



REPUBLIC OF KENYA



**Mboga v Excellent Business Services Limited (Civil Appeal
E554 of 2023) [2025] KEHC 9812 (KLR) (Civ) (7 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9812 (KLR)

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

CIVIL

CIVIL APPEAL E554 OF 2023

WM MUSYOKA, J

JULY 7, 2025

BETWEEN

EVERLYNE KWAMBOKA MBOGA APPELLANT

AND

EXCELLENT BUSINESS SERVICES LIMITED RESPONDENT

*(Appeal from judgement and decree of Hon. Judith Omollo,
in Nairobi SCCC No. E557 of 2023, of 12th June 2023)*

JUDGMENT

1. The suit, at the primary court, was by the appellant against the respondent, for recovery of a sum of Kshs. 820,000.00; said to be compensation for loss or damage to property. The respondent denied liability. A trial was conducted. Only the appellant testified. Judgment was delivered on 12th June 2023. The suit was dismissed, for lack of adequate evidence to establish the claim.
2. The appellant was aggrieved, hence the appeal herein, vide a memorandum of appeal, dated 26th June 2023. The grounds are, in summary, two, around the evidence not being properly evaluated and the decision being based on extraneous matters.
3. Directions were taken on 2nd May 2015, for canvassing of the appeal by way of written submissions. Of the two parties, only the appellant filed written submissions, which I have read through and noted the arguments made.
4. Before I consider the appeal, on its merits, if at all I will get to do so, let me first address an issue that the trial court also addressed, and which goes to the core of the matter, and that is jurisdiction.
5. That issue had been flagged by the respondent, in its written submissions at the trial court, relying on the decision in [*Kartar Singh Dhupar & Company Limited v ARM Cement PLC \(In Liquidation\)*](#)



- [2023] KEHC 2417 (Gichohi, J), that once the time limitation, placed by section 34(1) of the *Small Claims Court Act*, Cap 10A, Laws of Kenya, within which a trial should be conducted and concluded, lapsed, the trial court would lose jurisdiction, and a judgement, delivered outside the stipulated sixty days, would be invalid and a nullity.
6. The trial court considered that issue, and preferred to be guided by *Crown Beverages Limited v MFI Documents Solutions Limited* [2023] KEHC 58 (KLR) (Majanja, J), which took a different view, from *Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J), that, although that provision was couched in mandatory terms, it was not meant to be mandatory, but directory, and construing it as mandatory would be to render injustice to the parties.
 7. *Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J) was founded on *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and *Aprim Consultant v Parliamentary Service Commission & 2 others* CACA No. E039 of 2021 (unreported), where the proceedings were based on statutes which carried time limitations, couched in language similar to that used in section 34(1) of the *Small Claims Court Act*, and it was held that once that limitation period lapsed, jurisdiction was lost, and proceedings conducted thereafter would be invalid and a nullity.
 8. In finding that it had jurisdiction to handle the matter, despite the sixty days having lapsed, the trial court also based itself on Article 159(2) of the *Constitution*, about courts eschewing technicalities of procedure.
 9. Let me start by stating that statutory limitation periods, regarding the period within which a cause is to be commenced, upon the cause of action accruing, and within which a court decision ought to be made, in certain cases, are not technicalities of procedure. Such provisions go beyond technicalities of procedure. They go to jurisdiction. They define the circumstances under which a court acquires and loses jurisdiction. The technicalities of procedure, that Article 159(2) of the *Constitution* talks about, do not include or cover provisions of law relating to jurisdiction. Article 159(2) can only apply where there is jurisdiction. It does not apply where there is no jurisdiction. It does not confer jurisdiction. It cannot and should not be applied in a manner that confers jurisdiction where there is none, or to restore jurisdiction where it has been lost.
 10. Parliament is a creature of the *Constitution*, which has been granted a mandate to legislate. Article 159 of the *Constitution* is seldom cited to affect statute, given that statute law is created by a constitutional organ. What Article 159 shapes most are the rules of procedure created by non-constitutional bodies, such as the Rules Committee. Article 159 is hardly ever cited to override timelines given in legislation, but it overshadows rules and timelines set in subsidiary legislation. Legislation can be and is usually scrutinised by the courts, however, not under Article 159, but through other parameters. The bulk of the rules of procedure is in subsidiary legislation and not statute, for statutes tend to dwell on substance rather than procedure.
 11. Under section 34(1), the *Small Claims Court Act* confers jurisdiction on a Small Claims Court on a matter, which falls within its substantive jurisdiction, as set out in section 12 thereof, so long as the matter is handled and determined within the stipulated period of sixty days. It is declared that determination ought to be rendered within sixty days, from the date the cause is filed. The effect of the provision is that that is duration within which the Small Claims Court is to exercise jurisdiction.
 12. There are provisions, within section 34 of the *Small Claims Court Act*, designed to facilitate disposal of the causes within the sixty days. One, section 34(1)(2), requires the Small Claims Court to hear and determine the matter the same day. The other, section 34(1), requires that when a matter cannot be



