



**Kilimall International Limited v Wanjiru & another (Civil Appeal
E940 of 2024) [2025] KEHC 13883 (KLR) (Civ) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13883 (KLR)

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

CIVIL

CIVIL APPEAL E940 OF 2024

TW CHERERE, J

OCTOBER 2, 2025

BETWEEN

KILIMALL INTERNATIONAL LIMITED APPELLANT

AND

MANDELA GICHINI WANJIRU 1ST RESPONDENT

ESTHER WAIRIMU NGATIA T/A ESMASH VENTURES 2ND RESPONDENT

*(Being an appeal from the ruling and order in SCC E6247 of
2024 by Hon. D.S.Aswani (RM/Adjudicator) on 18th June 2024)*

JUDGMENT

Introduction

1. This is an appeal against the ruling of the learned Resident Magistrate/Adjudicator of the Small Claims Court, dated 18th July 2024 in Milimani SCCC No. E6247 of 2024, wherein the learned Magistrate/Adjudicator struck out the Appellant's claim on the ground that the Small Claims Court lacked jurisdiction.
2. The central question is whether a claim by an employer seeking to recover money allegedly lost due to fraudulent acts of a former employee falls within the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC), or whether it is a general civil claim that the Small Claims Court may entertain.

Background facts

3. The material facts, largely undisputed, are:



1. The Appellant, Kilimall International Limited, operates an online marketplace platform in Kenya.
 2. The 1st Respondent, Mandela Gichini Wanjiru, was employed by the Appellant as a Category Assistant Manager.
 3. The 2nd Respondent, Esther Wairimu Ngatia, is the spouse of the 1st Respondent under Kikuyu Customary Law and operates Esmash Ventures.
 4. During the 1st Respondent's employment, the Appellant contracted suppliers—Adarsh Limited, ASL Limited, and Bobmil Industries Limited—to list products for sale on its platform.
 5. On 16th October 2023, the Appellant discovered that products from these suppliers were missing or unaccounted for, yet these same products were listed on the platform via Esmash Ventures.
4. Consequent to the aforementioned discovery, the Appellant filed a Statement of Claim in the Small Claims Court on 19th June 2024, seeking KES 266,951.10 from both Respondents.
 5. The Appellant's claim was based on the following grounds that:
 1. The 1st Respondent fraudulently diverted products, manipulated inventory records, and misled suppliers;
 2. The 2nd Respondent received the diverted products and benefited from them;
 3. These acts caused financial loss and reputational damage to the Appellant.
 6. Subsequently, the Respondents filed a Preliminary Objection on 28th May 2024, claiming that the Small Claims Court lacked jurisdiction for the reason that the dispute was "employment-related."
 7. By a ruling dated 18th June, 2024, the learned Resident Magistrate/Adjudicator upheld the objection and struck out the claim, prompting this appeal.

Issues for determination

8. I have considered the appeal in light of the trial court record, the grounds of appeal and submissions filed on behalf of the parties, and the single issue for determination is whether the Appellant's claim is an employment dispute falling within the exclusive jurisdiction of the ELRC or a civil recovery claim that properly lies before the Small Claims Court.

Analysis and Determination

Whether the claim is an employment dispute and, if not, whether it falls within the jurisdiction of the Small Claims Court

9. The Respondents relied on *Anne Kinyua v Nyayo Tea Zone Development Corporation & 3 Others* [2012] KEELRC 219 (KLR) to argue that any dispute arising from the conduct of an employee falls within the exclusive jurisdiction of the ELRC.
10. The Appellant relied on *Ng'ang'a v Matheri* [2024] KEHC 6713 (KLR) to submit that its claim was for recovery of money is a matter expressly within the jurisdiction of the Small Claims Court under Section 12 of the Act, provided the claim was within the pecuniary limit. The amount sought which is KES. 266,951.10, is well within that threshold.



11. The Appellant also cited National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others (2023) eKLR, where it was held that fraud or misappropriation by an employee does not, without more, render a dispute an employment matter.
12. Although the alleged acts occurred in the course of employment, the pleadings reveal that the Appellant's claim is for recovery of funds allegedly lost through fraudulent diversion of goods, and not one relating to employment rights, benefits, or termination.
13. Accordingly, I find and hold that the claim does not constitute an employment dispute within the meaning of Section 12(1) of the *Employment and Labour Relations Court Act*.
14. Having found that the claim does not amount to an employment dispute, the remaining issue is whether the Small Claims Court is seized of jurisdiction. Guided by the authorities placed before me, I am satisfied that the Court has jurisdiction to entertain the claim. I accordingly hold and direct that the matter shall proceed before the Small Claims Court for hearing and determination on its merits.

Conclusion and orders

15. In the end, I make the following orders:
 1. The appeal is allowed
 2. The ruling of the Small Claims Court dated 18th July 2024, which upheld the Preliminary Objection and struck out the Appellant's claim, is hereby set aside and substituted with an order overruling the Preliminary Objection.
 3. The matter is remitted to the Small Claims Court for hearing on the merits before any other Adjudicator other than Hon. D.S.Aswani (RM/Adjudicator).
 4. Respondents shall bear the Appellant's costs of this appeal.

DELIVERED AT NAIROBI THIS 02nd DAY OF October 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellant - Ms. Ajumbo for Ong'anya Ombo Advocates

For Respondent - N/A for Ouko & Kyama Advocates

