



**Safety Surveyors ltd v Kenindia Insurance Company Limited (Commercial Appeal E116 of 2024) [2025] KEHC 10451 (KLR) (Commercial and Tax) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10451 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E116 OF 2024**

**BK NJOROGE, J  
JULY 17, 2025**

**BETWEEN**

**SAFETY SURVEYORS LTD ..... APPELLANT**

**AND**

**KENINDIA INSURANCE COMPANY LIMITED ..... RESPONDENT**

*(Being An Appeal from the decision and orders of the Small Claims Court at Milimani delivered on 16th April 2024 by Hon. A.G. Njuguna (Adjudicator/Resident Magistrate) in Nairobi (Milimani) Small Claims Commercial Case No. E1887 of 2023)*

**JUDGMENT**

1. This is the Judgement in respect of the Appeal dated 30th April 2024, filed by the Appellant against the Ruling of the Small Claims Court at Milimani delivered on 16th April 2024 by Hon. A.G. Njuguna (Adjudicator/Resident Magistrate) in Nairobi (Milimani) Small Claims Commercial Case No. E1887 of 2023.
2. The Appellant seeks the following orders:
  - a. That the Ruling dated 16<sup>th</sup> April 2024 and subsequent Orders be set aside.
  - b. That the Appellant’s application dated 13<sup>th</sup> December 2023 be allowed and be heard by a different Adjudicator on merit.
  - c. That the costs be awarded to the Appellant.
  - d. Any other or further relief that this court may deem fit and just to grant in the circumstances.
3. The Appellant therein adduced the following grounds:



- a. That the learned Magistrate erred in law by failing to exercise discretion to review the Judgement of the Hon. JP Omollo in applying Rule 29 (1) and (2) of the Small Claims Courts Rules, 2019.
- b. That the learned Magistrate erred in law by failing to properly exercise discretion and take judicial notice of the fact that there was a delay in issuance of the decree and thereby failing to properly apply Rule 31 of the Small Claims Courts Rules, 2019.
- c. That the learned Magistrate erred in law by selectively applying Section 41(2) of the Small Claims Courts Act to make his determination resulting from failure to note the basis why there was a delay in extracting the decree dated 18<sup>th</sup> November 2022.
- d. That the learned Magistrate erred in law by failing to exercise discretion in his sacrosanct duty and apply Article 159 (2) (d) of *the Constitution* of Kenya, 2010.

### **Background Facts**

4. The Appellant filed a Statement of Claim dated 13th March 2023 before the Small Claims Court, seeking judgment in the sum of Kshs.1,000,000/= for alleged investigation services rendered to the Respondent.
5. The Respondent duly entered appearance and subsequently filed a Response to the Claim dated 6th April 2023. The Respondent denied the Appellant's allegations and put forth a defence to the same.
6. The judgment of the Trial Magistrate, Hon. Judith Omollo, Senior Resident Magistrate/Adjudicator, dated 18th October 2023, states as follows:

“I have perused the system and the documents the Claimant has referred to were not uploaded. Therefore, I find that there is no evidence that the Respondent acknowledged the debt in 2019 and hence the contract entered in 2013 is statute barred under the provisions of the *Limitation of Actions Act*. Having found that the Claim is statute barred, the court will not delve into the merits of the case as the court has no jurisdiction.”

7. Consequently, the Appellant filed an application for review before the said Court by way of a Notice of Motion dated 13th December 2023, brought under certificate of urgency of even date.
8. In opposition to the said application, the Respondent filed Grounds of Opposition dated 22nd January 2024. The Appellant thereafter filed written submissions dated 6th March 2024, while the Respondent filed her submissions on 18th March 2024.
9. The judgment of the Small Claims Court at Milimani delivered on 16th April 2024 by Hon. A.G. Njuguna (Adjudicator/Resident Magistrate) in Nairobi (Milimani) Small Claims Commercial Case No. E1887 of 2023 states as follows:

“[8]. The application by the Claimant is dated 13<sup>th</sup> December 2023, with the impugned judgment having been entered on 18<sup>th</sup> October 2023, and a copy of the judgment uploaded on 19<sup>th</sup> October 2023 on the e-filing portal. The Claimant did not seek the court's leave to file the application out of time. Clearly the application offends the thirty-day timeline provided for in Section 41(2) of the SCCA.



