



**Ahmad Motors Limited v Christ is The Answer Ministry (CITAM) & another (Civil Appeal E288 of 2025) [2025] KEHC 13419 (KLR) (Appeals) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13419 (KLR)

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

**APPEALS  
CIVIL APPEAL E288 OF 2025**

**AC MRIMA, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**AHMAD MOTORS LIMITED ..... APPELLANT**

**AND**

**CHRIST IS THE ANSWER MINISTRY (CITAM) ..... 1<sup>ST</sup> RESPONDENT**

**PAUL MPAAYAYEI KURONOI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon. T.N. Nambisia in Nairobi [Milimani] Small Claims Court Civil Case No. E416 of 2023 delivered on 19th February 2025)*

**JUDGMENT**

**Background:**

1. Christ Is The Answer Ministry (CITAM), the 1<sup>st</sup> Respondent herein, instituted Nairobi [Milimani] Small Claims Court Civil Case No. E416 of 2023 [hereinafter referred to as ‘the suit’] against Ahmad Motors Limited, the Appellant herein. It sought damages for an accident it claimed was occasioned by the Appellant’s negligence which resulted in the extensive damage to its motor vehicle, registration No. KBS 035E.
2. In its judgment dated 13<sup>th</sup> October 2023, the learned Adjudicator observed that there indeed was an accident and that the Claimant [now 1<sup>st</sup> Respondent] incurred expenses. On the basis that the suit had rightfully been instituted under the doctrine of subrogation and having not been opposed to by the Appellant, the trial Court entered judgment for special damages of Kshs. 293,285/-.
3. The Appellant then lodged a review application dated 25<sup>th</sup> April 2024 where it sought to set aside the *ex-parte* judgment and that it be granted leave to defend the suit. In its Ruling of 19<sup>th</sup> February 2025, the Adjudicator dismissed the review application, hence, the instant appeal.



## The Appeal:

4. Through a Memorandum of Appeal dated 11<sup>th</sup> March 2025, the Appellant sought to set aside the impugned ruling on the following grounds: -
  1. The Learned Magistrate erred in Law and in fact by failing to review the Judgment of 13/10/2023 even though there were sufficient grounds thereby occasioning great injustice to the Appellant.
  2. The Learned Magistrate erred in law and in fact by failing to consider the Appellant's plea that the mistake to prosecute the Appellant's case in the primary suit was occasioned by their erstwhile Advocate and not them.
  3. The Learned Magistrate erred in Law and in fact by failing to rise to the Court's overriding calling of doing justice to parties as opposed to punishing for procedural infractions.
  4. The Learned Magistrate erred in Law and in fact by locking the Appellant from the seat of justice by declining to grant them the opportunity to remedy a mistake made by their erstwhile Advocate thereby occasioning them great injustice.
5. In its written submissions dated 24<sup>th</sup> April 2025, the Appellant argued that the Adjudicator exercised her discretion injudiciously by making the finding that the judgment sought to be set aside was regular, an issue that was not before her. The Appellant further argued that the application did not turn on issues of service, appearance, or filing of a defence, rather, it only sought to present the Appellant's case since it filed a defence that was never prosecuted due to its Advocate's negligence. The decision in *Kenya Commercial Bank Limited & Another -vs- Municipal Council of Mombasa & 2 Others* was relied upon where it was observed that the door of justice is not closed because a mistake has been made by a lawyer who ought to have known better.
6. The Appellant also submitted that the Adjudicators' finding that the it failed to demonstrate vigilance without engaging with the evidence was injudicious exercise of discretion. In asserting the position that it had made the case for reopening of the dispute, the Appellant cited the case of *Raindrops Limited -vs- County Government of Kilifi* (2020) eKLR where it was observed that;

... Whether good cause is shown, whether the new evidence is significant; whether undue prejudice would result and whether the evidence clarifies the real issues in dispute.
7. In conclusion, it was its case that it had demonstrated a proper case for allowing the appeal such that it would be accorded an opportunity to adduce its evidence in challenging the suit.