- heard and determined in the same day, then the Small Claims Court should adopt the procedure of hearing it on a day-to-day basis, until completion, so long as the determination is made within sixty days. The third, section 34(3), is about the no adjournment policy. The *Small Claims Court Act* has legislated that judicial policy. It effectively outlaws adjournments, and allows room for them only in exceptional circumstances, which are set out very clearly in section 34(4) of the *Small Claims Court Act*.
13. If the sixty days' time limitation was not meant to be strict, then Parliament, through the legislation, would not have gone to those lengths, to provide for these requirements. They are unique to the *Small Claims Court Act*. The other legislation, which comes close, is the *Elections Act*, Cap 7, Laws of Kenya, and the *Public Procurement and Asset Disposal Act*, Cap 412C, Laws of Kenya. These two give the lifespan of electoral disputes and disputes relating to public procurements. The courts, seized of these disputes, can only exercise jurisdiction, over those disputes, within those timespans, as was pointed out in *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and *Aprim Consultant v Parliamentary Service Commission & 2 others* CACA No. E039 of 2021 (unreported).
 14. Additionally, there are other provisions in the *Small Claims Court Act* which relax the rules of procedure and evidence, sections 17 and 32, so that the strict limitations imposed by the *Civil Procedure Act*, Cap 21, Laws of Kenya, and the *Evidence Act*, Cap 80, Laws of Kenya, are done away with. The Small Claims Court is allowed, in certain cases, to adopt its own procedure. See section 17. This relaxation, of the rules of evidence and procedure, is meant to ensure that the Small Claims Court can dispose of the matters within the sixty days, stipulated by section 34(1) of the *Small Claims Court Act*.
 15. The other aspect to it is the fact that the *Small Claims Court Act* is silent on what should happen should the sixty days, envisaged under section 34(1), expire before the matter is determined. There is no direction on how the trial court is to handle the matter when it gets to that point. There is no jurisdiction, granted to the trial court, to extend that period, or for recourse to a higher court for extension of the time. The provision requires conclusion of matters within sixty days. A court can only exercise such power or authority as is conferred upon it by the *Constitution* and statute. In this case, the *Small Claims Court Act* confers power and jurisdiction, to the Small Claims Court, for determination of a small claim within sixty days.
 16. The Small Claims Court, in the absence of an express provision, to extend that period, cannot arrogate to itself power and jurisdiction to hear the matter outside the sixty days. That would amount to exercising jurisdiction that has not been conferred by the relevant statute or by the *Constitution*. That jurisdiction cannot, equally, be conferred by the High Court, in its construction of section 34(1) of the *Small Claims Court Act*. Purporting to confer jurisdiction, on the Small Claims Court, beyond the sixty days, in the absence of an express statutory provision, would amount to conferring jurisdiction by judicial craft. See *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ).
 17. Jurisdiction is conferred by the *Constitution* or statute. What has not been conferred by these two does not exist. the *Constitution* has not directly addressed the issue of the jurisdiction of the Small Claims Court. The Small Claims Court is a subordinate court, and, under Article 169(2) of the *Constitution*, its jurisdiction is subject to statute or legislation. The statute which creates or establishes the Small Claims Court is the *Small Claims Court Act*. It delineates the jurisdiction of that court, in terms of substantive jurisdiction, regarding the nature of the claims and pecuniary jurisdiction, at section 12, on the matters that the court could handle. Procedural jurisdiction is delineated at section 34(1), in terms of the duration within which it has jurisdiction to hear and dispose of the matters. That delineation of jurisdiction is by Parliament. In its wisdom, Parliament decided not to provide extension for the



jurisdiction, beyond the sixty days. It should not be up to the court to allocate or arrogate to itself jurisdiction to extend that jurisdiction. Only Parliament can, in the spirit of the doctrine of separation of powers, through its constitutional legislative mandate, decide to grant jurisdiction to the courts to extend that jurisdiction beyond sixty days.