[9]. The upshot of the foregoing is that the Claimant’s application dated 13th December 2023 fails and is hereby dismissed with costs to the Respondent.”

10. It is the aforesaid decision that has triggered this Appeal.

11. Pursuant to directions issued by this Court, the appeal was to be canvassed and determined by way of written submissions. Accordingly, this Honourable Court has duly perused and considered the Appellants’ written submissions dated 14th February 2025, as well as the Respondent’s written submissions dated 14th March 2025, filed in opposition to the appeal.

### **Issues For Determination**

12. Upon perusal of the Record of Appeal and the written submissions filed by the parties, this Court is of the view that the following two issues arise for determination:

- a. Whether the application for review was properly before the Learned Adjudicator; and
- b. Whether the appeal is meritorious.

### **Analysis**

13. This Appeal originates from the Small Claims Court and constitutes the first and final appeal. Appeals to this Court from the Small Claims Court are governed by Section 38 of the *Small Claims Court Act*, which provides as follows:

38. Appeals

- (1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final”

14. It is therefore well settled that appeals to this Court from the Small Claims Court lie on matters of law only, as expressly provided under Section 38 of the *Small Claims Court Act*.

### **Whether the Application for Review was Properly before the Learned Adjudicator.**

15. The Ruling which forms the subject of this Appeal was delivered on 16th April 2024.

16. On the first issue — whether the Learned Magistrate failed to apply Rules 29(1), 29(2), and 31 of the Small Claims Court Rules, 2019 — the Appellant contended that Rules 29(1) and (2) confer upon the Court the discretion to review any decree or order issued under the Act upon a written request by a party aggrieved by such decree or order. The Appellant submitted that such review may be granted where it is demonstrated, to the satisfaction of the Court, that the impugned decree or order contains an error apparent on the face of the record or a clerical or arithmetical mistake. The Appellant further submitted that Rule 29(2) of the Small Claims Court Rules, 2019 provides that a request for review of a decree or order must be made within three (3) months from the date of the decree or order in question. The Appellant, being dissatisfied with the judgment delivered on 18th October 2023, filed an application for review on 13th December 2023. The said application, bearing an even date, was therefore filed within the three-month period contemplated under Rule 29(2).

17. The Respondent, on the other hand, submitted that Section 41(1) of the Small Claims Act empowers the Small Claims Court, upon application by an aggrieved party or on its own motion, to review any of its orders on, inter alia, specified grounds. The provision is couched in mandatory terms, requiring



that an application for review be made within thirty (30) days of the order or award sought to be reviewed, unless the Court permits otherwise. It was further noted that the Small Claims Act has not been amended, and Section 41(2) thereof has not been declared unconstitutional. Accordingly, Section 41(2) remains binding and mandates that an application for review must be filed within the prescribed thirty-day period. The judgment sought to be reviewed by the Appellant was delivered on 18th October 2023. However, the Appellant's motion for review was dated 13th December 2023—well beyond the statutory thirty-day period—and was filed without leave of the Court to extend time. Moreover, the Appellant did not offer any explanation for the delay or for waiting an additional month before filing the review application. In the absence of leave for extension of time, and in light of Section 41(2) of the *Small Claims Court Act*, 2016, the Appellant was required to file the application for review no later than 18th November 2023.

18. The issue for determination before this Court is whether an application for review before the Small Claims Court must be filed within thirty (30) days or within ninety (90) days.

19. Section 41(2) of the *Small Claims Court Act* states as follows;

41. Review of orders or awards of the Court

- (1) An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court on the ground that—
  - (a) the order was made ex-parte without notice to the applicant;
  - (b) the claim or order was outside the jurisdiction of the Court;
  - (c) the order was obtained fraudulently;
  - (d) there was an error of law on the face of the record; or
  - (e) new facts previously not before the Court have been discovered by either of the parties.
- (2) The application referred to under subsection (1) shall be made within thirty days of the order or award sought to be reviewed or such other period as the court may allow.