## The 1<sup>st</sup> Respondent's case:

8. CITAM opposed the appeal through written submissions dated 17<sup>th</sup> April 2025. It was its case that Appellant challenged its claim through a Response dated 13<sup>th</sup> February 2023 and also filed an application dated 22<sup>nd</sup> May 2023 seeking the joinder of a third party, Paul Mpaayei Kuronoi, to the claim. The application was subsequently allowed on 23<sup>rd</sup> May 2023. It submitted that on 12<sup>th</sup> June 2023, despite service, the Appellant was absent and 3<sup>rd</sup> Party discretions could not be taken. The Appellant was indulged. On 21<sup>st</sup> June 2023 and 8<sup>th</sup> August 2023, the Appellant failed to attend Court despite service. The Adjudicator then directed that the suit do proceed in line with Section 30 of the *Small Claims Court Act*. The matter was subsequently fixed for compliance on 12<sup>th</sup> September 2023 where the Appellant was again served but failed to either file any written submissions or to attend



Court. Consequently, the trial court fixed the case for judgment on 13<sup>th</sup> October 2023 and upon delivery thereof, the Court granted the 1<sup>st</sup> Appellant 30 days' stay of execution.

9. The 1<sup>st</sup> Respondent posited that the Appellant was only awakened by the proclamation of its goods in satisfaction of the judgment where it lodged the review application which was eventually dismissed.
10. Deriving from the foregoing, the 1<sup>st</sup> Respondent submitted that the setting aside of a judgment and leave to defend a suit is not a matter of course. A Court must satisfy itself that there is good explanation. It also that the Appellant was aware all along of the suit and had duty to follow up on the progress but failed to do so. It was its case that the claim against the Advocate is unsustainable and did not absolve the Appellant of the result of the delay. The 1<sup>st</sup> Respondent relied on the Court of Appeal decision in *Charles Omwata Omwoyo -vs- African Highlands & Produce Co. Ltd* to buttress the position that Advocates ought to bear the consequences of their negligent acts or omissions like other professions do in their fields of endeavour.
11. The 1<sup>st</sup> Respondent further submitted that the judgment was regular and valid and that the Appellant had not offered a plausible explanation to set it aside. It drew support from the case of *Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral and Boundaries Commission & 6 Others* (2013) eKLR where it was observed that: -

..... The Court cannot be seen to aid the bending or circumventing of rules and shifting of goalposts for while it seems to aid one side, it unfairly harms the innocent party who strives to abide by the rules.

12. In conclusion, the 1<sup>st</sup> Respondent maintained that the trial Court was within the law in exercising its discretion against the Appellant.
13. The 2<sup>nd</sup> Respondent did not take part in the appeal.

#### **Analysis:**

14. From the foregoing discourse, there is only one issue for determination which is whether the Adjudicator rightfully declined the review application.
15. From a reading of the grounds in the Memorandum of Appeal, the appeal herein revolves around the Adjudicator's refusal to review and set aside its judgment. As such, this Court has jurisdiction under Section 38 of the *Small Claims Court Act* to deal with the appeal since it seeks to challenge the manner in which the Court exercised its discretion. That is a matter of law.
16. Section 41 of the *Small Claims Court Act* provides for review in the following manner: -
  41. Review of orders or awards of the Court
    - (1) An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court on the ground that—
      - (a) the order was made *ex-parte* without notice to the applicant;
      - (b) the claim or order was outside the jurisdiction of the Court;
      - (c) the order was obtained fraudulently;
      - (d) there was an error of law on the face of the record; or



(e) new facts previously not before the Court have been discovered by either of the parties.

(2) The application referred to under subsection (1) shall be made within thirty days of the order or award sought to be reviewed or such other period as the court may allow.

17. This Court has intently perused the review application. The same was not based on any of the five grounds stated in Section 41 above. That in itself, rendered the application a non-starter. Despite such, the trial Court still went ahead and looked into the merits of the application. If this Court is to follow the same route, then the only reason the Appellant sought to review the judgment was that its Advocates did not attend to the proceedings. However, the Appellant did not give any reasons to that end. It only deposed as such and nothing more. Such approach cannot make any Court exercise its discretion and allow a review application. The application was, hence, rightly declined.

**Disposition:**

18. Deriving from the above, the appeal is unmerited and this Court has to uphold the guiding principles of the Small Claims Court as provided for in Section 3 of the Act and to specifically ensure the timely disposal of proceedings before Court.

19. In the end, the following final orders do hereby issue: -

(a) The appeal is hereby dismissed.

(b) The Appellant shall bear the costs of the appeal assessed at Kshs. 30,000/= [Kenya Shillings Thirty Thousand Only].

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment delivered virtually and in the presence of:

Mr. Anangwe, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

