have handled so far, determinations were made outside the 60-days jurisdiction, prescribed by section 34(1) of the *Small Claims Court Act*. So, there is no expeditious disposal of the matters. More crucially, the determinations, made outside the 60 days, are without jurisdiction, and invalid, therefore.

17. To my understanding, the non-compliance with the 60-day rule has something to do with the Small Claims Court not exercising the jurisdiction granted to it by the Act, to relax the rules of evidence and procedure, and to have control of its own procedures. To my thinking, relaxation of the rules of evidence and having control of its procedures would point to the said court having jurisdiction to fashion its own procedures, to suit the unique needs of the targeted litigants, to facilitate disposal of the claims within 60-days. The *Small Claims Court Act* gives the Small Claims Court a broad latitude and discretion, with respect to how it handles evidence and procedure, to enable it to accommodate its poor clientele, and dispose of their claims in the shortest time possible. The provisions, in sections 3(3) and 17 of the *Small Claims Court Act*, about the Small Claims Court having control over its own procedures, is not dissimilar to Article 163(8) of *the Constitution*, with respect to the Supreme Court making rules for exercise of its jurisdiction, no doubt informed by the very strict timelines, under Article 140 of *the Constitution*, for disposal of the Presidential election dispute.

18. The sense I get, with respect, is that the Small Claims Court project is failing. As currently operating, the Small Claims Court, does not, or no longer, meets or aligns to the objectives for which it was set up by the *Small Claims Court Act*. It is no longer a Small Claims Court defined by simplicity of procedure, and the desire to obtain expeditious disposal of claims. The trajectory, that it has taken, has brought it at par with the Magistrate Court and the High Court, in terms of operating under a framework of procedure defined by the *Civil Procedure Act*, Cap 21, Laws of Kenya, and the Civil Procedure Rules, instead of the *Small Claims Court Act*, upon which it ought to be anchored.

19. The High Court, as the superior court that supervises the Small Claims Court, by dint of Article 165(5)(7) of *the Constitution*, has not helped that court. The objective, of expeditious disposal of claims, has

been adulterated by the construction to which the High Court has given to section 34(1) of the *Small Claims Court Act*. Section 34(1) limits the jurisdiction of the Small Claims Court, during which it should determine claims, to 60 days. Put differently, the *Small Claims Court Act* has conferred upon the Small Claims Court a 60-day jurisdiction only, to hear and determine the claims that it is seized of. That provision is attuned to the spirit and the overall objective of the *Small Claims Court Act*. It is a conscious and deliberate provision, for the promotion of the objects of the Act, as set out in section 3.

20. To facilitate its implementation of the 60-day rule, the provision itself, that is section 34, prescribes ways of achieving that objective. It decrees that matters should be heard and determined the same day. The Small Claims Court should take evidence and deliver a judgement or make a determination the same day. Where that cannot work, it prescribes that the court adopts the strategy of hearing the matter on a day-to-day basis until it completes it. Judgements or determinations, where they cannot be delivered or made on the day hearing is completed, should be delivered at least within 3 days of completion of the hearing. Adjournments are discouraged, and should be allowed only in exceptional circumstances, which are defined. In any event, only a maximum of 3 adjournments is allowed.

21. Contrary to the stated objective of the *Small Claims Court Act*, the High Court has, in such decisions as Crown Beverages Limited vs. MFI Documents Solutions Limited [2023] KEHC 58 (KLR) (Majanja, J), Biosystems Consultants vs. Nyali Links Arcade [2023] KEHC 21068 (Magare, J) and Lumumba vs. Gift Gas Limited [2023] KEHC 25998 (Majanja, J), by judicial craft, removed that jurisdiction, and it has given to the Small Claims Court an open or unlimited jurisdiction, timewise, within which to determine these matters, which has brought it at par with the Magistrate's Court and the High Court, with respect to the timelines that those other 2 courts operate under, while handling their matters, as prescribed under the *Civil Procedure Act* and the Civil Procedure Rules.

22. The Rules developed to operationalise the *Small Claims Court Act* have not helped either. The Small Claims Court Rules are largely a replica of the Civil Procedure Rules. They have reproduced the complexities associated with the processes at the Magistrate's Court and the High Court, which often hinder access to justice for the poor and the underprivileged. The *Small Claims Court Act* sought to sidestep those complexities by establishing a special court, with a special jurisdiction, with a less stringent procedural framework compared to that under the *Civil Procedure Act* and the Civil Procedure Rules, which governs proceedings at the Magistrate's Court and the High Court.

23. Part of what complicates the position of the Small Claims Court could also be the judicial officers who preside over that court. The design, by the *Small Claims Court Act*, is that of a court to be presided over by Adjudicators, but not Magistrates, as the Small Claims Court is a distinct court from the Magistrate's Court. However, the Chief Justice has power, under the *Small Claims Court Act*, to appoint other judicial officers, such as Magistrates, to sit at the Small Claims Court as Adjudicators. At present, no Adjudicators have been appointed, and the Small Claims Court is being presided over and run by Magistrates, presumably nominated to do so by the Chief Justice. The Magistrates, sitting as Adjudicators, also sit as Magistrates, over matters initiated under the *Civil Procedure Act* and the Civil Procedure Rules.