20. Rule 29(2) of the Small Claims Court Rules states as follows;

Power to review decree or order

- (1) The Court may review any decree passed or order given in proceedings under the Act on the written request of any party aggrieved by such decree or order where it is shown to the satisfaction of the Court that the decree or order sought to be reviewed—
  - (a) has an error apparent on the face of the record; or
  - (b) has a clerical or arithmetical mistake.
- (2) A request for review of a decree or order under this rule shall be made within three (3) months of the passing of the decree or of the making of the order in issue, and may be made—
  - (a) orally in court; or
  - (b) in writing addressed to the Court and served on all parties to the proceedings.



- (3) Nothing in this rule prevents the Court, of its own motion, from reviewing and making a correction of any clerical or arithmetical mistake within thirty days of passing the decree or making the order in issue.
21. This Court, reiterating its holding in *Crossbridge Kenya Limited v Emerge Developments Limited* (Appeal E195 of 2023) [2025] KEHC 4355 (KLR) (Commercial and Tax) (3 April 2025) (Judgment), affirms that the substantive law—being the *Small Claims Court Act*—expressly limits the period for filing an application for review to thirty (30) days. Where an application is filed outside this statutory timeframe, leave of the Small Claims Court must first be sought and obtained.
22. The Act sets out five specific grounds upon which an application for review may be brought before the Small Claims Court. Upon consideration of the record, it is evident that the application for review in this matter was filed outside the prescribed thirty-day period.
23. The Small Claims Court Rules, which provide procedural guidance, are promulgated pursuant to Section 50 of the *Small Claims Court Act*, which states as follows:
50. Power to make Rules
- (1) The Chief Justice may make Rules of practice and procedure for the better functioning of the Court.
  - (2) For the purpose of Article 94(6) of *the Constitution*—
    - (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make rules to provide for the better carrying into effect the provisions of this Act;
    - (b) the authority of the Chief Justice to make Rules under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
    - (c) the principles and standards applicable to the Rules made under this section are those set out in the *Interpretation and General Provisions Act* (Cap. 2) and the *Statutory Instruments Act* (Cap. 2A).
24. This Court has carefully considered whether there exists any conflict between the *Small Claims Court Act* and the Small Claims Court Rules regarding the timelines for filing an application for review. In the Court’s considered view, the Rules cannot override, amend, or derogate from the provisions of the parent statute. Accordingly, the period for filing an application for review remains thirty (30) days as stipulated under the Act. The Rules do not, and indeed cannot, purport to extend this statutory timeline to ninety (90) days.
25. A reading of Rule 29 of the Small Claims Court Rules clarifies that the provision contemplates a form of review limited to the Court’s general powers to correct clerical or arithmetical errors in judgments, rulings, or decrees. Sub-rule (3) of Rule 29 further illuminates this intention by providing a time limit of three (3) months within which such corrections may be made. This power is analogous to that provided under Section 99 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, and does not apply to substantive applications for review under the Act.
26. The Appellant also relied on Rule 31 of the Small Claims Court Rules, 2019, which provides that in the conduct of proceedings, the Court shall not be bound by strict rules of procedure or evidence. The Appellant argued that the Trial Court failed to observe the spirit and intent of Rule 31 in delivering



its ruling, particularly in light of the explanation offered for the timing of the review application — namely, that the delay in filing the same was occasioned by the delayed issuance of the decree. Consequently, the Learned Magistrate erred in failing to apply Rules 29(1), 29(2), and 31 of the Small Claims Court Rules, 2019. Accordingly, the Appellant submitted that, having provided a reasonable explanation for the delay in filing the application dated 13th December 2023, the Learned Magistrate erred in failing to properly consider and apply the provisions of Section 41(2) of the *Small Claims Court Act*.

