



**Kuria v Monarch Insurance Co. Ltd (Civil Appeal E661 of 2022)
[2024] KEHC 15253 (KLR) (Civ) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15253 (KLR)

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

**CIVIL
CIVIL APPEAL E661 OF 2022**

**JM OMIDO, J
DECEMBER 3, 2024**

BETWEEN

JAMES IRUNGU KURIA APPELLANT

AND

THE MONARCH INSURANCE CO. LTD RESPONDENT

(Being an Appeal from the Ruling and Order of Hon. D.S. Aswani Adjudicator/Resident Magistrate delivered on 17th August, 2022 in Nairobi Milimani SCCOMM No. E1726 of 2022)

JUDGMENT

1. Vide a plaint dated 18th March, 2019, the Appellant herein filed the suit before the Small Claims Court seeking the following reliefs against the Respondent:
 - a. An order that the Respondent fully satisfies the decretal sum, costs and interest in Nairobi CMCC No. 3716 of 2019, Ksh.811,477 with interest from 1st March, 2022 to date of full payment.
 - b. Costs of the suit.
2. It would appear from the record of the lower court that the Respondent did not resist the suit as no response or other denial was filed.
3. It is apparent from the trial court’s file that the court raised the issue of jurisdiction on its own motion and invited the Appellant to submit on the same, which the Appellant did. The court then rendered its brief ruling on the issue on 17th August, 2022 and pronounced itself thus:

“Before this court is a declaratory suit, the primary suit of which was Nairobi CMCC No. 3716 of 2019.



I find that as the mother suit was determined by the CMCC court, the parties should seek enforcement from the same court. Had the drafters of the Small Claims Court (Act) intended or envisioned the court to enforce such decrees in this court, I am of the opinion that nothing could have been easier than expressly stating so.

As jurisdiction is everything and having opined as above, I have no choice but to down my tools and direct that parties file the claim before the CMCC Nairobi.

Dated, signed and delivered in virtual court this 17th day of August, 2022.

Signed.

Hon. D.s. Aswani

Adjudicator/resident Magistrate

Small Claims Court, Milimani”

4. It is the above ruling that gives rise to the instant appeal. The Memorandum of Appeal dated 17th August, 2022 raises one issue:

That the learned Magistrate erred by finding that the Honourable Court did not have the jurisdiction to determine a declaratory/secondary suit arising under Section 10 of Chapter 405 Laws of Kenya.

5. The Appellant proposes that the ruling and order of the lower court be set aside and be substituted with an order that the Small Claims Court has jurisdiction to hear and determine an enforcement suit under Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya.
6. The Respondent did not participate in the present appeal. The Appellant prosecuted the appeal by way of written submissions.
7. I have perused the Memorandum of Appeal, the Record of Appeal, the Appellant’s submissions and the lower court record. I discern the single issue for determination to be whether the trial court fell into error in reaching the finding that the Small Claims Court has no jurisdiction to hear and determine a claim against an insurer, which seeks to enforce a statutory obligation or duty imposed under Section 10(1) of Cap 405, to satisfy a judgement and decree against its policy holder that has been obtained in respect of liability arising out of the use of the policy holder’s concerned motor vehicle.

1. The jurisdiction of the Small Claims Court is provided for under Section 12 of the *Small Claims Court Act*, Cap 10A Laws of Kenya (erstwhile *Act No. 2 of 2016*) which provides as follows:

12. Nature of claims and pecuniary jurisdiction

- (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. Exclusions to jurisdiction of the Small Claims Court are set out under Section 13 of the Act as follows:
13. Exclusion of jurisdiction
- (1) If a claim has been lodged with the Court, no proceedings relating to the same course of action shall be brought before any other Court except where the—
 - (a) proceedings before that other Court were commenced before the claim was lodged with the Small Claims Court; or
 - (b) claim before the other Court has been withdrawn.
 - (2) A claim shall not be brought before the Court if proceedings relating to that claim are pending in or have been heard and determined by any other Court.
 - (3) Subject to section 12(3), a higher court may transfer a claim to a Small Claims Court.
 - (4) For the purposes of this section, a claim is deemed to have been lodged with the Court in any case where Section 23 has been complied with.
 - (5) A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.
10. In his submissions, the Appellant’s counsel Mr. Kaburu took the position that the Small Claims Court has jurisdiction to entertain a claim under Section 10 of Cap 405 as read with Section 12(1)(d) of Cap 10A which relates to “compensation for personal injuries” and Section 12(2) which in his view grants jurisdiction to the Small Claims Court to determine matters of a civil nature as may be conferred under any other written law. What perhaps counsel failed to point out is that the said statute provides under Section 12(2) that the provision can only be employed without prejudice to the generality of Section 12(1) of Cap 10A.
11. No doubt, the claim as filed was one of a civil nature. The question that then abounds is whether the claim falls within the jurisdiction of the court as being among those provided for under Section 12(1) or is one that is specifically excluded under Section 13 of Cap 10A.
12. Starting with the latter, I think that there is no dispute that the claim that was before the trial court did not fall under any of the categories under Section 13 of Cap 10A.
13. Now to the former, this court is required to determine if the claim that was filed before the Small Claims Court falls under any of the categories numbered (a) to (e) under Section 12(1) of Cap 10A.
14. The argument proffered by the Appellant is that the claim that was filed before the Small Claims Court is one for compensation of injuries and was therefore well covered under Section 12(1)(g) of Cap 10A which confers jurisdiction upon the Small Claims Court to entertain claims of that description.