24. Such magistrates exercise jurisdiction under the *Small Claims Court Act*, when handling Small Claims Court work, and under the Magistrates' Court Act, and the *Civil Procedure Act* and the Civil Procedure Rules, when handling Magistrate's Court work. It is something doable, but with the potential of undermining the objectives of the *Small Claims Court Act*, for there could be a real risk that the Magistrates could end up handling the Small Claims Court matters as if they are handling matters subject to the *Civil Procedure Act*, rather than the *Small Claims Court Act*. There could be an unconscious challenge, with juggling or transitioning from sitting as Adjudicator to sitting as Magistrate. It should not be forgotten that these are entry level positions, where young or newly

enrolled Advocates are taking baby steps in the profession, and struggling to find their footing, in terms of making sense of the business of the legal profession, in the context of the workings of the Judiciary and the legal system.

25. The Small Claims Court is designed by the *Small Claims Court Act* for the poor, the marginalised, the underprivileged and the indigent. In the political arena, the current reference to the individuals, in that social stratum in Kenya, is in such terms of mama mboga, mama fua, boda boda, jua kali, among others. That cohort of litigants has low or meagre resources, small means, and, possibly, low levels of education. The Small Claims Court is meant to avail to them an opportunity to have their matters handled with lesser formality, in a system that would allow them to navigate through the court process with relative ease, without being inhibited by the procedural maze that defines the processes at the Magistrate's Court and the High Court, governed, as they are, by the *Civil Procedure Act*.

26. It is also meant to afford them a process that would dispose of their matters quickly and expeditiously, as, being peasant farmers, petty traders, artisans and unskilled labourers, living from hand-to-mouth, from what they earn from their hustles on a daily basis, they cannot afford to be off their work, for long periods of time, as they attend to court cases. People lose jobs, for frequently seeking permission to be away from work, to attend court case sessions. In any event, claims for small amounts, such as Kshs. 1,000.00, or Kshs. 5,000.00, or Kshs. 10,000.00, or even Kshs. 50,000.00 should not drag in court for a long time. The claimants would like to recover the amounts quickly, and use the amount recovered to meet their daily needs.

27. I doubt that the Small Claims Court, as currently operating, is aligned to the needs of mama mboga, jua kali and boda boda operators. It is drifting away from its original goal, and it is now more of a Magistrate's Court, than the Small Claims Court, that it was designed to be. The Kenyan economy is largely subsistent, for the majority, eke a living at the fringes or margins, from a rural economy or a jua kali environment. The other term used frequently, to describe it, is the Kadogo economy. Manufacturers, and other commercial entities, are cognisant of that reality, and have tapped into that kadogo economy, on the realisation that most consumers are in that bracket, the subsistence economy, with an income that only allows them to purchase consumer products enough to be consumed the same day, hence they, the industrialists, have begun to package consumer products in small quantities, on that account. Put differently, consumer products, specifically packaged for this cohort of consumers, are faster moving compared with the rest. The Small Claims Court, as designed by the *Small Claims Court Act*, targets that group of consumers, the provisions of the Small Claims Act has them in mind, and the said court should adapt to suit their needs.

28. If I understand the concept of the Small Claims Court, as designed by the *Small Claims Court Act*, well, which I think I do, I see it is a sort of revival of a court similar to what was known, during the colonial era, as the Native Court, which mutated into the African Court, before it became the District Magistrate's Court, before it was, eventually, either merged with the Magistrate's Court, or abandoned altogether, depending on the perspective that one looks at it from.

29. Perhaps, there may be need to contextualise this. There is a tendency to overplay the ills of the colonial system, and, in the process, only see the forest, instead of the trees in it. There could be a sense, in which the colonial State was more alive to the justice needs of the poor and the marginalised, compared with what happened after independence, with respect to access to justice, for that cohort of litigants.

30. The colonial State did not have enough European judicial officials on the ground, in Kenya, to go round, for it to impose a unitary legal system, designed to apply to all within the borders. For that reason, it permitted a dual or plural legal system to apply, where different systems of law applied to different socio-cultural groups. For the Europeans, a legal system, founded on statute and the common

law, was permitted, largely copied from what they were familiar with. The Asians were allowed, so far as their personal matters were concerned, to be governed by their customary law. Later statutes, that applied in the Indian sub-continent, were applied in Kenya, for their benefit. The Muslims were allowed to keep their Islamic law, and the Africans their customary law. The different systems were allowed to co-exist and develop separately. Efforts, to unify the systems, into one catering for all, were only undertaken after independence.

31. There were both merits and demerits, of that plural system. The principal merit was that it facilitated a gradual growth and development of the separate systems, in a manner that, perhaps, respected and accommodated the social and cultural perspectives of the different groups or communities. The principal demerit was that it was segregationist.

32. My interest is with what happened to the African. At the onset of colonialism, the African was subject, exclusively, to customary law, with respect to both civil and criminal matters, and justice was accessed through the structures that existed traditionally amongst the different African communities. After some time, following access to some level of formal Western education, conversion to Christianity and incorporation into the growing formal employment sector, a small African elite emerged, and the colonial State began to develop primitive structures, to cater for their affairs, but separate from the structures existing for the other racial groups.

33. The Native Court was one of some of those structures. It handled matters of a civil and criminal nature, founded on African customary law. It was run by Africans, working under supervision of the local colonial European administrators. The Native Court was not part of the colonial Judiciary. It was largely designed for the small African elite, for the rest of the general African populace remained subject to the traditional structures, ran through the clan system. It was not supervised by the High Court, but by the provincial administration. The Native Court was later renamed the African Court.

34. At independence, there was a unification or merger of all the four systems of justice. The agenda was to unify the country, by bringing all under one legal regime. That development led to the re-structuring of the African Court. It was renamed the District Magistrate's Court, and it was incorporated into the formal judicial system, or the mainstream Judiciary, as the lowest level of the magistracy, ran by judicial officers who were not Advocates, and supervised by the Resident Magistrate's Court.

