



REPUBLIC OF KENYA



**Wachuri v 15 Minutes Logistics Limited & 2 others (Civil Appeal
E795 of 2022) [2024] KEHC 8929 (KLR) (Civ) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8929 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E795 OF 2022

RC RUTTO, J

JULY 19, 2024

BETWEEN

CHARLES KAGOTHO WACHURI APPELLANT

AND

15 MINUTES LOGISTICS LIMITED 1ST RESPONDENT

JESMILY SAGHE 2ND RESPONDENT

CATHERINE MBALA 3RD RESPONDENT

*(Being an appeal from the Ruling delivered on 16th September 2022 by Hon
Caroline Ndumia in Milimani Small Claims Court Commercial No. E4478 of 2022)*

JUDGMENT

1. This is an appeal from a decision of the Small Claims Court seeking to challenge the ruling of that court in Nairobi Commercial Case No. SCC Comm E4478 of 2022 dated 16th September 2022 that determined a preliminary objection on the territorial/geographical jurisdiction to entertain the matter. The appeal seeks that this Court sets aside the Ruling of the court and award costs to the appellant.
2. In that Ruling the court held that the local limits of the Small Claim Court at Nairobi is Nairobi County and as per the authority to act dated 13th July, 2022 the address of the claimant is indicated as 12345 – 00123 Nairobi. Therefore, as per the address the provision of section 15(1) of the [Small Claims Act](#) applies.
3. Aggrieved by this holding the appellant lodged a memorandum of appeal dated 20th September 2022 raising the following grounds, that;



- a. The learned magistrate erred in law and in fact in determining that the local limits of the small claims court at Nairobi is Nairobi County since the address of the claimant is in Nairobi.
- b. The learned magistrate erred in law and in fact by not considering that the place where the cause of action arose was the determinant factor where the suit should be filed.
- c. The learned magistrate erred in law and in fact by failing to take into consideration the appellant submissions and authorities cited therein.

Appellant Submissions

4. In urging this appeal, the appellant filed its submissions dated 20th May 2024 in which they reiterate the grounds of appeal as set out above.
5. It is their submission that the issues for determination in a suit generally flow from the pleadings and unless the pleadings are amended in accordance with the Civil Procedure Rules, the trial court by dint of the aforesaid Rules, may only pronounce judgment on issues arising from the pleadings. They make reference to the case of [*Galaxy Paints Company Limited vs Falcon Guards Limited Court of Appeal Case No. 219 of 1998*](#).
6. They submitted that jurisdiction is everything and without it the court has no power to make one more step. They urged this Court to find that the court lacked jurisdiction because the cause of action wholly arose in another jurisdiction. To support this argument they relied on the case of *The Owners of Motor Vessel "Lillian 'S' v Caltex Oil Kenya Ltd* [1989] 1 KLR 1 as well as the case of [*Macfoy v United Africa Co. Ltd*](#) [1961] 3 All E.R. 1169 to urge the court to find that the proceedings of the court were void.
7. It was the appellant's submission that residence or the principal offices of the respondent cannot be the sole basis for consideration when determining the local limits of small claims court. That the address of the claimant alone cannot suffice as the same will defeat the objects of Article 48 of [*the Constitution*](#).
8. Further reference was made to section 15 of the [*Civil Procedure Act*](#) Cap. 21 Laws of Kenya and the case of [*County Government of Migori v INB Management IT Consultant Limited*](#) [2019] eKLR.
9. The appellant urged the Court to find that they transacted at the respondent's dealership at Mwatate which is within Mwatate Sub-county and the nearest court is Wundanyi Law Courts which is the court with jurisdiction to handle the matter. In addition, they urged the court to find that the respondent is forum shopping for justice, to frustrate the appellant and for his convenience.
10. On the issue of costs, the appellant makes reference to section 27(1) of the [*Civil Procedure Act*](#), the case of [*Republic v Rosemary Wairimu Munene, ex-parte Applicant v Ibururu Dairy Farmer Co-operative Society Ltd*](#) Judicial Review Application No.6 of 2014 to urge the Court to exercise the discretion and not use the basic rule that costs follow the event. That the Court should consider the trouble the appellant has gone through while prosecuting the matter, and the incurred costs. He urges the court to find it proper for the respondent to bear the costs.

1st Respondent Submissions

The 1st respondent opposes this appeal and urge this Court to dismiss the appeal with costs to the respondent by affirming the ruling of the Small Claims Court dated 16th September 2022.

