



**Diamond Trust Bank Kenya Ltd v Njau t/a Kinyanjui & Njau Advocates (Civil Appeal E172 of 2022) [2024] KEHC 5452 (KLR) (Commercial and Tax) (17 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5452 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E172 OF 2022  
FG MUGAMBI, J  
MAY 17, 2024**

**BETWEEN**

**DIAMOND TRUST BANK KENYA LTD ..... APPELLANT**

**AND**

**LEONARD NJOGU NJAU T/A KINYANJUI & NJAU  
ADVOCATES ..... RESPONDENT**

**JUDGMENT**

1. The appellant filed a claim in the Small Claims Court in SCCOMM No. E 5352 of 2022 (the claim) seeking reimbursement of Kshs. 764,458.92 from the respondent, who maintained Account No. 0801xxxxxx with the appellant. The claim originated from a garnishee application dated 21<sup>st</sup> October 2020 filed in Kajiado ELC No. 3 of 2017 (the ELC case) which compelled the appellant to pay Kshs. 11,435,364/= from the respondent's account to satisfy a decree. Of the amount paid, the appellant's claim is for Ksh.764,458.92.
2. The respondent raised a preliminary objection before the small claims court and argued that the court lacked jurisdiction to entertain the claim. The adjudicator concurred with the respondent, leading to the current appeal on the following grounds:
  - i. The Magistrate erred in law in finding that the claim did not fit into the genre of disputes set out in Section 12(1) of the *Small Claims Court Act* No. 2 of 2016.
  - ii. The Magistrate erred in law in failing to find that the claim herein related to a contract entered into between the Claimant and Respondent which was made and intended to be performed within the jurisdiction of the Small Claims Court.



- iii. The Magistrate erred in law in failing to find that the dispute related to an overdrawn account operated by the Respondent at the Claimant's Capital Centre Branch hence fell within the provisions of Section 12(1)(b) and (e) of the *Small Claims Court Act* No. 2 of 2016.
  - iv. The Magistrate erred in law in finding that the suit related to enforcement of Garnishee proceedings and not enforcement of contractual terms.
  - v. The Magistrate erred in law by failing to consider the Appellants' submissions and in doing so arrived at an erroneous conclusion.
3. The appellant prays that the ruling and order of the trial court delivered on the 26<sup>th</sup> October 2022 be set aside and this court be pleased to substitute it with an order dismissing the preliminary objection dated 6<sup>th</sup> October 2022.

### Analysis

4. Upon reviewing the appeal, response, submissions, and cited authorities, the central issue is whether the Learned Adjudicator erred in determining that the small claims court lacked jurisdiction to entertain the dispute before it. The seminal case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd*, [1989] eKLR highlights the paramount importance of jurisdiction: without it, a court cannot proceed. This case underscores that a court must cease all proceedings if it finds itself without jurisdiction.
5. The appellant maintains that the cause of action herein is one of a contractual nature relating to money held and received, as envisaged in section 12(1)(b) of the *Small Claims Court Act*. In the alternative, the appellant argues that the cause of action generally falls in the ambit of the tort of restitution which is defined as:
- “... that part of the law which is concerned with reversing a defendant's unjust enrichment at the claimant's expense.”
6. The respondent disagrees with the appellant stating that the small claims court lacks jurisdiction to entertain the claim by dint of section 12 of the *Small Claims Court Act*. It is the respondent's view that the appellant ought to have moved the Kajiado Environment and Land Court under Order 23 rule 2 of the *Civil Procedure Rules*.
7. The respondent further argues that since the garnishee proceedings formed part of the execution of the decree in Kajiado ELC No. 3 of 2017 the appellant ought to have put in a Further Affidavit in the proceedings to inform the Court that it did not have any money in the respondent's account.
8. Under section 12(1) of the *Small Claims Court Act*, the small claims court has the mandate to determine civil claims where the monetary value does not exceed Kshs.1,000,000/= . Section 12 provides as follows:
- “ 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.”
9. The above provisions of Section 12 must be interpreted in alignment with, and as complementary to, the broader jurisdiction of the courts under the *Civil Procedure Act*. Specifically, garnishee proceedings are governed by Order 23 of the *Civil Procedure Rules*. Order 23, Rule 9 requires that:
- “Proceedings under this Order shall be filed upon the record of the suit in which the decree sought to be enforced was obtained.”
10. The rationale for encouraging parties to pursue enforcement actions within the framework of the related case is rooted in the overriding objective to facilitate a just, expeditious, and affordable resolution of civil disputes, as envisaged under Sections 1A, 1B and 3A of the *Act*.
  11. Within this context, although the amount in question (Ksh 764,458.92) is within the pecuniary jurisdiction for small claims courts, the origin of the claim to which the garnishee proceedings are linked is a significant debt of Kshs. 11,435,364/= in which judgment was delivered by the Environment and Land Court.
  12. It must be remembered that the *Small Claims Act* was designed to facilitate the quick and informal resolution of less complex disputes. Where disputes involve intricate legal procedures or interpretations of orders from other courts superior to the small claims court, they may not fit into the genre of disputes that the court was established to handle.
  13. This applies to the claim which is the subject matter of this appeal. Garnishee proceedings are fundamentally execution processes that arise from an existing judgment and decree. Moreover, the claim by the appellant falls afoul of the provisions of Order 23, Rule 9.
  14. These proceedings, and their intersection with the substantial judgment of Kshs. 11,435,364 from Kajiado ELC No. 3 of 2017, may additionally render the dispute too complex or intertwined with matters that are beyond the typical scope of the small claims court.

### **Disposition**

15. In conclusion, the small claims court’s ruling of 26<sup>th</sup> October 2022 is upheld and the appeal herein is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 17<sup>TH</sup> DAY OF MAY 2024.**

**F. MUGAMBI**

**JUDGE**