35. For a long time, the formal Judiciary comprised of the High Court and Resident Magistrate's Court only, presided over by Judges and Resident Magistrates, who were Advocates. The incorporation of the African Court into the system created the third category, which was re-named the District Magistrate's Court, presided over by a lay Magistrate. The District Magistrate's Court handled matters that were subject to customary law, with a limited criminal jurisdiction to try petty offenders and a limited civil jurisdiction covering petty claims.

36. The coming of independence saw exodus of a large part of the European and Asian elite from Kenya, largely to the United Kingdom. That group used to provide the bulk of the consumers of justice at the High Court and the Resident Magistrate's Court. The vacuum they left was filled by the African elite, who began to have their matters handled by the Resident Magistrate's Court and the High Court, leaving the District Magistrate's Court to handle matters for the rural and urban poor. The processes, at the District Magistrate's Court, were marked by simplicity and informality, while those at the other 2 levels were laden with complexity and formality.

37. The District Magistrate's Court remained in place until the 1990s or the turn of the century, when it was quietly phased out. The phasing out was informed more by the fact that the country had produced enough Advocates, to take charge of the entire magistracy. The thinking was that there was no need to maintain a court manned by lay magistrates, given the abundance of qualified Advocates in the

market. The phase out had nothing to do with lack of need for a court, at the lowest level, to handle matters for the persons at that level, the peasant farmer, the mama mboga, the mama fua, the jua kali and boda boda operator, among others. That left them with the Resident Magistrate's Court, which, for a long time, had been a court for the elite. Advocates never used to appear at the African Court, and hardly appeared before its successor, the District Magistrate's Court, but the Resident Magistrate's Court was their playground. The phasing out of the District Magistrate's Court left the poor and the marginalised, who comprise the bulk of the Kenyan population, orphaned. The courts that remained, after the phase out of the District Magistrate's Court, were elitist, and out of tune with the needs of the poor, and beyond their reach.

38. The vacuum, left by the abandonment of the District Magistrate's Court, was filled by alternative justice systems. Rather than move up to the Resident Magistrate's Court and the High Court, the poor resorted to other mechanisms, such as the police and the Chiefs, and to this day, these entities, in the Executive, handle most of the disputes at the local level, using the model of the Native Court. The challenge with these systems is that there are no enforcement mechanisms, for the resolutions arrived at through these forums, given that these modes are extra-judicial. Invariably, the festering of the unresolved disputes manifest in criminal activity, usually taking the form of assault or homicide.

39. The colonial State operated a system of justice which accommodated all, but in a segregated fashion. The independent State attempted to end the segregation, through unification, but in the process created a gap, where the poor ended up being excluded from the formal justice system, and shunted to the fringes. My understanding is that the Small Claims Court is an attempt to address that gap. That endeavour is, however, being or has been thwarted or subverted.

40. The new Constitution recognised these challenges, hence the provision in Article 159 of *the Constitution*, which addresses the issues that often hinder access to justice by the vulnerable, that is procedural technicalities, lack of access to justice, failure by the courts to utilise alternatives to formal justice systems, among others. It is little wonder then that the principles that guide the Small Claims Court, according to the *Small Claims Court Act*, are drawn from Article 159(2) of *the Constitution*.

41. I have compared the *Small Claims Court Act* with the statutes establishing the other courts, that is to say the High Court Organisation and Administration Act, Cap 8C, Laws of Kenya; the *Environment and Land Court Act*, Cap 8D, Laws of Kenya; the *Employment and Labour Relations Court Act*, Cap 8E, Laws of Kenya; and the Magistrates' Court Act, Cap 10, Laws of Kenya; all enacted after the promulgation of *the Constitution* in 2010, and noted that only the statutes for the High Court and the Magistrate's Court refer to Article 159, and that only the *Small Claims Court Act* gives emphasis to the court ensuring "the timely disposal of all proceedings before the Court using the least expensive method; equal opportunity to access judicial services ... ; fairness of process; and simplicity of procedure," which is, no doubt, distilled from Article 159(2).

42. The decisions, in Crown Beverages Limited vs. MFI Documents Solutions Limited [2023] KEHC 58 (KLR) (Majanja, J), Biosystems Consultants vs. Nyali Links Arcade [2023] KEHC 21068 (Magare, J) and Lumumba vs. Gift Gas Limited [2023] KEHC 25998 (Majanja, J), signify a subtle shift in focus, from what the Small Claims Court should be, under the *Small Claims Court Act*, to what the elite would like it to look like. It represents are rejection of the Small Claims Court, as designed by the *Small Claims Court Act*, and of the notion of a special court to address the needs of the poor and the vulnerable. However, the reality of the existence of a dual or plural system of justice in Kenya persists, one for the elite and the other for the poor and the marginalised.

43. The Kenyan judicial system is alive to the reality of that pluralism. It does not present a pretty picture, for it reflects the State as an elite enterprise, to which the poor are either excluded, sidelined and

marginalised, or they, the poor, have chosen to keep away from it, for it is alien to them, or it is not suited to their circumstances. The official judicial system is that established through *the Constitution* and the statutes, and it conduces to the circumstances of persons who are economically able. The poor have their disputes and issues resolved away from or outside of the official judicial system, using either non-judicial State agencies or non-State agencies.

44. The presumption is that the official Judiciary is accessible to all. The reality is that it is not. When the needs of the marginalised and the voiceless are not attended to, that category of Kenyans, who form the majority in the population, tend to go underground. The consequence of that often manifests itself in unsavoury ways, for they tend to find solutions to their problems through ways and means that are not authorised or recognised by the State, often with disastrous consequences.