27. The Respondent further submitted that a delay in the issuance of a decree does not preclude a party from filing an application for review before the same Court or from lodging an appeal. As is evident from the record, the Appellant did not seek leave or extension of time to file the application out of time. The delay alluded to by the Appellant was never raised or canvassed before the Trial Court. It is therefore respectfully submitted that this line of argument is an afterthought and a calculated attempt by the Appellant to mislead the Court into making a finding that is null and void.
28. The Respondent also submitted that the Appellant failed to provide any meaningful elaboration or justification for their actions, yet paradoxically claimed to have suffered an 'injustice.' The Respondent contended that the Appellant knowingly and willingly filed the review application out of time. This was in contravention of the provisions of the *Small Claims Court Act*. It was further submitted that the Appellant sought to rely on Rule 31 of the Rules in an attempt to circumvent the strict procedural requirements that were properly applied by the Trial Court.
29. In the view of this Court, the rationale behind the strict timelines under the *Small Claims Court Act* lies in the deliberate legislative intent to expedite proceedings before the Small Claims Court. A statutory limitation is not merely a procedural formality. While limitation provisions are often embedded within procedural law, they also serve important substantive purposes. Statutes of limitation are not technicalities that may be waived or disregarded at will. Once the prescribed limitation period lapses, the underlying legal right itself is extinguished; the claim is no longer just procedurally barred, but ceases to exist in law. Accordingly, unless a statute expressly provides for extension of time, Courts have no jurisdiction to entertain claims filed outside the limitation period. Unlike under the Civil Procedure Rules, where an application for review may be brought within a "reasonable time," the *Small Claims Court Act* expressly limits such applications to a period of thirty (30) days. Any application made outside this timeframe must be preceded by a prayer for leave or for extension of time, supported by sufficient cause.
30. In the present case, the Court finds that the application for review was filed outside the statutory thirty (30) day period and without leave of the Small Claims Court to file out of time.

#### **Whether the Appeal is Meritorious.**

31. It is trite law that an Appeal to this Court from the Small Claims Court lies only on matters of law. Appeals on factual matters do not lie from the decisions of the Small Claims Court.
32. The present Appeal challenges the decision of the Small Claims Court declining to grant a review of its earlier judgment. Notably, no appeal was filed against the original judgment of the Small Claims Court delivered on 18th October 2023. The issues now raised in this appeal are, in substance, issues that ought to have been canvassed in an Appeal against that substantive judgment. However, such an Appeal was not filed. In any event, even if such an Appeal had been filed, this Court would have been precluded from considering grounds challenging the factual findings of the Trial Court, as only issues of law are appealable from the Small Claims Court. Nothing would have precluded this Court from considering as a ground of appeal, evidence that was allegedly presented before the Small Claims Court



and allegedly ignored or mistakenly overlooked by the Learned Adjudicator. That would be a proper ground for a finding of a mistrial. However, in view of the tangent in which matter has proceeded, the Court is precluded from entertaining such an issue at this juncture, due to procedural lapses on the part of the Appellant. To ignore that the application for review was filed out of time without leave being sought, would be this Court actively fouling the rules of procedure that it is bound to enforce. The Rules of procedure govern the parties to a legal dispute. They were passed for a reason. Where the Court has discretion to bend the Rules, the law or the rules themselves will say so. The Parties will already know so, because the rules have alerted them so. They will plead and supplicate themselves to the Court seeking to please the Court to exercise its discretion or withhold it depending on their brief and the instructions thereof. To ignore the rules is to invite chaos and mathogothanios into litigation. We are better off litigating and living within the rules.

33. Upon a careful review of the record, this Court is not persuaded that the Appeal has merits.
34. As to costs the same follow the event. The Court has discretion when it comes to matters of awarding costs. Looking at all the circumstances of this case, the Court is persuaded that there be no order as to costs.

### **Determination**

35. The Appeal is dismissed in its entirety with no order as to costs.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 17<sup>TH</sup> DAY OF JULY, 2025**

**NJOROGE BENJAMIN K.**

### **JUDGE**

In the presence of;

Miss Mwema for Miss Mutugi for the Appellant.

Miss Achieng for the Respondent.

Mr. Luyai – Court Assistant