11. In urging this, the 1st respondent submits that this appeal lacks merit and should be dismissed on the basis of section 15 of the [*Small Claims Court Act*](#). He submits that section 15 provides for jurisdiction as follows, jurisdiction;



- a. to lodge a claim on the basis of residence and business location; that the 1st respondent is based in Nairobi and conducts its business within the local limits of the jurisdiction of the Nairobi Small Claims Court;
 - b. based on the subject matter; that the claim involves a breach of contract related to services provided by the respondent who operates in Nairobi as set out in section 15(1) (b).
 - c. contractual jurisdiction that the contract in dispute was negotiated and intended to be performed within Nairobi satisfying section 15(1)(c);
 - d. jurisdiction based on cause of action, that the failure of the appellant to pay for the services rendered by the respondent arose in Nairobi where the contract was to be performed and where the breach occurred in line with section 15(1) (d); and
 - e. defendant jurisdiction, that the business operations of the 1st respondent being in Nairobi fulfils the jurisdiction requirements as stated in section 15(1)(e).
12. The respondent urges court to rely on the case of *Owners of the Motor Vessel "Lillian S v Caltex Oil (Kenya) Ltd* [1989] eKLR and hold that the magistrate was correct in asserting this jurisdiction.

Issues for determination

13. Before delving into the issue for determination, I have observed that the appeal herein is against three respondents, however only the 1st respondent proceeded to contest the appeal by filing his submissions. The other two respondents did not file any submission nor appear before this court for hearing.
14. The only issue arising for determination is whether the trial court erred in finding that the Small Claims Court in Nairobi had jurisdiction to hear and determine this cause.
15. In the case of the *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] IKLR the court dealt with the issue of jurisdiction as follows:-

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.
16. From the record, the appellant herein raised a preliminary objection dated 5th September 2022 before the Small Claims Court on the grounds that; the entire claim is contrary to the provisions of section 15 of the *Civil Procedure Act* Cap 21 Laws of Kenya; that the Court has no territorial/geographical jurisdiction to entertain the matter; that the suit is incompetent misconceived and fatally defective and the suit is bad in law, an abuse of the court process and ought to be dismissed.
17. Notably, while the appellant’s preliminary objection and appeal is majorly based on the provisions of section 15 of the *Civil Procedure Act* Cap 21, the trial court relied upon the provision of section 15 of the Small Claims Act Cap 10A, Laws of Kenya to arrive at its decision. This being a Small Claims Court matter, the same is governed by the Small Claim Act which is a self-executing Act that adequately provides for its jurisdiction, procedures, operations and management of the claims before the small claim court.



18. In a ruling dated 16th September 2022, the adjudicator while dismissing the preliminary objection with no orders as to costs proceeded to observe that; “local limits of the Small Claims Court at and as per the authority to act dated 13th July 2022, the address of the claimant is indicated at 12345 -00123 Nairobi. Therefore, as per the said address the provision of section 15(1) (a) of the Small Act applies.”
19. I take note that this matter being one falling within the ambit of the Small Claims Court, the applicable statute is the *Small Claims Court Act* (the Act) which provided for the establishment, the jurisdiction and guiding principles of the Small Claims Court. Section 3(1) makes reference to *the Constitution* thus:
- In exercise of its jurisdiction under this Act, the Court shall be guided by the principles of judicial authority prescribed under Article 159(2) of *the Constitution*.
20. Suffices it to say that in its operations, the Small Claims Courts’ have to be guided by the principles in Article 159 (2) of *the Constitution*. Thus, in interpretation the extent of jurisdiction of the small claims court under the Act, this Court will take into consideration these principles. I also agree with the appellant that a consideration of this matter cannot delink from the principle of access to justice as provided for in Article 48 of *the Constitution*.
21. Section 15 of the Act sets out the jurisdiction of the court and provides as follows;
- 15 (1) A person has the right to lodge a claim before the Court only if—
- (a) such a person ordinarily resides or carries on business within the local limits of the jurisdiction of the Court;
 - (b) the subject matter of the claim is situated within the local limits of the jurisdiction of the Court;
 - (c) the contract to which the claim relates was either made or was intended to be performed within the local limits of the jurisdiction of the Court;
 - (d) the cause of action arose within the local limits of the jurisdiction of the Court; or
 - (e) the defendant to the claim resides within the local limits of the jurisdiction of the Court.
- (2) Without prejudice to subsection (1), any person against whom notice of a claim has been served under section 25 shall be party to the proceedings of that claim.
22. This Section provides for the right of a party to lodge a claim before the Small Claims Court. Section 15(1) (a) focuses on the claimant and states that he/she should ordinarily reside or be carrying out business within the jurisdiction of the court. The use of the phrase ‘ordinarily’ connotes that it should be as a matter of notoriety that indeed the claimant is to be found residing and or operating within the local limits of the court. Section 15(1) (b) is more outright as it connotes that where the subject matter is a property in-situ then, it is within the local limits of the court. Section 15(1) (c) caters for contractual matters and it focus on WHERE the contract was made or where it was intended to be performed. Section 15(1)(d) provides for cases where the cause of action arose within the local limits of the court. Suffices to say that Section 15(1) (a) to (d) are focused on the claimant and the subject matter. Once these are not appropriate considerations, then the section gives the alternative of (e) which refers to the defendant. That is, the only time you can go outside the realms of Section 15(1) (a) to (e) is when you are considering the residence of the defendant.
23. In this instance, the appellant is urging this court to fault the Small Claims Court in determining that the local limits of Small Claims Court at Nairobi is Nairobi County since the address of the Claimant is in Nairobi. Is this invitation with merit?