45. The Judiciary has gone out of its way to give life to the constitutional guidelines given by Article 159(2). Initially, by launching the Court Annexed Mediation, and later the Alternative Justice Systems. All these are efforts to address the issue of access to justice, which was a concern, raised with respect to the poor and the marginalised, during *the Constitution*-making process.

46. Article 159(2) of *the Constitution* is meant to address that concern, access to justice for all. The provision gives to the courts guidelines on the principles that ought to assist them in handling the matters placed before them. One aspect addresses access to justice, while the other is on expeditious disposal of matters.

47. The well-to-do usually have no issues with access to justice. They have resources to facilitate their filing of cases in whichever court. They have the wherewithal to hire Advocates to act for them in those matters. They also usually possess adequate education, enabling them to argue the cases in the courts personally, when, for whatever reason, they choose not to rely on Advocates. The concern of this cohort would not be with being able to access the courts, but rather in having their disputes being disposed of expeditiously.

48. The other cohort, the poor, or those who are not so well-to-do, have issues with access to justice and technicalities of procedure. Technicalities of procedure are, in fact, an aspect of the problem of access to justice for this class of litigants. In the first place, the courts could be located too far from them, accessible only at considerable expense. Two, the procedures involved are too technical for them to navigate around, because they often lack adequate education, and do not have the resources to access legal representation. Three, the spectacular grand palaces, that the courthouses are, are the other dimension. They create a surreal environment, which makes the poor feel out of place, draining away all their confidence.

49. Article 159(2) addresses the concerns of the two groups, and more so of the group that is often marginalised and left out, for that provision focuses on justice being rendered to all irrespective of status, embrace of alternative modes of dispute resolution, and eschewing of technicalities of procedure.

50. The Small Claims Court is the other judicial initiative. As indicated elsewhere, the Small Claims Court is anchored specifically on Article 159(2), going by section 3 of the *Small Claims Court Act*. It was, obviously, created to breathe life to Article 159(2), by way of addressing concerns around access to justice for a section of the Kenyan populace, and the desire to have the cases affecting them disposed of expeditiously, and, in some cases, through modes of dispute resolution that are more palatable to them. The emphasis of Article 159(2) is on the needs of the vulnerable group, and I suppose the Small Claims Court was intended for the benefit of this very large group of Kenyans, which is of very small means, with very small claims, which require very little formality to prove, and very little time to determine.

51. Disputes are not a preserve of the elite and the well-to-do. The poor also have their issues. They too lend and borrow money, and defaults occur, when the money is not repaid. They offer services, of one kind or other. Often, such services are rendered on the understanding that they would be paid for later or in future, then default sets in. They lease and hire out assets, be it land, equipment or plant, at a fee. Often, the fee is not settled on time. Their claims may be what the wealthier cohorts may write-off as insignificant bad debts, but to the poor they could mean everything. Because of the challenges that I have discussed above, they have access issues, so far as going to the courts is concerned, which the other categories of citizens and residents do not have. Those concerns came up at Constitution-making, and were addressed, through Article 159(2). The Small Claims Court project is an attempt to answer those concerns.

52. The poor also want their day in a proper court. They deserve a space of their own in the official or mainstream Judiciary, instead of playing the role of spectators or onlookers, gazing into the Judiciary enterprise, from the fringes or the outside. They would want to have their own place, in the official judicial system, and to be heard in a judicial setting not substantially different from that afforded to the others, through the Magistrate's Court and the High Court, albeit with structures sensitive to their unique needs. The poor will always be there, and for a poor third world country, like Kenya, they will always be the majority, until a level of development, which uplifts a substantial chunk of them to the middle class, happens. Until then, they have to be carried along, in a manner that makes then belong.

53. The context would point to the 60-day limitation period being a deliberate provision, designed for a court meant to handle a particular class of cases, for a particular class of litigants, in a particular way, to be determined within a particular duration of time.

54. For eons, the Kenya judicial landscape had known only 2 courts, the High Court and its subordinate, the Resident Magistrate's Court. They largely shared, and still largely do, the same jurisdiction, hence they are, in the main, governed by the same laws of procedure, the *Civil Procedure Act*, for civil matters, and the *Criminal Procedure Code*, Cap 75, Laws of Kenya, for criminal matters. The High Court was, and still is, the main court, in that arrangement, while the Resident Magistrate's Court was, and still is, the surrogate, to which the High Court dispersed or ceded jurisdiction, over the lesser cases, in the pecuniary sense. The language, that the High Court was and still is the main court, while the Resident Magistrate's Court was and still is the subordinate or delegate court, comes out clearly in some statutes, such as the *Criminal Procedure Code* and the *Law of Succession Act*, Cap 160, Laws of Kenya.

55. The 2 old courts, the High Court and the Magistrate's Court, have had common challenges, requiring that other courts be established to handle aspects of their work. These other courts are often described or characterised as specialised, in the sense of having a particular class or category of cases to handle, often through their own rules of procedure. The Environment and Land Court and the Employment and Labour Relations Court are specialised courts, at the level of the High Court, under that arrangement. They are not part of the High Court, for they are distinct from it, on account of their special jurisdiction.

56. The Small Claims Court is the first special court, at the level of the Magistrate's Court, which is separate and distinct from the Magistrate's Court. It is a subordinate court, under Article 169 of *the Constitution*, in the same class with the Magistrate's Court. The Magistrate's Court is specifically established under Article 169(1)(a) of *the Constitution*. According to section 4 of the *Small Claims Court Act*, the Small Claims Court is established pursuant to Article 169(1)(d) of *the Constitution*. It is not a Magistrate's Court. It contrasts with the Children's Court, which is established under the *Children Act*, Cap 141, Laws of Kenya, which is clearly, by dint of sections 90 and 91 of that Act, a

court within the magistracy. The Children's Court is a specialised court, but within, and not outside, the Magistrate's Court.

