Gatura v Mbugua & another (Civil Appeal E055 of 2025)
[2025] KEHC 12527 (KLR) (3 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12527 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL E055 OF 2025

RC RUTTO, J

SEPTEMBER 3, 2025

BETWEEN

SIMON NGIGI GATURA ..... APPELLANT

AND

ESTHER WANJIRU MBUGUA ..... 1ST RESPONDENT

SAMUEL KARANJA KIAURA ..... 2ND RESPONDENT

(Being an Appeal from the Judgment and Decree of the Small Claims Court of Kenya at Ruiru delivered by the Hon. T.J Khalimesi, on the 21st February, 2024 in Ruiru SCC No. E043 OF 2023)

JUDGMENT

1. This appeal arises from the judgment delivered by Hon. T. J. Khalimesi in Ruiru Small Claims Court Case No. E043 of 2023 In the trial court, the Appellant filed a Statement of Claim dated 14th December 2023 seeking damages amounting to Kshs.419,106/=, for loss sustained to his motor vehicle, registration number KCZ 146B allegedly following an accident that allegedly occurred on 23rd March 2022.

2. The Respondents filed their Response to the Statement of Claim dated 6th January 2024, denying liability. The matter did not proceed to hearing immediately, as both parties requested a one-month period to negotiate a possible settlement. However, when the matter was later mentioned to confirm the outcome of the negotiations, the trial court dismissed the suit pursuant to Section 34 of the *Small Claims Court Act*.

3. Aggrieved by the court's decision, the Appellant lodged this appeal on grounds that the Learned Adjudicator erred in law by failing to grant the Appellant the right to fair hearing; by failing to consider

the Appellant's claim on its merit and by dismissing the Appellant's claim on the basis that it was time barred.

4. The Appellant prays that the appeal be allowed with costs, the trial court orders set aside and a declaration be issued reinstating case No. SCCC/E043/2023 at the Small Claims Court in Ruiru for hearing on its merits.

5. The appeal was canvassed by way of written submissions. The Appellant's submissions are dated 22nd July 2024 while the Respondents' submissions are dated 11th July 2024.

Appellant's Submissions

6. The Appellant reiterated the background of the case as outlined in the earlier paragraphs of this judgment. He framed a single issue for determination: whether the Learned Adjudicator was correct in dismissing the Appellant's claim based on statutory timelines under the *Small Claims Court Act*, which require that matters to be concluded within 60 days.

7. In support of his appeal, he cited Biosystem Consultants v Nyali Links Arcade (Civil Appeal E185 of 2023) [2023] KEHC 21068 (KLR) (31 July 2023), Kiai Mbaki & 2 Others v Gichuhi Macharia & Another [2005] eKLR, and Catherine Chepkemoi Mukenyang v Evanson Pkemei Lomaduny & Another [2022] eKLR. He submitted that the Adjudicator failed to uphold the parties' constitutional right to be heard, as guaranteed under Article 50 of *the Constitution* of Kenya. He further contended that the record clearly shows that both parties were ready to proceed with the hearing once the negotiations for an out-of-court settlement failed.

8. The Appellant further submitted that his counsel informed the court of their awareness of the 60 days statutory timelines and sought the court's indulgence to proceed pursuant to Section 30 of the *Small Claims Court Act*. However, the Respondent insisted on cross-examining the Appellant. The Appellant argued that, under these circumstances, the trial Adjudicator failed to consider the position prayers of both parties and instead dismissed the suit solely on the basis of the statutory timelines, in contravention of the principles of natural justice. To buttress this argument, the Appellant relied on the decision in Wachira Karani v Bildad Wachira [2016] eKLR.

9. In conclusion, the Appellant contended that the trial court failed to uphold the principles of natural justice and urged this Court to allow the appeal with costs.

