



Desert Locust Control Organization for Eastern Africa & another v Mwinzi (Civil Appeal E701 of 2022) [2025] KEHC 14323 (KLR) (Civ) (14 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14323 (KLR)

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

CIVIL

CIVIL APPEAL E701 OF 2022

WM MUSYOKA, J

OCTOBER 14, 2025

BETWEEN

DESERT LOCUST CONTROL ORGANIZATION FOR EASTERN AFRICA 1ST APPELLANT

DANIEL OTIENO ODIYO 2ND APPELLANT

AND

DANIEL MWOLOLO MWINZI RESPONDENT

(Appeal from the ruling and orders, of Hon. VN Mochache, Resident Magistrate and Adjudicator, of 5th August 2022, in Nairobi SCCC No. E1658 of 2022)

JUDGMENT

1. The suit herein was initiated by the respondent, against the appellants, founded on the tort of negligence, with respect to loss and injury that he allegedly sustained in a road traffic accident, on 19th January 2022, along Outer Ring Road, Nairobi, involving a motorcycle, on which he was a pillion passenger, and motor vehicle registration mark and number KX 09A 23, belonging to or controlled by the appellants. He attributed negligence to the appellants, and sought to recover special and general damages.
2. The claim was resisted by the appellants, who filed a response, in which they conceded the accident, but denied liability, and attributed liability on the rider of the unidentified motorcycle, on which the respondent was a pillion passenger. They went on to plead that the 1st appellant enjoyed diplomatic immunity in Kenya, and was immune to litigation in Kenyan courts, by virtue of section 9 of the *Privileges and Immunities Act*, Cap 179, Laws of Kenya; the Privileges and Immunities (The Desert Locust Control Organization for Eastern Africa) Order, 1977; and Legal Notice No. 58/1977. They



- asserted that that immunity had not been waived, and, hence, the court lacked jurisdiction. They evinced filing a preliminary objection, to have the suit struck out.
3. No formal notice of preliminary objection was filed, but, on 26th July 2022, the parties were directed to file written submissions to the preliminary objection raised in the response. A ruling was delivered, on 5th August 2022, dismissing the preliminary objection, founded on *Theuri Kihira vs. Gerhand Matthiessen* [2018] eKLR[2018] KEHC 4301 (KLR) (Ngaah, J), with respect to the matter of immunity being subject to proof, on grounds that the preliminary objection was premature, on that account.
 4. The appellants were aggrieved, hence the appeal herein. The grounds revolve around the trial court not appreciating that the 1st appellant was a privileged institution, the respondent had not alleged waiver of immunity, and ignoring authorities which had held that the immunity claimed extended to road traffic accident claims.
 5. It would appear, from the record, that the appeal was never placed before a Judge, for directions, hence no directions were ever given on the mode of canvassing of the appeal. However, the parties chose to canvass the appeal by way of written submissions.
 6. The appellants submit that the trial court made an error in not upholding the preliminary objection, as the 1st appellant was a privileged institution, protected by section 9 of the *Privileges and Immunities Act*, and that Legal Notice No. 58/1977 had declared the 1st appellant an international organisation, which conferred upon the 1st appellant immunity from suit and legal process. They have cited a number of decisions to support their case, and attached a copy of Legal Notice No. 58/1977.
 7. The respondent has argued the preliminary objection raised did not fit strictly in the mould of *Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors* [1969] EA 696 (Sir Charles Newbold, P, Duffus VP & Law JA). 2 reasons are advanced, the first is that the suit before the trial court related to 2 defendants, which meant that the suit could not be disposed of, on the basis of a preliminary objection, with respect to only 1 of the defendants. Secondly, it is argued that whether the immunity was absolute may require some facts being adduced at trial. He has cited a number of judicial authorities to support his case.
 8. Was there a proper preliminary objection? I do not think so. Immunity is granted by the Minister, under section 9 of the *Privileges and Immunities Act*. That grant is through gazette, and there ought to be ratification of the grant, through Parliament. There is a whole process, which may require some evidence or facts, to establish that such a grant was made, that there was publication of it in the official gazette, and that Parliament had ratified it. The court cannot possibly decide on these matters without the appropriate evidence. The requirement of proof would disqualify the matter from preliminary objection, and the same would have to go for full trial, where that proof would be provided, before the trial court can rule on the granting of the immunity. See *Kandie vs. Allassane Ba & another* [2017] eKLR [2017] KESC 13 (KLR) Mwilu, DCJ&VP, Ibrahim, Ojwang, Wanjala & Lenaola, SCJJ).
 9. Secondly, immunity, in Kenya, is not absolute. There could be a variety of exceptions to it, and, in any case, absolute immunity could violate public policy. See *Tononoka Steels Limited vs. Eastern and Southern Africa Trade and Development Bank* [1999] eKLR [1999] KECA 124 (KLR) (Kwach, JA) and *Kandie vs. Allassane Ba & another* [2017] eKLR [2017] KESC 13 (KLR) Mwilu, DCJ&VP, Ibrahim, Ojwang, Wanjala & Lenaola, SCJJ). To establish whether there was absolute immunity may require that the document or instrument, granting immunity, be considered together with other documents and instruments, such as host country agreements and memoranda of understanding. See



- Kandie vs. Allassane Ba & another [2017] eKLR [2017] KESC 13 (KLR) Mwilu, DCJ&VP, Ibrahim, Ojwang, Wanjala & Lenaola, SCJJ).
10. Given the positions taken in *Tononoka Steels Limited vs. Eastern and Southern Africa Trade and Development Bank* [1999] eKLR [1999] KECA 124 (KLR) (Kwach, JA) and *Kandie vs. Allassane Ba & another* [2017] eKLR [2017] KESC 13 (KLR) Mwilu, DCJ&VP, Ibrahim, Ojwang, Wanjala & Lenaola, SCJJ), it cannot be concluded that the trial court erred in not upholding the preliminary objection. There was need for some evidence to be adduced, to establish the incident the subject of the case, was subject to the immunity granted to the 1st appellant. The consequence shall be that the appeal herein is not merited, and I hereby dismiss the same, with costs.
 11. The matter is still alive, at the Small Claims Court. However, by dint of section 34(1) of the *Small Claims Court Act*, Cap 10A, Laws of Kenya, the adjudicators would have no jurisdiction to determine the matter, given that their jurisdiction expired, the moment 60 days lapsed, from the date when the cause was filed. The claim was filed on 24th June 2022, and 60 days expired on or about 23rd August 2022. There would be no jurisdiction for the adjudicators to handle it.
 12. The suit is still viable though, for determination, for it was filed within the limitation period, and the *Small Claims Court Act* has not changed the law on limitation of actions, for the causes to be filed at the Small Claims Court. The suit, at the Small Claims Court, can still be heard and determined by a court with jurisdiction over the subject matter, such as the Magistrate's Court or the High Court. As the value of the claim would be within the jurisdiction of the Magistrate's Court, there would be no need to escalate it to the High Court.
 13. The High Court has power, under Article 165(5) of *the Constitution*, with respect to the matters being handled at the subordinate courts. Both the Small Claims Court and the Magistrate's Court are subordinate courts, by dint of Article 169 of *the Constitution*. I shall exercise supervisory jurisdiction, and direct, under section 18 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, that the claim at the Small Claims Court be transferred to the Magistrate's Court, for hearing and final disposal. The instant appeal file shall be closed. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 14TH DAY OF OCTOBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Mege, instructed by Muchui & Company, Advocates for the appellants.

Mr. Mugo, instructed by GMR Advocates LLP, Advocates for the respondent.

