



**Mark Holdings Limited & another v Nyamita & 3 others (Civil Appeal E263 & E266 of 2024 (Consolidated)) [2025] KEHC 13826 (KLR) (Civ) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13826 (KLR)

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

**CIVIL**

**CIVIL APPEAL E263 & E266 OF 2024 (CONSOLIDATED)**

**WM MUSYOKA, J**

**OCTOBER 3, 2025**

**BETWEEN**

**MARK HOLDINGS LIMITED ..... APPELLANT**

**AND**

**MARK NYAMITA ..... 1<sup>ST</sup> RESPONDENT**

**AUTO INDUSTRIES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUMA WANYAMA ..... 3<sup>RD</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E266 OF 2024**

**BETWEEN**

**AUTO INDUSTRIES LIMITED ..... APPELLANT**

**AND**

**MARK NYAMITA ..... 1<sup>ST</sup> RESPONDENT**

**JUMA WANYAMA ..... 2<sup>ND</sup> RESPONDENT**

**MARK HOLDINGS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

*(Appeal from judgement and decree of Hon. DS Aswani, Resident Magistrate and Adjudicator, of 25st January 2024, in Nairobi SCCC No. E1532 of 2023)*



## JUDGMENT

1. The suit, at the primary court, was initiated by Mark Nyamita, against Auto Industries Limited and Juma Wanyama, for recovery of a sum of Kshs. 456,574.00, being compensation, by way of special damages, for damage wrought on his vehicle, after a collision, in a motor road traffic accident, with another, belonging to or controlled by Auto Industries Limited and Juma Wanyama. He alleged negligence on the part of Auto Industries Limited and Juma Wanyama.
2. The claim was resisted by the Auto Industries Limited, who filed a response, denying liability, and alleging that it had sold the accident vehicle to Mark Holdings Limited, which was subsequently brought into the suit, by way of third-party proceedings. Mark Holdings Limited, on its part, appeared, and denied any liability, on grounds that it never owned or had custody of the accident vehicle at the material time.
3. The claim was processed, *vide* section 30 of the [Small Claims Court Act](#), Cap 10A, Laws of Kenya, where it proceeded based on documents. Judgement was delivered, on 25<sup>th</sup> January 2024, in favour of Mark Nyamita.
4. Mark Holdings Limited and Auto Industries Limited were aggrieved, hence these appeals, revolving around diverse grounds, set out in the memoranda of appeal lodged in the 2 appeals.
5. Directions were taken on 5<sup>th</sup> June 2024. The only written submissions I see in the record before me were filed by Mark Holdings Limited. I have read through the said submissions and noted the arguments.
6. Before I advert to the merits of the appeal, if at all, let me first address a preliminary issue, which Mark Holdings Limited has not dealt with, and which goes into jurisdiction, and that is whether there is a valid appeal before me.
7. The claim at the trial court was lodged in the nature of a small claim in the Small Claims Court. The Small Claims Court is established under the [Small Claims Court Act](#), to handle small claims, in a certain way, within certain timelines. It is a special court, with a special jurisdiction.
8. It is granted, under section 12, jurisdiction to handle a defined class of cases, and the instant one falls within that class. Its pecuniary jurisdiction is fixed at Kshs. 1,000,000.00 and below. Section 3 of the [Small Claims Court Act](#), and various other provisions, in the Act, pitch for expeditious disposal of the claims filed under the [Small Claims Court Act](#), in the Small Claims Court. These set the background to section 34(1) of the [Small Claims Court Act](#), which vests the Small Claims Court with a limited jurisdiction of 60 days, from the date of the filing of the claim, to hear and determine the claim. Most of the subsections of section 34 lay out rules on how that can be achieved. Since jurisdiction is exercisable by the Small Claims Court within 60 days, it would follow that after the 60 days expire, the court would lose jurisdiction, and it would have no legal foundation or basis to continue to determine the matter after that.
9. The claim in Nairobi SCCC No. E1532 of 2023 was filed on 3<sup>rd</sup> April 2023. Judgement was delivered on 25<sup>th</sup> January 2024.
10. The question then is, did the court have jurisdiction, as at 25<sup>th</sup> January 2024, to deliver the judgement, or to determine the matter, in view of section 34(1) of the [Small Claims Court Act](#).
11. When I apply section 34(1) of the [Small Claims Court Act](#), to the facts of this case, it would mean that the 60 days began to run on 3<sup>rd</sup> April 2023, and should have expired on or about 3<sup>rd</sup> June 2023. After