Respondents' Submissions

10. The Respondents while relying on the decision in Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR and Section 34 of the *Small Claims Court Act*, argued that Section 34 was enacted to reduce case backlogs by ensuring expeditious resolution of disputes. They submitted that although both parties had sought leave to negotiate for one month, no settlement was reached. Consequently, the matter was due for hearing, but by that time, the 60 days statutory period had lapsed. The Respondents maintained that the jurisdiction of the small claims court is strictly time-bound and that the court was correct in concluding that the statutory timelines had been exceeded.

11. They further contended that any directions or orders issued outside the prescribed timelines would be made without jurisdiction and would therefore be a nullity, lacking any force of law. To reinforce this argument, they cited Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation) (Civil Appeal 129 of 2022) [2023] KEHC 2417 (KLR) (Commercial and Tax) (23 March 2023).

12. The Respondents urged this Court to dismiss the appeal with costs, submitting that allowing it would set a precedent that undermines the finality of court decisions and lead to unnecessary prolongation of legal proceedings.

Analysis and Determination

13. To begin with, the duty of this Court as an appellate court is well prescribed under Section 38 of the *Small Claims Court Act* which limits the jurisdiction of this Court to matters of law only. It provides that:

> 38. (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. What constitutes, points of law, has been settled in the case of Otieno, Ragot & Company Advocates v. National Bank of Kenya Limited [2020] eKLR.

15. Based on the above legal framework and precedent, this Court has considered the grounds of appeal as outlined in the Memorandum of Appeal dated 14th March 2024, the Record of Appeal, and the submissions of both parties. The primary question of law for determination is:

> Whether the Learned Adjudicator erred in law in dismissing the Appellant's claim under Section 34 of the *Small Claims Court Act* on the basis that the matter had exceeded the 60-day timeline?

16. This issue is not a novel issue. It is common ground that Section 34 of the *Small Claims Court Act* (SCCA) provides as follows:

> 34. Expeditious disposal of cases
>
> (1) All proceedings before the court on any particular day so far as it 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 claims shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.
>
> (3) .....
>
> (4) .....

17. The trial court proceedings are not contested. On 16th January 2024, both parties requested one month adjournment to explore an out of court settlement. The court granted this request and cautioned the parties that, by the time the matter was mentioned after one month, only two days would remain before the expiry of the 60 days timeline within which the case had to be heard and determined if no settlement was reached. The matter was scheduled for mention on 16th February 2024; however, the record does not indicate what transpired on that date. On 21st February 2024, the matter was mentioned again and the parties informed the court that they had failed to reach a settlement and wished to proceed under Section 30 of the *Small Claims Court Act*, with the Respondent seeking to cross-examine the Claimant. It was at this point that the court dismissed the claim, stating that the statutory timelines had lapsed.

18. Although Section 34(1) of the *Small Claims Court Act* is couched in mandatory terms, its application must be interpreted in line with the overriding objectives set out under Section 3 of the Act, which

include, inter alia, the facilitation of just, expeditious, proportionate and affordable resolution of civil disputes. The purpose of the 60day timeline is intended to ensure and encourage speedy determination of matters, not to defeat the ends of justice where parties are ready and willing to proceed.

19. In the present case, the record clearly shows that the delay was caused by the parties' mutual request for time to negotiate an out-of-court settlement, an approach encouraged by the court and in line with Article 159(2)(d) of *the Constitution* and Section 28 of the *Small Claims Court Act*, which promotes alternative dispute resolution mechanisms. Once negotiations failed, both parties expressed their readiness to proceed with the hearing. At that stage, the court had the discretion to give appropriate directions under Section 30 of the Act to ensure was concluded within the shortest time possible. In doing so, the court would have been guided by the principles of substantive justice as guaranteed under Article 159(2)(d) of *the Constitution* and the right to a fair hearing under Article 50.