57. The Small Claims Court should be seen in similar light with the Environment and Land Court and the Employment and Labour Relations Court. It is a special court, outside the Magistrate's Court, but exercising a jurisdiction hived off from the Magistrate's Court. Indeed, the 2 share the jurisdiction, in the sense that the Magistrate's Court still retains jurisdiction to hear and determine claims that fall within the jurisdiction of the Small Claims Court, if filed at the Magistrate's Court. The difference is that once the matter is filed at the Small Claims Court, the Small Claims Court would have exclusive jurisdiction, by virtue of section 13 of the *Small Claims Court Act*. The Small Claims Court has a special mandate, indicated by the nature of the claims it should handle, the period within which jurisdiction is to be exercised and the special procedures. The Small Claims Court is meant to handle a specific class of work, dispersed to it from the Magistrate's Court. That work is designed to be done in a different way, within a different span of time, by a different outfit. The special status of the Small Claims Court should, therefore, be respected, honoured and protected.

58. The position of a special court, with a special jurisdiction, in the Kenyan judicial and legal system, should be contextualised. *The Constitution* of Kenya, 2010, at Article 165, establishes the High Court, although, in reality, it merely re-establishes it, for that court has been in existence since 1902. Article 165(3)(a) vests the High Court with "unlimited original jurisdiction in civil and criminal matters." That makes the High Court the premier or foremost primary or original trial court, for all matters of a civil and criminal nature. All the other courts, subordinate and of equal status to the High Court, exercising an original jurisdiction, although imagined in *the Constitution*, are special courts, established under legislation, to assist the High Court discharge its constitutional mandate. The fact of the "unlimited original jurisdiction" would mean all the other courts, exercising an original jurisdiction, do so it as part of that "unlimited original jurisdiction," dispersed to them, from the High Court

59. It is for this reason that the High Court is said to be the engine of the Judiciary, the fulcrum around which the entire judicial system rotates. All subordinate courts assist the High Court to discharge its wide mandate under *the Constitution*, and so do the courts of equal status. The Court of Appeal exists to hear appeals from the High Court, under Article 164(3)(a) of *the Constitution*, and any other court or tribunal as may be prescribed by statute. The Supreme Court hears appeals from the Court of Appeal, by virtue of Article 163(3)(b)(i) of *the Constitution*, most of which, no doubt, originate from the High Court. The Supreme Court also exercises an original jurisdiction, over the Presidential election dispute, under Article 163(3)(b) of *the Constitution*, which should be part of the "unlimited original jurisdiction" of the High Court, but dispersed to the Supreme Court.

60. The Magistrate's Court is a primary or original court, with no appellate jurisdiction. That would mean that it has original jurisdiction, with respect to all cases that originate from that court and go on appeal to the High Court. The Magistrate's Court is subordinate to the High Court, according to section 5 of the Magistrates' Court Act. *The Constitution*, at Article 169, identifies it as such, although its existence preceded *the Constitution* of Kenya, 2010. In the pre-2010 statutes, the "subordinate court" is used to refer exclusively to the magistrate's court. Indeed, in those statutes, the subordinate court and the magistrate's court are synonymous.

61. As indicated above, section 5 of the Magistrate's Court Act, the Magistrate's Court is constituted with reference to the High Court, in the words, "A magistrate's court shall be subordinate to the High Court." This provision, among others, defines the jurisdiction of the Magistrate's Court. It is a special court, created subordinate to the High Court. It is designed to assist the High Court discharge its "unlimited original jurisdiction in civil and criminal matters." The Magistrate's Court complements the High Court. The wide original jurisdiction of the High Court is exercised also by the Magistrate's

Court, in both civil and criminal matters. The 2 courts share jurisdiction. The 2 are paired. The 2 are partners, joined at the hip. As the Magistrate's Court is subordinate to the High Court, and discharges a substantial part of the jurisdiction of the High Court, the High Court supervises it, by dint of Article 165(6)(7) of *the Constitution*, to ensure that it handles its special delegated jurisdiction in accordance with the statutes conferring jurisdiction to it. It must be emphasised that the jurisdiction of the Magistrate's Court is special, in the sense that it is part of the jurisdiction of the High Court, devolved to it by statute, but, unlike that of the High Court, it is limited.

62. In criminal matters, the language and tone of the *Criminal Procedure Code* is that the primary court is the High Court, being the court with "unlimited original jurisdiction." It shares that "unlimited original jurisdiction," in criminal matters, with the Magistrate's Court, referred to there as the subordinate court. However, the work of trying the various offences is distributed in such a manner, by the First Schedule to the *Criminal Procedure Code*, as to give the bulk of it to the Magistrate's Court, reserving trial of only 2 offences for the High Court. That then would leave the High Court as the appellate court, for criminal appeals from the Magistrate's Court. The Magistrate's Court is the special court, designed to handle a substantial part of the "unlimited original" criminal jurisdiction of the High Court. The *Criminal Procedure Code* regulates how both the High Court and the Magistrate's Court handle the criminal jurisdiction.

