



**Spikas Beach Gardens v Ng'ang'a & 4 others (Civil Appeal
E274 of 2024) [2025] KEHC 9449 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9449 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E274 OF 2024
BK NJOROGE, J
JULY 3, 2025**

BETWEEN

SPIKAS BEACH GARDENS APPELLANT

AND

PATRICK NG'ANG'A 1ST RESPONDENT

LAWRENCE MUTEMBEI 2ND RESPONDENT

JOEL MBUTHIA WAINAINA 3RD RESPONDENT

GEORGE KURIA MUNYUA 4TH RESPONDENT

RAPHAEL KINYANJUI NGANG'A 5TH RESPONDENT

JUDGMENT

1. This is a Judgement arising out of a decision of the Learned Adjudicator Hon. Tawai Jackline Khalimesi. It was delivered on 15th September, 2024 in (Ruiru Small Claims Court) SCCC E322 of 2024, *Spikas Beach Garden Limited v Patrick Ng'ang'a and 4 Others*.
2. The Learned Adjudicator dismissed the Appellant's claim against the Respondent. It also directed the Appellant pay costs of Kshs.10,000/- to each Respondent.

Background facts

3. The Appellant is the Original Claimant before the Small Claims Court. The Respondents are and still were the Original Respondents.
4. The Appellant sued the Respondents alleging that they had without any colour of right directed storm waters to its premises. This had caused the Appellant to sustain severe damages assessed at Kshs.971,652.00



5. The Appellant sought the following reliefs against the Respondents.
 - a. An injunction restraining the Respondents jointly or severally from interfering with the Claimant through interfering with water ways escarpments and barriers near the Claimant's premises.
 - b. Payment jointly and severally of Kshs.971,852/- being damages to Claimant's premises as per valuer's reports.
 - c. Cost and interests.
6. The claim was denied by the Respondents. The 1st Respondent filed a response separate from that of the 2nd to 4th Respondents. The 5th Respondent also file a separate response. The summary of their responses is that they denied channelling the storm water to the Appellant's premises. The maintained that the storm water was caused by heavy rains that had been witnessed in the Country, during that season. This had led to flooding in several parts of the Country. They maintained that any actions they took were to unclog the blocked roads. This was to allow the storm water to drain away.
7. They stated that the flooding was an act of God and a natural phenomenon, for which they cannot be blamed. They also asserted that the County Government of Kiambu was involved in the unblocking of public water drains.
8. They blamed the Appellant for having blocked the existing cross culverts that would have allowed the storm waters to drain away. That the undogging of the drainage system along the Kimbo - Kiganjo Road was done in collaboration with the County government of Kiambu.
9. By consent of the parties the Court visited the locus in quo (the site of the incident). Thereafter, it heard the witnesses presented by the parties.
10. It is the Judgment of the Court dismissing the suit that has triggered this Appeal.

Issues of Determination

11. The Court has perused the Memorandum of Appeal, the Record of Appeal as well as the Submissions filed by the parties. The Court frames two issues for determination.
 - a. Whether the Small Claims Court had the jurisdiction to hear this case.
 - b. Whether the dismissal of the claim was merited.

Analysis

12. An Appeal from the Small Claims Court to this Court lies pursuant to Section 38 of the [*Small Claims Court Act*](#). It states as follows;

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.
13. An Appeal to this Court is therefore not in the same manner as in the usual first appeal. The Court's mandate is restricted to reviewing the decision of the learned Adjudicator on points of law. See [*Mwaura*](#)



v Wambua (Commercial Appeal E003 of 2024) [2024] KEHC 13897 (KLR) (11 November 2024) (Judgment).

“This being an appeal from the Small Claims Court, the duty of the court is circumscribed under Section 38 of the *Small Claims Court Act* which provides as doth:

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.

The duty of the court is to defer to the findings of fact of the adjudicator and analyse the matter for issues of law. The issues of law are either due to the subject matter or the finding of law by the court.”

14. Therefore, an Appeal to this Court is narrowly circumscribed to issues of law. The Court will not delve on matters of facts. This is not unless the Court is persuaded that the learned Adjudicator reached a perverse decision on the basis of the evidence provided.

a. Whether the Small Claims Court had the jurisdiction to hear this case

15. This Court’s attention has been drawn into the nature of the dispute before the learned Adjudicator.

16. The Court looks at the following averments made at paragraph 4 of the statement of claim.

- a. On 24th April, 2024 the 1st, 2nd and 3rd Respondents through themselves, agents and/or employees illegally and without colour of right directed storm water to the claimant’s premises along along Kiganjo road and caused extensive damages to the premises.
- b. The 1st and 2nd and 3rd Respondents hired and directed the 4th and 5th Respondents, employees and/or agents to illegally interfere with storm water drainage causing flooding and damages to the Client’s premises.
- c. The Respondent’s actions were against the Laws of the land.
- d. The actions by the Respondents were not authorised, permitted or allowed expressly or impliedly by the relevant authorities that Ruiru Juja Water & Sewerage Company, County Government of Kiambu, Kenya National Highways Authority and/or Kenya Rural Roads Authority who are mandated by the Law to do such works.
- e. The Respondents actions caused immense damages to the Claimant’s premises as tabulated in the valuer’s report.
- f. The Claimant will incur extensive repairs costs as per valuer’s report.
- g. The Respondents have failed to comply with the demand issued by Claimant’s Lawyer.