20. Several judicial pronouncements have consistently emphasized the need to balance the goal of expeditious resolution of disputes and safeguarding the right to be heard. It is now well established that proceedings before the Small Claims Court may in certain circumstances, exceed the timelines set under Section 34(1) of the Act. I concur with this position and hold that Section 34(1) must be interpreted holistically to avoid defeating the very purpose of the Act. I agree with the reasoning in Biosystems Consultants v Nyali Links Arcade (Civil Appeal E185 of 2023) [2023] KEHC 21068 (KLR) (31 July 2023) (Ruling) that the 60-day timeline in the Act is aspirational rather than punitive. The court in this emphasized on the importance of purposive interpretation and the need to give effect to legislative intent, especially where literal interpretation leads to unjust outcomes. The court stated:

> " 54. I don't think the legislative intent of section 34 of the Small Claims Act is to impose unnecessary bottlenecks. Even tax statutes have timelines for paying or declaring taxes. It is never that non- payment makes those taxes void. There should be consequences. In the *Income Tax Act*, the non- compliance with deadlines does not vitiate the taxes. It attracts known penalties. What are the consequences under section 34 of the Small Claims Court?
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> 55. A court is not entitled to impose a penalty that was not hitherto anticipated. The parties must know, a priori, the consequences of their actions. Any act, especially one promoting certain aspects of *the Constitution* cannot be read mechanically. The Supreme Court in the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, Supreme Court Petition No 26 of 2014 [2014] eKLR, opined that a purposive interpretation should be given to statutes so as to reveal the intention of the statute. The Court observed as follows:
>
> > " In Pepper v Hart [1992] 3 WLR, Lord Griffiths observed that the "purposive approach to legislative interpretation" has evolved to resolve ambiguities in meaning. In this regard, where the literal words used in a statute create an ambiguity, the court is not to be held captive to such phraseology. Where the court is not sure of what the legislature meant, it is free to look beyond the words themselves, and consider the historical context underpinning the legislation. The learned Judge thus pronounced himself:
> >
> > > "The object of the court in interpreting legislation is to give effect so far as the language permits to the intention

> of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."

56. The purpose of the *Small Claims Court Act* is to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result is that balancing the two may result at times to overshooting the 60 days. The 60 days do not have penal consequences for good reason. They are aspirational. This is part of having access to justice over amounts that need not be in the normal system. Allowing the application will open floodgates that will eventually defeat the purpose of the Act.

56. It is my take that the non- compliance goes to the court's performance and is answerable internally. It cannot affect parties who are in court and ready to be heard. I have seen defendants use various gimmicks to have matters adjourned and thereafter turn around to say, 60 days are over. The parties have wasted a full month arguing in this court and with preliminary objections that are much ado about nothing."

21. I am in total agreement with the Court in the above case. From the heading to section 34 of the Act, there is no doubt that the section is aspirational and directed to the court. The Court should at all times once seized of the matter endeavour to ensure that it finalize within the 60 days. However, in so doing, it should not infringe on the right to fair hearing and access to justice as constitutionally enshrined rights. This is more profound in this case where both parties agreed to attempt an out of court settlement, in line with Article 159(2) of *the Constitution*. The court in fact was aware of the 'danger' of time. It should have thus granted a limited time for negotiation, if it was inclined to have the matter finalized within the 60 days.

22. Secondly, it is against the constitutional right to equality before the law for parties in a matter before court to agree for an attempt to an out of court settlement, fail to agree and then only one party, like the Appellant herein, face the consequences. I find that a court well directed, in computing the 60 days within which it has to finalize the matter before it pursuant to section 34 of the Act, should exclude the time when parties were engaging in an out of court negotiations. That period should be considered as frozen. I hasten to add that this does not give parties and the court the leeway to delay the resolution of the matter in court arbitrary beyond the 60 days.

23. In light of the above, this Court finds that the Learned Adjudicator erred in law by interpreting Section 34(1) in isolation of *the Constitution* and applying it in a manner that violated the Appellant's right to be heard and the principles of natural justice. I therefore direct as follows;

    a. The judgment and order of the Small Claims Court at Ruiru in SCCC No. E043 of 2023 dismissing the Appellant's claim is hereby set aside.

b. The claim is reinstated and shall be heard on its merits by a different adjudicator other than Hon. T.J. Khalimesi.

c. The costs of the appeal shall abide the outcome of the claim.

24. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant