



**Uap Insurance Company Limited v Malonza (Civil Appeal
E005 of 2024) [2025] KEHC 9953 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E005 OF 2024
CM KARIUKI, J
JULY 10, 2025**

BETWEEN

UAP INSURANCE COMPANY LIMITED APPELLANT

AND

SERAH KAGWALE MALONZA RESPONDENT

*(Being an Appeal from the ruling of the Honourable. P.L. Shinyada
delivered on 19.01.2024 in Narok CMCC No. 110 of 2017)*

JUDGMENT

1. This appeal arises from the judgment of the Chief Magistrate’s Court at Narok in Civil Suit No. 110 of 2017, delivered on 19th January 2024. In the impugned ruling, the trial court upheld the respondent’s preliminary objection, having found it to be meritorious, and consequently struck out the appellant’s suit. As the suit had not proceeded to full hearing, the court awarded the respondent half the cost of the suit.
2. The Appellant, being dissatisfied with the ruling of the Hon. Senior Resident Magistrate delivered on 19th January 2024 in Narok CMCC No. 110 of 2017, filed a Memorandum of Appeal dated 6th February 2024, raising the following three (3) grounds of appeal:
 1. That the learned magistrate erred in law and in fact in finding that the defendant’s preliminary objection has merit and striking out the plaintiff’s suit with costs.
 2. That the learned magistrate erred in law and in fact in finding that the cause of action having been founded on the contract of insurance entered into arose in Nairobi where the contract was made and was to be performed and the magistrate court at Narok has no jurisdiction to entertain nor determine the suit and yet the cause of action arose from the accident which occurred along Narok-Bomet Road within the jurisdiction of the subordinate court.



3. That the learned magistrate erred in law in not taking into account entirely the submissions of the appellant.

Background

3. The suit giving rise to this appeal stems from a Preliminary Objection filed by the respondent on 5th August 2022. In the objection, the respondent sought to have the appellant's suit struck out on the grounds that the Honorable Court lacked jurisdiction to hear and determine the matter, pursuant to Section 15 of the [Civil Procedure Act](#) as read together with the [Magistrates' Courts Act](#) No. 26 of 2015.

Directions of the court

4. The appeal was canvassed by way of written submissions. The appellant duly filed their submissions. The respondent, despite being served with the appeal and various mention notices, failed to file any submissions and did not attend court on subsequent mention dates. The respondents' counsel only appeared once, during the initial directions on the appeal, and indicated that submissions would be filed; however, no submissions were ever filed thereafter.

The Appellant's Submissions

5. The Appellant submitted that the trial court erred in upholding the Respondent's preliminary objection and striking out the suit for lack of jurisdiction. The central argument is that the cause of action arose from a road traffic accident that occurred along the Narok–Bomet Road, within Narok County, and thus fell within the jurisdiction of the Narok Magistrate's Court.
6. The Appellant emphasized that the accident is the central fact giving rise to the insurance claim. Citing Section 15 of the [Civil Procedure Act](#), they argued that suits must be filed either where the defendant resides or where the cause of action arises. Since the accident occurred in Narok County, the jurisdiction lies there. Reliance was placed on *Kenindia Insurance Co. Ltd v George Mungai* [2017] eKLR, where the court held that the accident was the trigger for the claim, and absent that fact, no claim would subsist.
7. The Appellant cited several judicial precedents to reinforce the principle that jurisdiction is anchored in the place where the cause of action occurred. These included *Diamond Trust Bank Kenya Ltd v L.Z. Engineering Construction Ltd* [2014] eKLR, *Koinange v Koinange* [1968] EA 43, and the seminal case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1. These authorities establish that jurisdiction must be determined at the outset and must align with the factual origins of the dispute.
8. The Appellant submitted that jurisdiction should also serve the principles of convenience and fairness. Relying on Article 48 of [the Constitution](#) and *Kenya Bus Service Ltd v Minister for Transport & 2 Others* [2012] eKLR, it was argued that justice is best served when suits are heard in forums nearest to the underlying facts, as this eases the participation of parties and witnesses.
9. The Appellant argued that Section 15 aims to prevent forum-shopping and ensure that cases are heard where they are most appropriately connected. Since the accident occurred in Narok and forms the factual foundation of the claim, the Narok court was the correct forum.
10. Quoting Black's Law Dictionary, the Appellant emphasized that a cause of action consists of the facts entitling a party to sue—in this case, the accident. The Appellant submitted that the trial court misapplied its discretion by focusing on irrelevant considerations and ignoring relevant facts. Citing



Price & Another v Hilder (1984) eKLR and Mbogo v Shah [1968] EA, they urged the appellate court to interfere with the decision as it was plainly wrong.