18. The objective of section 34(1) of the [Small Claims Court Act](#) is like that of Article 105 of the [Constitution](#), with respect to electoral disputes on the election of a member of Parliament, and Article 140 of the [Constitution](#), on disputes with respect to the Presidential election. The petition is to be lodged in court within a certain timeline, and the determination should also come within a set timeline. Anything outside that period would be invalid. The objective is the same as that of section 75(2) of the [Elections Act](#), with respect to electoral disputes relating to elections of Governors. These have a lifespan of six months. The matter must be disposed of within that stipulated time, and anything outside that period would be invalid and a nullity. It is also like that under section 175 of the [Public Procurement and Asset Disposal Act](#), where court disputes are to be disposed of within forty-five days. The spirit and intent of these provisions is the same.
19. That spirit and intent was discussed in [Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others](#) [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and [Aprim Consultant v Parliamentary Service Commission & 2 others](#) CACA No. E039 of 2021 (unreported), which decisions were followed in [Kartar Singh Dhupar & Company Limited v ARM Cement PLC \(In Liquidation\)](#) [2023] KEHC 2417 (Gichohi, J). The language used in section 34 of the [Small Claims Court Act](#) is similar in tone, content and spirit to that used in Articles 105 and 140 of the [Constitution](#), section 75(2) of the [Elections Act](#) and section 175(3) of the [Public Procurement and Asset Disposal Act](#). I do not see why the language used in section 34(1) of the [Small Claims Court Act](#) should be construed as directory, while that used in the [Constitution](#), the [Elections Act](#) and the [Public Procurement and Asset Disposal Act](#), is deemed to be mandatory, yet the intent and design of all these provisions is the same, expeditious disposal of the matters, within set timelines.
20. The intent of section 34 of the [Small Claims Court Act](#) is to have expeditious disposal of the small claims filed under the [Small Claims Court Act](#). This is a special jurisdiction. The specialness of the jurisdiction does not just lie with the short list of the substantive matters, enumerated in section 12 of the [Small Claims Court Act](#), to be handled by that court. It is also about the duration within which these matters are to be disposed of, and the lesser formality to which these matters are to be subjected, in terms of procedure and evidence.
21. It is for the reason of the special jurisdiction, created for the Small Claims Court, by the [Small Claims Court Act](#), that I do not, with respect, agree with the decisions in [Crown Beverages Limited v MFI Documents Solutions Limited](#) [2023] KEHC 58 (KLR) (Majanja, J), [Biosystems Consultants v Nyali Links Arcade](#) [2023] KEHC 21068 (Magare, J) and [Lumumba v Gift Gas Limited](#) [2023] KEHC 25998 (Majanja, J), that the sixty days limitation, in section 34(1), is not mandatory, and the trial court can quite comfortably continue to hear and determine the small claims, under the [Small Claims Court Act](#), despite the expiration of the sixty days. In my humble view, the position taken in these decisions is against the object, intent and spirit of the [Small Claims Court Act](#). It is further my view that the position in these decisions undervalues, undermines and diminishes, if not destroys, the specialness of the jurisdiction that the [Small Claims Court Act](#) intends for the Small Claims Court.
22. The net effect of these decisions is to re-set the Small Claims Court, under the [Small Claims Court Act](#), to the same mode as the Magistrate's Court, under the [Magistrates Courts Act](#), Cap 10, Laws of Kenya, and the exercise of jurisdiction by the Magistrate's Court, under the [Civil Procedure Act](#) and [Civil Procedure Rules](#), in a manner which is not as restrained or restricted, as that of the Small Claims