63. In civil matters, there are various statutes dealing with civil work. The handling of ordinary civil matters is provided for under the *Civil Procedure Act*. The Magistrate's Court Act separates the work to be handled by the Magistrate's Court, from that by the High Court, by way of pecuniary ceilings. For probate matters, the *Law of Succession Act*, at section 47, envisages the High Court as the court for the purposes of that Act, with a proviso that the High Court may be represented by magistrates, appointed by the Chief Justice, and the limits of the jurisdiction of the magistrates, so appointed, is set out in section 48, tied to the pecuniary ceilings set out in the Magistrate's Court Act. These examples would suffice for the civil jurisdiction of the Magistrate's Court, and how it comes about. However, the Magistrate's Court, although complementing the civil jurisdiction of the High Court in many areas, does not have jurisdiction in some areas, which are the exclusive preserve of the High Court, such as Judicial Review, Constitutional Petitions, among others, because the same have not been dispersed to it by *the Constitution* or the relevant statutes.

64. The Magistrate's Court is, therefore, a special court, established essentially to assist the High Court discharge its mandate in civil and criminal matters. The extent of its jurisdiction is set out in the various statutes, which disperse a substantial portion of the "unlimited original jurisdiction" of the High Court, to it. As it is subordinate to the High Court and exercises part of the unlimited jurisdiction of the High Court, as extended to it by statute, the High Court exercises a supervisory jurisdiction over the Magistrate's Court. It is an old jurisdiction, which is re-captured in Article 165(6)(7) of *the Constitution*.

65. I reiterate, the Magistrate's Court is a special court. It is identified in *the Constitution* as a subordinate court, but *the Constitution* has not allocated to it a jurisdiction but left it to Parliament. The jurisdiction of the High Court is defined in *the Constitution*, and that jurisdiction is dispersed by legislation to the Magistrate's Court. That makes the Magistrate's Court a special court, as it is given a portion of the unlimited jurisdiction of the High Court, by statute. The extent of its jurisdiction can only be what the legislation has delineated for it, to be exercised in the manner set out in the legislation.

66. The courts enjoying equal status with the High Court, that is the Environment and Land Court and the Employment and Labour Relations Court, are not creatures of *the Constitution* of Kenya, 2010, but *the Constitution* does imagine them, under Article 162(2). Article 162(2) requires Parliament to establish courts, with the status of the High Court, to determine disputes relating to employment and

labour relations, the environment, title to land, and use and occupation of land. Article 162(3) directs Parliament to determine the jurisdiction and functions of the 2 courts imagined in Article 162(2). Parliament harkened to that, by enacting the *Environment and Land Court Act* and the *Employment and Labour Relations Court Act*, to establish the Environment and Land Court and the Employment and Labour Relations Court and define their jurisdiction and functions.

67. These 2 courts do not form part of the High Court. They are separate and distinct from the High Court. They are, however, defined with reference to the High Court, for Article 162(2) of *the Constitution* refers to them as "courts with the status of the High Court." "Courts with the status of the High Court" does not make them part of the High Court, neither does it confer upon them the jurisdiction vested in the High Court, by Article 165 of *the Constitution*, save to the extent of the jurisdiction reserved for them under Article 162(2). Karisa Chengo & 2 others vs. Republic [2015] KECA 756 (KLR) (Okwengu, Makhandia & Sichale, JJA) and Republic vs. Chengo & 2 others [2017] KESC 15 (KLR) (Maraga, CJ&P, Mwilu, DCJ&VP, Ibrahim, Ojwang, Wanjala, Ndungu & Lenaola, SCJJ) were made in that context. "Courts with the status of the High Court" does not confer jurisdiction; it merely locates, places or situates those courts in the hierarchy of the courts in the Kenyan judicial system. The status, conferred upon the Environment and Land Court and the Employment and Labour Relations Court, is of courts at the level of the High Court, by dint of Article 162(2); above the subordinate courts, by dint of Article 169(1)(d); and below the Court of Appeal, by dint of Article 164(3)(b).

68. The Environment and Land Court and the Employment and Labour Relations Court are special courts, exercising special jurisdictions. The special jurisdictions they exercise are part of the "unlimited original jurisdiction" of the High Court, with respect to civil matters. The said jurisdictions are dispersed from the "unlimited original jurisdiction" of the High Court and reserved for them. There is a whole background as to why that was done. As the jurisdiction of the Environment and Land Court and the Employment and Labour Relations Court is part of what is meant for the High Court, under *the Constitution*, *the Constitution* does not create or entrench them as such, the same way it does with the High Court, the Court of Appeal and the Supreme Court, in Articles 163, 164 and 165. Instead, they are created under statute, to avoid a possible conflict with the High Court. The jurisdiction of the Environment and Land Court and the Employment and Labour Relations Court is defined in Article 162(2), and in the statutes that establish them, and it is to be exercised, strictly, in the manner defined in *the Constitution* and the statutes.

69. Is the Magistrate's Court subordinate to the Environment and Land Court and the Employment and Labour Relations Court? The term "subordinate" is defined, by the Concise Oxford English Dictionary, Oxford University Press, 12th Edition, 2011, in 2 senses, to refer to rank or position, and to being under authority or control of another. The Magistrate's Court is subordinate to the High Court in both senses, in rank, by virtue of Article 169(1)(a) of *the Constitution*; and with respect to authority and control, under Article 165(5) of *the Constitution*.