11. The Appellant argued that no prejudice would be occasioned to the Respondent if the appeal is allowed, as there would be no delay or harm to their legal position. Allowing the appeal would serve the broader interests of justice and uphold both constitutional and procedural requirements.
12. The Appellant prayed that the appeal be allowed, the ruling of the Magistrate's Court delivered on 19th January 2024 be set aside, and a finding be made that the suit was properly instituted before the Narok Magistrate's Court, with costs awarded to the Appellant.

Analysis And Determination.

Duty of the court

13. In accordance with Section 78(2) of the *Civil Procedure Act*, sitting as the first appellate court has the mandate to re-evaluate and re-analyze the evidence on record and to arrive at its own independent conclusions, while bearing in mind that it did not have the benefit of seeing or hearing the witnesses firsthand. The provision reads:

“The appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”

14. The guiding principle for a first appellate court is well articulated in the decision of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the Court held:

“An appeal to this court from a trial by the High Court is by way of a retrial, and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

Issues

15. Having considered the record of appeal, the impugned ruling, the Appellant's submissions, and the applicable law, the following issue arises for determination:

Whether the trial court erred in law and in fact in upholding the Preliminary Objection and striking out the suit for want of jurisdiction.

Jurisdiction and the Cause of Action

16. It is not in dispute that the claim before the trial court arose from a road traffic accident that occurred along the Narok–Bomet Road. The Appellant's case is that this accident is the central fact which triggered the subsequent insurance claim, and therefore, the cause of action arose within Narok County.
17. Under Section 15 of the *Civil Procedure Act*, every suit shall be instituted in a court within the local limits of whose jurisdiction:
 - (a) The defendant resides, or
 - (b) The cause of action, wholly or in part, arises.



18. In the present case, the accident occurred in Narok, and the claim for compensation stems directly from this incident. The fact that the insurance contract may have been signed or administered elsewhere does not negate the centrality of the accident in establishing the cause of action. This position finds support in the holding of *Kenindia Insurance Co. Ltd v George Mungai* [2017] eKLR, where the court noted that the accident formed the factual foundation of the suit.
19. The Appellant cited persuasive precedents, including *Diamond Trust Bank Kenya Ltd v L.Z. Engineering Construction Ltd* [2014] eKLR and *MV Lilian S v Caltex Oil (Kenya) Ltd* [1989] KLR 1, to emphasize that jurisdiction must be determined based on the factual matrix giving rise to the dispute. These authorities consistently reaffirm the principle that jurisdiction is not a matter of convenience but of legal entitlement tied to the facts of the case.
20. In this context, the accident occurring in Narok provided a factual and territorial nexus sufficient to vest jurisdiction in the Narok court. The trial magistrate, in finding otherwise, failed to give due weight to this foundational fact.
21. Further, Article 48 of *the Constitution* guarantees every person the right to access justice. Locating jurisdiction in the place where the cause of action arose not only aligns with the law but also enhances access to justice by reducing logistical burdens on parties and witnesses. This consideration was echoed in *Kenya Bus Services Ltd v Minister for Transport & 2 Others* [2012] eKLR, where the court emphasized that efficiency and fairness are best served when courts are proximate to the events in question.
22. The appellate court has a duty to interfere with the trial court's exercise of discretion where such discretion has been wrongly exercised. In *Mbogo v Shah* [1968] EA 93, the Court of Appeal held that:

“A court will not interfere with the exercise of discretion unless it is satisfied that the judge misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of discretion and that as a result there has been injustice.”
23. In the instant case, the trial magistrate misdirected herself by focusing on the location where the insurance contract was executed and disregarding the fact that the accident, the factual basis of the claim, occurred in Narok. This misdirection led to an erroneous finding that the Narok court lacked jurisdiction.
24. The Respondent did not file submissions in opposition to the appeal and has not demonstrated any prejudice that would result if the appeal is allowed. On the contrary, allowing the matter to proceed in a court with clear territorial jurisdiction promotes substantive justice and fair hearing.
25. From the foregoing, this Court finds that the trial court erred in law and in fact in upholding the Preliminary Objection and striking out the suit. The cause of action arose in Narok County, and therefore, the Narok Magistrate's Court had jurisdiction to hear and determine the matter.

Disposition

26. Having carefully considered the appeal, the submissions of the Appellant, the applicable law, and the authorities cited, this Court finds that the appeal is meritorious.
27. The ruling of the Hon. Senior Resident Magistrate delivered on 19th January 2024 in Narok CMCC No. 110 of 2017, striking out the Appellant's suit on grounds of lack of jurisdiction, is hereby set aside. The court thus makes the orders.



- i. It is hereby declared that the Narok Magistrate's Court has jurisdiction to hear and determine the suit as the cause of action arose within its territorial limits.
- ii. The suit in Narok CMCC No. 110 of 2017 is hereby reinstated for hearing and determination on the merits before a court of competent jurisdiction other than the one that struck it out (Honourable. P.L. Shinyada).
- iii. The costs of this appeal are awarded to the Appellant.
- iv. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
10TH DAY OF JULY, 2025**

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CHARLES KARIUKI

JUDGE