- Court is, by the [Small Claims Court Act](#). The two sets of subordinate courts are distinct courts, with distinct jurisdictions. The effect of these decisions is to blur that distinction, in jurisdiction, between the Small Claims Court and Magistrate's Court, and reducing the distinction between them to just the pecuniary limitation of Kshs. 1,000,000.00, which was not the intent of Parliament, in passing the [Small Claims Court Act](#), which established the Small Claims Court as a court distinct from the Magistrate's Court.
23. Perhaps, I should say more about small claims. As defined under the [Small Claims Court Act](#), small claims are those whose value does not exceed Kshs. 1,000,000.00, and which fall within the categories set out in section 12 of the [Small Claims Court Act](#). Some of these claims, for one reason or other, are not capable of being disposed of within the sixty days contemplated by section 34(1) of the [Small Claims Court Act](#).
 24. Part of the problem could be with what a small claim, for the purposes of the [Small Claims Court Act](#), should be perceived to be. The smallness of the claim appears to be as defined by section 12 of the [Small Claims Court Act](#), in terms of the substantive matters listed and the value of the claim. The principal objective of the [Small Claims Court Act](#) is expeditious disposal of matters. There is a deliberate effort to walk away from the strictness of evidence and procedure. The overall intent, as I understand it, is that matters of small value, in economic terms, which can be disposed of with the least of formality, should be channelled to the court envisaged under the [Small Claims Court Act](#). There should, therefore, in my view, be a confluence of smallness in economic value and the possibility of the claim being disposed of in the most simple and straightforward manner.
 25. There could be small claims that could be, or are capable of being, disposed of simply and quickly, within the sixty days envisaged under the [Small Claims Court Act](#). There could also be small claims, in economic terms, that are not so capable of simple and informal disposal. A claim may be small in value, but its adjudication may be complicated, by several factors, making it impossible of disposal within the envisaged sixty days. It should not be assumed that every claim of Kshs. 1,000,000.00 and below, falling within the envisaged categories, is a claim capable of disposal within sixty days. Some are not capable of simple and summary disposal, and could be classified as complex matters, requiring to be handled as ordinary claims, which ought to be processed through the [Civil Procedure Act](#) and [Civil Procedure Rules](#), to be handled by Magistrates' Courts.
 26. Some of the factors that could complicate small claims include difficulties with service of pleadings on the other parties. The sixty days could be lost while trying to serve a party, either outside jurisdiction or through substituted service. It could be a case of multiple parties. Time would be consumed serving the many parties, in having them file their responses and in hearing all of them. It could be a case requiring numerous witnesses, or numerous and huge bundles of documents, to establish the claim. For some, the sort of proof required to establish them may be complex, so that they are not capable of disposal within the sixty days envisaged by section 34(1) of the [Small Claims Court Act](#). Counterclaims and third-party proceedings would also have the effect of complicating small claims.
 27. The concept of a small claim, for the purposes of the [Small Claims Court Act](#), is of a claim that can be processed through the Small Claims Court system within sixty days. If it cannot be processed through that system, within that period, for whatever reason, then it cannot be a small claim, for the purposes of the [Small Claims Court Act](#). Complexity of the small claim would be a good reason why such a claim may not be fit for prosecution as a small claim under the [Small Claims Court Act](#). Complexity could arise if the claims involve multiple parties or numerous claims within one; or require proof by a mountain of documents or the calling of a multitude of witnesses. When it gets to the point where counterclaims are being filed, or more defendants are being added and third parties joined, then all