70. The answer to the question posed above is yes and no. The Magistrate's Court is only subordinate to the Environment and Land Court and the Employment and Labour Relations Court to the extent of the first sense, in rank or position. But it is not subordinate in the second sense of being under their authority and control. Under *the Constitution*, the Environment and Land Court and the Employment and Labour Relations Court are not given supervisory jurisdiction over subordinate courts. The Magistrate's Court is subordinate to the High Court, hence, under Article 165(5), the High Court exercises supervisory jurisdiction over it. Under *the Constitution* and the Magistrate's Court Act, there is no linkage between the Magistrate's Court and the courts of equal status, for Article 162(2) of *the Constitution* confers a special or specific jurisdiction on the courts envisaged in that provision, as special

courts, and there is no provision that the Magistrate's Court is to be subordinate to them, so that it could share jurisdiction with them over those matters, so that the 2 courts envisaged could exercise supervisory jurisdiction over the Magistrate's Court.

71. One would wonder, therefore, about the wisdom of passing legislation, such as the *Land Act*, Cap 280, Laws of Kenya, and the *Land Registration Act*, Cap 300, Laws of Kenya, to disperse the jurisdiction, the subject of Article 162(2) of *the Constitution*, to the Magistrate's Court, for that created a jurisdictional anomaly. I would reiterate that the creation of the Environment and Land Court and the Employment and Labour Relations Court is not intended to be a reproduction of a parallel High Court, with similar structures, rather what is intended are special courts, with exclusive jurisdiction, limited to the areas defined in Article 162(2) of *the Constitution*, not to be shared with the High Court, nor with its surrogate, the Magistrate's Court.

72. Part of the "unlimited original jurisdiction" of the High Court is dispersed to the Supreme Court, with respect to the handling of the Presidential election dispute resolution, under Article 140 of *the Constitution*. I say so because Article 165(3)(a) grants to the High Court an "unlimited original jurisdiction in criminal and civil matters," which would include litigation to challenge validity of a Presidential election. The High Court has exercised that jurisdiction in the past, prior to the promulgation of the current Constitution. What the new Constitution has done is to disperse that jurisdiction and vest it in the Supreme Court. Since the High Court has "unlimited original jurisdiction" over the matter, the Supreme Court handles the same as a special court, in exercise of a special jurisdiction, carved out of the "unlimited original jurisdiction" of the High Court. Special jurisdiction is exercised within the parameters of the law prescribing it; hence the Supreme Court exercises that jurisdiction in accordance with the strict timelines prescribed in Article 140. The said timelines are comparable to those in section 34(1) of the *Small Claims Court Act*, in terms of strictness and tightness.

73. *The Constitution* does not self-contradict. It cannot possibly confer "unlimited original jurisdiction" on the High Court and then, at once, limit it under Articles 162(2) and 163(3)(a). The provisions in Articles 162(2) and 163(3)(a) appear to be inconsistent with or contradictory to Article 165(3)(a). However, Article 165(5) is alive to that seeming contradiction, which it addresses by providing that "The High Court shall not have jurisdiction in respect of matters" the subject of Articles 162(2) and 163(3)(a). Article 165(3)(a) vests the High Court with "unlimited original jurisdiction in criminal and civil matters," part of which would be that the subject of Articles 162(2) and 163(3)(a). The construction that could be given to these provisions is that the "unlimited original jurisdiction" of the High Court, falling under Articles 162(2) and 163(3)(a), is not taken away or limited, for it is "unlimited," according to Article 165(3)(a). It is, instead, paused or intermitted, and it exists in dormant or residual mode, with the capacity of being re-activated, should the special courts cease to exist or are disabled. I suggest that "unlimited original jurisdiction" was not intended to be a meaningless statement or clause in *the Constitution*.

74. The point is that the Small Claims Court is a special court, in the mould of those that I have discussed above, and the statute establishing that court, the *Small Claims Court Act*, properly defines its jurisdiction, and the environment within which that jurisdiction is to be exercised, including the mandatory prescription that the dispute shall be resolved or determined within the 60 days stipulated in section 34(1) of the *Small Claims Court Act*. Therefore, there is nothing unusual about the time limitation stipulated in section 34(1) of the *Small Claims Court Act*. A special court is not established for the sake of it, but to address a gap, need, issue, weakness or shortcoming, which the current structure of the courts is not suited to handle, and it is designed with inbuilt strategies geared to achieve that objective.

75. The *Civil Procedure Act*, which governs procedure at the High Court and the Magistrate's Court, does not carry a provision equivalent to section 34(1) of the *Small Claims Court Act*. A provision, slightly similar in wording to section 34(1) of the *Small Claims Court Act*, is to be found in the Civil Procedure Rules, at Order 21 rule 1, and I suppose that section 34(1) of the *Small Claims Court Act* is partially borrowed from it. It provides that a judgement should be pronounced at once, at conclusion of a hearing, or within 60 days from the conclusion of trial. That provision, in Order 21 rule 1 of the Civil Procedure Rules, is directory, for there is a proviso to it, which requires that where a judgement is not given in 60 days, the court shall record reasons, and forward a copy, of the reasons, to the Chief Justice, and, thereafter fix a date for judgement. That language indicates that the provision is not mandatory. The 60-days rule there would have no effect on the jurisdiction of the trial court and the validity of the judgement delivered outside that period. The only consequence is that the judicial officer affected would have to explain himself to the Chief Justice.

76. The other thing is that that rule, in Order 21 rule 1, is in subsidiary legislation, the Civil Procedure Rules. Subsidiary legislation largely governs process, not substance. The 60-days rule, in section 34(1), is in legislation, the *Small Claims Court Act*, and it goes into substance, as it confers a jurisdiction, within which the judgement is to be delivered. Prescriptions in subsidiary legislation do not carry the same weight with provisions of a statute. Subsidiary legislation can be easily overridden by Article 159(2) of *the Constitution*, as technicalities of procedure. The provisions of an Act of Parliament are not that easy to override. An Act of Parliament is passed by the organ ordained by *the Constitution* for that purpose, subsidiary legislation does not come from such a body. In any event, the Civil Procedure Rules does not apply in the Small Claims Court, as that court is not governed by the *Civil Procedure Act*, but by the *Small Claims Court Act* and the Small Claims Court Rules.

