



REPUBLIC OF KENYA



KENYA LAW
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**Jane v Runga (Civil Appeal E034 of 2024)
[2024] KEHC 11036 (KLR) (18 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11036 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E034 OF 2024
GMA DULU, J
SEPTEMBER 18, 2024**

BETWEEN

JUDAH ZIGHE JANE APPELLANT

AND

DANSON BONGOLI RUNGA RESPONDENT

*(From the judgment in Taveta Small Claims Court Case No. E004 of 2023
delivered by Hon. S. M. Musili (Adjudicator/RM) on 11th April 2024)*

JUDGMENT

1. In a ruling delivered on 11th April 2024, the learned Magistrate at Taveta Small Claims Court, dismissed a preliminary objection raised by the appellant therein contending that the Small Claims Court did not have jurisdiction to entertain the matter before it, as it related to personal injuries. The Magistrate found that the Small Claims Court had requisite jurisdiction.
2. Dissatisfied with the above ruling of the Taveta Small Claims Court dismissing the objection, the appellant Judah Zighe Jane who was the respondent/objector has come to this court on appeal, through counsel Kimondo Gachoka & Company Advocates, on the following grounds:-
 1. The learned Magistrate erred in law and misdirected himself when he failed to apply the right legal principles and precedents in determining whether the Small Claims Court has jurisdiction to entertain the suit before it, Taveta Small Claims Civil Case No. E004 of 2024.
 2. The learned Magistrate erred in law and misdirected himself by attempting to arrogate to himself jurisdiction through the craft of interpretation.
 3. The learned Magistrate misdirected himself in law by failing to consider that the Small Claims Court is bound by the then Justice Kizito's decision in *Ogwari v Hersi* (Civil Appeal 223 of 2023) (2023) KEHC (3rd July 2023).



4. That the learned Magistrate misdirected himself in law by failing to apply proper constitutional provisions specifically that the High Court has supervisory jurisdiction over the subordinate courts under Article 165(6) of the Constitution of Kenya.
 5. That the learned Magistrate's decision was unjust, and was based on misguided points of fact and wrong principles of law and has occasioned miscarriage of justice.
 6. The learned Magistrate erred in law and fact by overly relying on the respondents submissions which were not relevant and without addressing his mind on the circumstances of the case.
3. I note that at one point during the process of this appeal before hearing, counsel for the appellant was on record for stating that they intended to withdraw this appeal, but later a Record of Appeal was filed and served, and the appeal process continued.
 4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the appellant, as well as the submissions filed by S. M. Righa & Company Advocates for the respondent. I note that both sides relied on the reasoning in High Court case of Jerusha Auma Ongwari v Ibrahim Aisha Hersi alias Aisha Hersi – Mombasa HCCA No. 223 of 2022.
 5. It was also specifically emphasized in the submissions of counsel for the appellant, that in the case of Ogwari v Hersi above, the High Court concluded as follows:-

“The claim for personal injury for accident cases, in view of the notices to be served after filing under Cap.405 and the particulars of negligence which must be proved in common law singularly unsuited for the Small Claims Court. Personal injury for assault and allied causes can still be filed. A claim that has no monetary value, that is a claim at large, where damages have to be assessed is not a small claim.”
 6. In my view, the above referred to decision of the High Court, being a decision of a judge of equal jurisdiction to this court, is only persuasive on me and not binding. Thus I do not have to abide with the decision, but it is a relevant guide to be considered.
 7. On my part, having considered the matter herein, and the entire appeal and arguments of counsel on both sides, and the purport and meaning of the reasoning of the judge in the case of Ongwari above, in which the High Court stated that some claims for personal injuries may still be filed and determined in the Small Claims Court, in my view the most prudent practice should be to leave the issue of jurisdiction in each particular case if personal injury claims, to be determined by the Small Claims Magistrate. It will be futile for this court to stop proceeding in the Small Claims Court, liberally on appeal, as such action is likely to cause unwarranted delays, like has happened in this matter. The Small Claims Court were specifically created to minimise delays in determining minor cases.
 8. In holding as above, I am aware of the holding in the case of Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989) eKLR that jurisdiction is everything, and without it a court of law has to down its tools. In the case of the Small Claims Court however, jurisdiction is broad as defined under Section 12(1) of the Small Claims Court Act No. 2 of 2016, and includes compensation for personal injuries as follows:-

“12(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 counter claim under any contract.”

9. From the above provisions of the law it is clear that the jurisdiction of the Small Claims Court actually covers some personal injury claims. I must mention here also, that in determining the issue of its jurisdiction, every Small Claims Court, must bear in mind and be conscious of the short time lines statutorily given for determination of matters in that court, and that all cases that are likely to take a longer period than the statutory time allowed, should be heard and determined in the ordinary courts.

10. As for this appeal, I find no merits in the appeal. I dismiss the appeal and order as follows:-

- i. The appeal herein is hereby dismissed.
- ii. The Small Claims Court will proceed to hear and determine the case before it herein within the period allowed by law.
- iii. The matter will be mentioned by the Taveta Small Claims Court on 23rd September 2024 for directions and further progress of the case.
- iv. The period between 12th April 2024 when the present appeal was filed and 23rd September 2024 when the case will be mentioned in the Taveta Small Claims Court will be excluded from the computation of the statutory time for completion of the Small Claims case herein.
- v. The costs of this appeal will abide the decision in the pending Small Claims Court case.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF SEPTEMBER 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Nganga for appellant

Mr. Kiwinda for respondent