15. But then, it is to be remembered that the matter as filed before the lower court was one that is in our jurisdiction popularly referred to as a Cap 405 declaratory suit. It is one that seeks to enforce the judgement and decree already passed by a court of law against a Defendant who was not a party to the suit, pursuant to a policy of insurance issued by the Defendant as the insurer of the party against whom the judgement was entered and decree issued, courtesy of a statutory duty that may have existed (if proved), placed upon the insurer under Section 10(1) of Cap 405.
16. Let us read the said provision:
 10. Duty of insurer to satisfy judgments against persons insured
 - (1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.
17. Of course, under Section 5(b) of Cap 405, the liability for which the insurer is under statutory duty to meet is that which may be incurred by the policy holder and is limited to a judgement and decree that is entered in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the insured vehicle on a road, subject to satisfaction of the further conditions under Section 10(2) to (7) of the statute.
18. Perhaps knowing well that this court (R.E. Aburili J) has in the case of *Kenya Orient Insurance Limited v Otieno (Civil Appeal E166 of 2023)* [2024] KEHC 7637 (KLR) (25 June 2024) (Judgement) already elaborately, in my view, dealt with the issue as to whether the Small Claims Court has jurisdiction to entertain and determine a declaratory suit, Mr. Kaburu sought to distinguish the said decision by stating that my sister did not attempt a consideration or delimitation of what would amount to “compensation for personal injuries” as provided under Section 12(1)(d) of Cap 10A.
19. In my considered view, the claim that sought the relief for compensation for personal injuries is the primary suit that was filed by the Appellant against the party against whom judgement was entered and a decree issued. From the pleadings filed, that suit was Milimani CMCC No. 3716 of 2019.
20. The present suit seeks to enforce the judgement in Milimani CMCC No. 3716 of 2019 on the basis of the underpinning of statute under Section 10 of Cap 405. Does that make the declaratory suit that was filed before the Small Claims Court one for compensation for personal injuries?
21. I do not think so. I say so because the suit is one that relates to the duty of insurer to satisfy a judgment against a person that it had insured and not one in which the court considers ordering compensation for personal injuries, which would have already been determined in the primary suit. Put in another way, a declaratory suit is one that seeks to compel the insurer of a judgement debtor to settle and/or satisfy the decree issued in the primary suit. Such a suit does not fall under any of the categories under Section 12(1) of Cap 10A and is most definitely not one for compensation for personal injuries as the aspect of such compensation would already have been dealt with in the primary suit in which the decree sought to be enforced is issued.



22. In the decision cited above of Kenya Orient Insurance Limited v Otieno, (supra) the court observed and held as follows, in part:
 20. The Court considers that Section 10 of the Insurance Motor Vehicle (Third Party Risks) Act provides for the duty of an insurer to settle a decretal amount as follows:
 10. Duty of insurer to satisfy judgments against persons insured
 - (1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of Section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in Section 5 (b) prescribed in respect thereof in the Schedule.
 21. Upon entry of judgment in such accident claims where the Defendant was insured, the above provisions require the insurer to settle the decretal amount as awarded and in accordance with the provisions of the Act. It is however not always the case that the insurers willingly settle the claim and this necessitates the filing of a declaratory suit to compel the insurer to settle the decree. Ordinarily, such declaratory suits may be filed by the Defendant and/or Judgment Debtor in the primary suit.
 22. However, that can only happen if there is jurisdiction conferred on the court to hear such claims albeit they are claims arising from or as a consequence of a judgment and in effect, to give effect to a judgment or decree in those specific cases.
 23. What then is a declaratory suit? Relevant to this case, a declaratory suit is one that seeks to compel a judgement debtor's insurer to settle the decree passed against the insured. This kind of claim is not provided for under Section 12 of the SCC Act.
 24. In the circumstances I find that declaratory suits do not fall within the mandate of the Small Claims Court. I thus find and hold that the Adjudicator erred in law in dismissing the preliminary objection raised by the appellant. I set aside the order dismissing the preliminary objection and substitute it with a finding that the Small Claims Court has no jurisdiction to hear and determine declaratory suits relevant to the matter before this court. Consequently, the declaratory suit before the Small Claims Court is hereby struck out with an order that each party shall bear their own costs of the said suit and of this appeal.
23. From my analysis above, I reach the same conclusion as Aburili J. that a Cap 405 declaratory suit is not among the claims the Small Claims Court is mandated by Act No. 10A to handle.
24. I therefore reach the result that the appeal herein lacks merit. The ruling and order of Hon. Aswani that the Small Claims Court lacks jurisdiction to entertain the suit before it is hereby upheld, save only to add that the suit in the lower court stands struck out from the date of the ruling, with no order as to costs.



25. I make no order as to costs of the appeal as the Respondent did not participate in the same.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 3RD DAY OF DECEMBER, 2024.

JOE M. OMIDO

JUDGE

For The Appellant: Mr. Kaburu.

For The Respondent: No Appearance.

Court Assistant: Ms. Njoroge.