24. I have perused the record before me and noted that the 1st respondent, 15 Minutes Logistic Limited, claim residing in Nairobi. They urge this court to find that the small claim court was right in finding jurisdiction under section 15(1) of the Act on the basis that they operate in Nairobi. I also note that the decision of the court was based on the authority to act by the claimant dated 13th July 2022 which showed that the claimant residential address as 12345-00123 Nairobi. Further, while the authority to act by the claimant, dated 13th July 2022 shows that the residential address as 12345-00123 Nairobi, the invoices attached to the claim show that the box number is 23156-0064 Nairobi/Machakos/Voi.
25. On the other hand, the appellant urges this court to find that cause of action wholly arose in another jurisdiction, and that the address of the claimant alone cannot suffice to prove residence or the principal offices of the respondent cannot be the sole basis for consideration when determining the local limits of small claims court.
26. Having holistically examined the record before me, I make the following findings. While the respondent relied on the authority to act dated 13th July 2022 which bore its postal address as 12345-00123 Nairobi, I find that this was a narrow consideration of the claimant's 'residence'. First, I note that the postal address of the claimant was/is a moving target. While the authority to act indicates it as 12345-00123 Nairobi, the invoices attached to the claim show that the Box Number is 23156-0064 Nairobi/Machakos/Voi. Further, the Statement of Claim filed in court as the primary pleading gives the address as 100798-00100 Nairobi. Consequently, taken holistically, it would suffice to conclude on the basis of the Respondent's argument that his residence is either, Nairobi, Machakos or Voi.
27. In *Lumbasi Khisa Simiyu v Jane Atahi* [2007] eKLR, the Court in cautioning against use of postal address as a determination of one's residence held as follows:
- “In the same vein, simply because the postal address of the plaintiff was in Turbo (as stated in the verifying affidavit); or if the defendant's postal address was in Webuye (as stated in the Plaintiff), those facts would not necessarily imply that the parties were resident in the towns within which their postal addresses are to be found.”
28. From the Statement of Claim, the Claimant stated as follows in paragraph 4:
- “a. The Claimant is a duly incorporated private limited company that conducts the business of retailing motorcycles while the 1st Respondent presented himself to the Claimant as a customer of the claimant's products and the 3rd respondent was a sales representative of the claimant at its Mwatate dealership.
- b. The 1st Respondent visited the Claimant's dealership in Mwatate on or about 8th April 2021 and offered to buy motor vehicle Bajaj Boxer BM 150 Upgraded Registration Number KMFZ 215F (the “Suit Vehicle”) and the claimant agreed to sell the said Suit Vehicle for the price of Ksh.s 150, 000/=”
29. From the foregoing excerpt from the Respondent's Statement of Claim, it is clear that the Appellant herein visited the Respondent's premises/dealership in Mwatate and that is where the offer to buy was made and agreement to sell the motor vehicle for Ksh.s 150, 000/= made. Consequently, as regards this suit, I find that the Respondent himself acknowledges having a dealership in Mwatate where the Appellant visited. Hence Section 15(1) (a) of the Act confirms that for purposes of this suit the claimant ordinarily carries out its business through its Dearship in Mwatate. Secondly, in line with section 15(1) (c) , the contract was made in Mwatate, and for all intends and purpose, if the Appellant defaulted, the cause of action arose in Mwatate as it impacted the Respondent's sales/books



in Mwatate. Hence, I find that in this case the postal address was not the correct way of determining the residence of the Claimant for purposes of determining the jurisdiction of the court.

30. Lastly, it is common ground that in line with section 15(1) (e) of the Small Claims Act the defendant (Appellant herein), resides in Mwatate. It would be in gross violation of Article 48 of *the Constitution* on access to justice, to expect a defendant who ordinarily resides in Mwatate, and who had his contract executed in Mwatate to travel all the way to Nairobi to defend himself while we have a court of competent jurisdiction within his locality on the basis that the party with whom he contracted with is 'apparently' a resident in Nairobi, despite cogent evidence that the company has a local dealership in Mwatate. Such a decision defeats the very rationale which the Small Claims Court were established, to wit, to quickly and cheaply solve 'small claims and disputes.
31. The upshot is that I find that there is merit in this appeal. The Small Claims Court erred in holding that it had jurisdiction in this matter. For the reason stated above, I find that the Small Claims Court in Nairobi Commercial Case No. SCC Comm E4478 of 2022 dated 16th September 2022 had no jurisdiction to hear and determine this matter. The decision dated 16th September 2022 is hereby set aside and replaced by this Court's decision that the Small Claims Court in Nairobi Commercial Case No. SCC Comm E4478 of 2022 had no jurisdiction to hear and determine this matter and the same is struck out with costs to the defendant.
32. Costs of this appeal to be borne by the respondent.
Orders accordingly.

RHODA RUTTO

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 19 TH DAY OF JULY, 2024

For Appellants: Ms. Kyalo H/B for Mr Mwazighe

For Respondent: Mr. Wagumba H/B for Harry Karanja

Court Assistant: Peter Wabwire