17. The Court understands the Appellant to have pleaded as follows;

- a. The Respondents interfered with storm water by illegally channelling it to the Appellant’s Land.
- b. The storm water flooded the appellant’s premises causing it extensive damages.
- c. This constituted trespass to the Appellant’s land/premises, for which the Appellant held the Respondents liable.



- d. The Appellant was entitled to an injunction to stop further trespass as well as special damages of kshs.971,650/-.
18. On the question of jurisdiction, the Court notes that jurisdiction is everything.
19. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR) the Court of Appeal stated as follows;
- “Jurisdiction was everything. Without it, a court had no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downed tools in respect of the matter before it the moment it held the opinion that it was without jurisdiction.”
20. Section 12 of the *Small Claims Court* states as follows;
12. Nature of claims and pecuniary jurisdiction
- (1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
 - (a) a contract for sale and supply of goods or services;
 - (b) a contract relating to money held and received;
 - (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
 - (d) compensation for personal injuries; and
 - (e) set-off and counterclaim under any contract.
 - (2) Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.
 - (3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.
 - (4) Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the Court as the Chief Justice thinks fit.
21. Section 13 of the *Small Claims Court* states as follows;
13. Exclusion of jurisdiction
- (1) If a claim has been lodged with the Court, no proceedings relating to the same course of action shall be brought before any other Court except where the—
 - (a) proceedings before that other Court were commenced before the claim was lodged with the Small Claims Court; or
 - (b) claim before the other Court has been withdrawn.
 - (2) A claim shall not be brought before the Court if proceedings relating to that claim are pending in or have been heard and determined by any other Court.
 - (3) Subject to section 12 (3), a higher court may transfer a claim to a Small Claims Court.
 - (4) For the purposes of this section, a claim is deemed to have been lodged with the Court in any case where section 23 has been complied with.



- (5) A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.
22. To this Court, the Small Claim Court is prohibited from hearing disputes that specifically relate to defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of Land, or employment and labour relations.
23. To this Court this Section 13(5) should have alerted the Appellant and provides a clear sign that the matters that belong to specialised Courts or Court of equal status are not to be presented to the Small Claims Court.
24. The *Constitution* of Kenya defines the jurisdiction of the Land and Environment Court as follows;
- System of courts.
- 162.
- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
 - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
 - (a) employment and labour relations; and
 - (b) the environment and the use and occupation of, and title to, land.
 - (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
25. The *Environment and Land Court Act* at Section 13 defines the jurisdiction of that Court as follows;
13. Jurisdiction of the Court
- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.



- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the *Constitution*.
 - (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
 - (5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (f) restitution;
 - (g) declaration; or
 - (h) costs.
26. The Supreme Court of Kenya in the case of *Republic v Chengo & 2 others* [2017] KESC 15 (KLR) stated and clearly defined that Courts should keep to their respective jurisdictions. A matter falling before the Environment and land Court should not be heard before the Small Claims Court. Once the parties invited the Learned Adjudicator to visit the locus in quo being land and premises that had allegedly been destroyed by the thing upon the land, (being storm waters), the issue of jurisdiction ought to have been triggered or become clear. That parties were dealing with an issue beyond what was contemplated by the Small Claims Court.
27. The Court has also looked at the nature of this claim. It cannot be said to be covered by Section 12(1) (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property. This Section does not make reference to immovable property which would involve land.
28. The Court is not convinced that this was a matter that ought to have been filed before the Small Claims Court. The jurisdiction to hear this matter vested in the Environment and Land Court with the proper jurisdiction to hear the dispute. This means it could have been filed before the Magistrate’s Court with competent pecuniary jurisdiction.

b. Whether the dismissal of the claim was merited

29. The Court finds that the Small Claim Court did not have jurisdiction. It therefore ought to have downed its tools and declined to hear this matter. For that reason, this Court need not delve further into this issue.
30. This Court is persuaded to allow the Appeal but for reasons outlined herein than those set out by the Appellant. The proper order to be made is that the Appellant’s claim be struck out for want of jurisdiction. The Court will not interfere with the order made as to costs before the Small Claims Court. The costs awarded to the Respondent are fair and reasonable. However, the 2nd to 4th



Respondents shared one Counsel and they get one share of costs. The 1st and 5th Respondent each get a share of costs. It would be unfair to direct that each Respondent is awarded separate costs.

31. As to costs of the Appeal, the fair order is let each party bear its or their own costs. The issue of jurisdiction having been raised by the Court suo motto.

Determination

32. The Appeal is allowed to this extent that;
- a. The Judgement delivered on 13th September, 2024 in (Ruiru Small Claims Court) SCCC E322 of 2024 and the Decree thereof is quashed and set aside and substituted with an order and/or Decree striking out the Claimant's claim for lack of jurisdiction.
 - b. The costs of the suit are assessed at Kshs.10,000/- and awarded to the 1st Respondent, the 2nd, 3rd and 4th Respondents jointly since they share one Counsel and lastly to the 5th Respondent.
33. Each party to bear its or his own costs of the Appeal
34. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF JULY, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of: -

N/A for the Appellant

N/A for the Respondents

Court Assistant Mr. Luyai.