- the marks of complexity would be emerging, which would make the claim unsuitable for adjudication under the *Small Claims Court Act*.
28. The sense that I get is that the current logjam of matters at the Small Claims Court may have something to do with that court being inundated with complex small claims, which are not capable of disposal through the avenue created in the *Small Claims Court Act*. The judicial officers sitting in that court are being stressed and pressured to the limits, while trying to clear these matters within sixty days, when they, the matters, are, simply, not capable of nor suitable for disposal within such a short period of time.
 29. When I read sections 12 and 13 of the *Small Claims Act*, I get the impression that not every small claim, of up to Kshs. 1,000,000.00, should be filed at the Small Claims Court. The provisions do not make it mandatory, that such claims be filed exclusively in that court. Parties ought to assess whether their small claims, although falling within the statutory category, are capable of disposal in the Small Claims Court, that is within the sixty-days timeline, before they file them there, for nothing compels them to. So that if they are not capable of disposal within that short period, then they should consider filing them as ordinary suits at the magistrates' courts, to be handled within the framework of the *Civil Procedure Act* and the *Civil Procedure Rules*.
 30. The risk with filing a complex small claim, at the Small Claims Court, is that it would be rendered incompetent, should the sixty days expire before it is determined. It would appear that the decisions in *Crown Beverages Limited v MFI Documents Solutions Limited* [2023] KEHC 58 (KLR) (Majanja, J), *Biosystems Consultants v Nyali Links Arcade* [2023] KEHC 21068 (Magare, J) and *Lumumba v Gift Gas Limited* [2023] KEHC 25998 (Majanja, J) seek to rescue or salvage claims that are likely to be, or have been, rendered incompetent on that account, yet it would be the litigants or parties themselves who would have knowingly put themselves in that unfortunate situation, when they should have simply filed their claims at the Magistrates' Courts. The expansive construction, given to section 34(1) of the *Small Claims Court Act*, appears to be driven by the desire to preserve the claims, but it defeats the object and intention of the provision, that is the establishment of a court which utilises simple procedures for expeditious disposal of straightforward claims, without the attendant complexities of proof and procedure.
 31. Part of the solution could be transfer of the matters out of the Small Claims Court to the Magistrate's Court, before the sixty days expire, once it is established that the claim is complex, and, therefore, incapable of being disposed of within the sixty days. The *Small Claims Court Act* only provides for transfer of matters from a higher court to the Small Claims Court, but not out of the Small Claims Court to a higher court. It would then mean that a party wishing to have a transfer out of the Small Claims Court would have to move the High Court under section 18 of the *Civil Procedure Act*. Due to the time limitation, in section 34(1) of the *Small Claims Court Act*, that may not be much of a solution. Perhaps, a window should be opened, in the *Small Claims Court Act*, for transfer, by Adjudicators, of such matters to the magistrates' courts, through some diversion-like criteria, the moment it is discerned that the matter was not a simple small claim as earlier thought.
 32. I should think that section 18 of the *Civil Procedure Act* has outlived its usefulness. It belongs to a bygone era, when subordinate courts were presided over by laypersons, who needed to be guided by the lawyers at the High Court. That is no longer the case. The subordinate courts, save, the Kadhi's Court, are presided over by Advocates, who do not have to be superintended by the High Court on such simple issues as that of transfer of a matter from one court to another, on such a ground as pecuniary or territorial jurisdiction.
 33. Part of the problem could be that the Small Claims Court is still in the mindset of the Magistrate's Court, in terms of operating as if it is exclusively governed by the *Civil Procedure Act* and the *Civil*