77. I am of the persuasion that the decisions, in Crown Beverages Limited vs. MFI Documents Solutions Limited [2023] KEHC 58 (KLR) (Majanja, J), Biosystems Consultants vs. Nyali Links Arcade [2023] KEHC 21068 (Magare, J) and Lumumba vs. Gift Gas Limited [2023] KEHC 25998 (Majanja, J), were influenced more by the subsidiary legislation, in Order 21 rule 1 of the Civil Procedure Rules, than by the Act of Parliament, in construing section 34(1) of the *Small Claims Court Act*.

78. Whereas Order 21 rule 1 of the Civil Procedure Rules is directory, section 34(1) of the *Small Claims Court Act* is not. Section 34(1) of the *Small Claims Court Act* is mandatory. It should be taken for what it says. The seemingly mandatory clause, in Order 21 rule 1 of the Civil Procedure Rules, is qualified or mollified by the proviso which follows, to render it directory. There is no qualification of the mandatory clauses in section 34(1) of the *Small Claims Court Act*, if anything, the provisions that follow reinforce the intention to make that provision mandatory. The proviso, in Order 21 rule 1 of the Civil Procedure Rules, allows for a fixing of a date for judgement after the 60 days have expired, which suggests that the lapse of the 60 days does not extinguish jurisdiction. There is no equivalent of that, in section 34(1) of the *Small Claims Court Act*, which means that there is no extension of the 60-day period, provided for in that provision, and once the 60 days expire, jurisdiction is lost, with no room for salvaging it.

79. For avoidance of doubt, Order 21 rule 1 of the Civil Procedure Rules provides:

> " Order 21 - Judgment and Decree
>
> 1. Judgment, when pronounced [Order 21, rule 1]
>
> In suits where a hearing is necessary, the court, after the case has been heard, shall pronounce judgment in open court, either at once or within sixty days

from the conclusion of the trial notice of which shall be given to the parties or their advocates.

Provided that where judgment is not given within sixty days the judge shall record reasons thereof copy of which shall be forwarded to the Chief Justice and shall immediately fix a date for judgment.".

80. The entire section 34 of the *Small Claims Court Act* states:

> " 34. Expeditious disposal of cases
>
> (1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.
>
> (2) Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.
>
> (3) The Court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.
>
> (4) When considering whether to allow an adjournment on the grounds of exceptional and unforeseen circumstances referred to in subsection (3), the court may in particular take into consideration where appropriate any of the following exceptional and unforeseen circumstances—
>
> (a) the absence of the parties concerned or their advocate or other participants to the proceedings required to appear in court for justified personal reasons which may include sickness, death, accident or other calamities;
>
> (b) an application by a party for the Adjudicator to withdraw from hearing the matter;
>
> (c) a request by parties to settle the matter out of court;
>
> (d) an appeal filed in the matter where orders of stay of proceedings have been granted;
>
> (e) an application by a party to summon new witnesses to court, collect new evidence, new inspection or evaluation or supplementary investigation on the subject matter of the case; and
>
> (f) any other exceptional and unforeseen circumstances which in the opinion of the court justifies or warrants an adjournment."

81. To my mind, the problem is not with the jurisdiction of the Small Claims Court or its objects, but rather the lack of appreciation of what the Small Claims Court is supposed to be, and the desire to mould it into the likeness of the High Court and the Magistrate's Court. The problem is with the Small Claims Court being used to handle disputes other than those for which it was designed, claims or suits that are not suitable for determination or disposal within its framework.

82. I believe that I have said enough, to demonstrate that there is a whole background or context to section 34(1) of the *Small Claims Court Act*, particularly that aspect which limits the jurisdiction of the Small Claims Court to just 60 days. Given that background or context, it cannot be that that aspect of the provision is not intended to make it mandatory, but directory. My understanding is that that provision is intended to be mandatory, and an Adjudicator, who handles a matter or claim outside the 60 days, does so without jurisdiction, and their determination is invalid and a nullity.

83. So, what is the position here? The original trial court records were availed. The statement of claim was filed on 6th June 2023. Going by section 34(1) of the *Small Claims Court Act*, the determination by the trial court should have come 60 days thereafter, which should have been on or about 5th August 2023, for the trial court could only exercise jurisdiction within that 60-day period. Judgement was delivered on 8th December 2023, way outside the 60 days. Indeed, delivery came 185 days outside the 60-day deadline. The proceedings conducted, after 5th August 2023, were without jurisdiction, and that made the determination, of 8th December 2023, null and void.

84. As the decision, upon which the appeal herein is founded, is an invalid and null judgement, this appeal is itself a nullity. I have no jurisdiction to determine a null appeal. The Owners of Motor Vessel "Lillian S" vs. Caltex Oil Kenya Limited [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA) prescribes what a court should do, once it establishes that it has no jurisdiction. It downs its tools. I hereby do so. Consequently, I hereby strike out the null appeal. The respondent participated in these proceedings. However, since she had obtained a null judgement, she is not entitled to costs of this null appeal.

85. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED, IN CHAMBERS, AT BUSIA, ON THIS 18TH DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

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

Ms. Azenga Alenga, Legal Researcher.

Advocates

Ms. Cherotich, instructed by Wambui Njehia & Company, Advocates for the appellant.

Mr. Shikanda, instructed by Okwach & Company, Advocates for the respondent.