- Procedure Rules, somewhat forgetting that it is a special court, quite apart from the Magistrate's Court. That challenge could be because, currently, the Adjudicator doubles up as a Resident Magistrate, and, in most stations, works as both an Adjudicator and a Resident Magistrate, sitting as either, at the same time. There could be a challenge with transitioning from Adjudicator to Resident Magistrate, and vice versa, whenever a matter is placed before them, with the consequence that matters, filed under the Small Claims Act, end up being handled as ordinary suits filed under the Civil Procedure Act and the Civil Procedure Rules, to be handled by the Resident Magistrate, rather than by the Adjudicator.
34. This is evidently reflected in the process, where the Small Claims Courts, handling the claims filed under the Small Claims Court Act, are squandering valuable time conducting mentions and sessions for directions, yet these are not even provided for in the Small Claims Court Act and the Small Claims Court Rules. There could be need for judicial officers, sitting as Adjudicators, to be always alive to the matters that come to them as small claims filed under Small Claims Court Act and small claims that are filed as ordinary suits under the Civil Procedure Act.
35. The other problem could be with the litigants, suffering the difficulty of shedding off the Civil Procedure Act and Civil Procedure Rules mindset, and forgetting that small claims, under the Small Claims Court Act, are conceived to be special claims, regulated by a special jurisdiction and a special procedure, handled by a special or specialized courts. It is not uncommon to find unnecessary documents being filed at the Small Claims Court, yet the Small Claims Court Act and the Small Claims Court Rules do not require their filing. I have in mind, as an example, the witness statement. Its filing is not provided for under the Small Claims Court Act and the Small Claims Court Rules. Being a specialized jurisdiction, intended to dispose of matters expeditiously, there is a deliberate effort, in the Small Claims Court Act and the Small Claims Court Rules, to cut down on the filings, to make the process as simple and informal as possible. But the mindset of most litigants appears to be attuned more to the processes under the Civil Procedure Act and the Civil Procedure Rules, and not to what the Small Claims Court Act requires. Most of the filings made by the parties, at the Small Claims Court, mirror, largely, what is filed vide the Civil Procedure Act and the Civil Procedure Rules, yet that was not the intention of the Small Claims Court Act. I should mention that the Small Claims Court Act is not a replica of the Civil Procedure Act.
36. The way to deal with these challenges, in my humble view, does not lie, with the High Court, resorting to judicial craft, to extend jurisdiction to or craft a jurisdiction for the Small Claims Court, to handle matters where the jurisdiction conferred upon the Small Claims Court, by the Small Claims Court Act, has expired. The High Court has no jurisdiction to confer jurisdiction on any court, including itself, and any such conferment of jurisdiction should be a nullity. Law making, through judicial precedent, does not extend to crafting and conferring a jurisdiction, upon a court, outside of what is provided by statute. Doing so would amount to dabbling in unconstitutionality and illegality, and it would connote a breach of the doctrine of separation of powers. The answer should lie with Parliament amending the Small Claims Court Act, to extend that jurisdiction, or to address the issues around the jurisdiction of that court one way or the other.
37. I have mentioned counterclaims and addition or joinder of parties as incidences of complexity, which often beleaguer small claims, and which ought to disqualify them from adjudication under the Small Claims Court Act. It may be pointed out that the Small Claims Court Rules does in fact provide for filing of counterclaim, and for joinder and addition of parties, suggesting that there would be nothing wrong with complex small claims being handled by the Small Claims Court. My answer to that would be this, that the Small Claims Court Rules, as drafted, with respect to counterclaim, set-off and joinder/addition of parties, does not capture the spirit and essence of the Small Claims Court Act. The Small Claims Court Act does address many aspects of procedure, but it does not provide for counterclaims,



set-off, joinder and addition of parties. The drafters of the *Small Claims Court Rules* missed the spirit of the *Small Claims Court Act* and introduced aspects of procedure spelt out in the *Civil Procedure Rules*, in the process under the *Small Claims Court Act*, when the said Act had left latitude to the Small Claims Court to fashion its own procedure.

38. So, what is the position here? The original trial court records were not availed. The pleadings that I have before me, in the record of appeal, are copies. I cannot tell, from them, when the claim was filed. The statement of claim is dated 30th January 2023. The response is dated 14th March 2023. It would appear that the claim was filed on some date between 30th January 2023 and 14th March 2023. According to the typed proceedings, the matter was first before the Adjudicator on 13th February 2023, and judgement was delivered on 12th June 2023.
39. I shall, for the purpose of this judgement, treat 13th February 2023 as the effective date of filing. The sixty days should have started to run from 13th February 2023. The sixty days would have expired on or about 15th April 2023. The jurisdiction of the Adjudicator, over the matter, could only be exercised between 13th February 2023 and 15th April 2023. There was no jurisdiction to handle the matter after 15th April 2023, and anything done after that date was invalid and a nullity. Judgement was rendered on 12th June 2023, some fifty-seven days after expiry of the sixty days, and after the trial court had ceased to have jurisdiction. That judgement was, therefore, invalid and a nullity.
40. Is there basis for me to consider this appeal on its merits? No. The decision, upon which it is founded, is an invalid and null judgement. The appeal is itself a nullity. I would have no jurisdiction to determine a null appeal. The *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited* [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA) prescribes what a court should do when it establishes that it has no jurisdiction. It downs its tools. I hereby do so. As the appeal before me is a nullity, it should suffer the fate of being struck out. I hereby strike it out. The respondent did not file appearance, and did not participate in the proceedings. Consequently, there shall be no order on costs.
41. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED, IN CHAMBERS, AT BUSIA, ON THIS 7TH DAY OF JULY 2025.

W.M. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

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

Advocates

Ms. Wanja, instructed by NK Mugo & Company, Advocates for the appellant.