3<sup>rd</sup> June 2023, the trial court lost jurisdiction to entertain the claim, and it certainly had no jurisdiction to deliver the judgement that it purported to on 25<sup>th</sup> January 2024. That judgement was a nullity, for being delivered by a court which had lost jurisdiction. I declare the said judgement to be null, void and of no effect. The result shall be that the judgement of 25<sup>th</sup> January 2024 is hereby vacated, quashed or set aside.

12. It should be clarified that the *Small Claims Court Act* does not set out the limitation period for the filing of the claims that the Small Claims Court has jurisdiction to handle, for limitation periods for the filing of civil actions is governed by the *Limitation of Actions Act*, Cap 22, Laws of Kenya. The *Small Claims Court Act* does not, in any way, interfere with the limitation of actions law.
13. The loss of jurisdiction, on account of section 34(1) of the *Small Claims Court Act*, does not mean that the suit ceases to be viable. It would lose viability only for the purposes of the *Small Claims Court Act* and the Small Claims Court, but not the *Civil Procedure Act*, Cap 21, Laws of Kenya, and the High Court and the Magistrate's Court, since it would still be valid on account of limitation of actions law. It would be stale for the purposes of the *Small Claims Court Act*, for lack of jurisdiction of the adjudicator, but not under the *Civil Procedure Act*. The competence of the small claim is not tied to the jurisdiction of the Small Claims Court or of the adjudicator. It has nothing to do with that, for its viability is dictated by the law on limitation of actions.
14. There is a concurrence of jurisdiction between the Small Claims Court, the High Court and the Magistrate's Court, with respect to the matters that are under the jurisdiction of the Small Claims Court. Loss of jurisdiction under the *Small Claims Court Act*, would not spell a death knell on the claims. Only the Small Claims Court would lose jurisdiction, but the suits would still be viable in the High Court and the Magistrate's Court, which would retain jurisdiction over the subject-matter, subject to limitation of actions, under the *Limitation of Actions Act*. What would be lost, under section 34 of the *Small Claims Court Act*, is the jurisdiction of the adjudicator, but not the limitation period, within which the suits ought to be filed under the *Limitation of Actions Act*.
15. An adjudicator, who loses jurisdiction under section 34 of the *Small Claims Court Act*, ought not push on with the matter, nevertheless, in the absence of such jurisdiction, but should lay down his tools, in the spirit of *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd* [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA), and may advise the parties to move the High Court, for transfer of the matters, under section 18 of the *Civil Procedure Act*, to the Magistrate's Court, for trial and disposal. The High Court would also have jurisdiction, to determine the claim, filed at the Small Claims Court, and may cause transfer to itself, although a trial at the Magistrate's Court would be preferable, given the low value of the subject matter of the claims.
16. There would be jurisdiction, for invocation of section 18 of the *Civil Procedure Act*, given that the claims under the *Small Claims Court Act* are civil by nature. Although the *Small Claims Court Act* provides a special civil jurisdiction and process for those claims, its jurisdiction and processes are saved by section 3 of the *Civil Procedure Act*, meaning that the provisions of the *Civil Procedure Act* remain a fallback, where there are gaps in the *Small Claims Court Act*.
17. As a matter of practice, where it becomes obvious that a matter, in the Small Claims Court, cannot be handled by an adjudicator, within the 60 days permitted by section 34 of the *Small Claims Court Act*, the adjudicator ought to guide the parties appropriately, instead of embarking on an obviously ill-fated hearing. Equally, the parties themselves ought to be alive to that fact, and should move the High Court appropriately, once it becomes clear that the Small Claims Court suit would not be viable, on account of section 34 of the *Small Claims Court Act*.



18. The impossibility of handling or disposing of the matter within the 60-day timeline may be on account of several factors. It could be on account of difficulties with the claimant serving process on the respondent in good time, to allow for the hearing or disposal within the 60 days. It could be on account of the case being complicated by the necessity of having to file a counterclaim, or set-off, or joinder of a third party. It could also be that the case would require proof by oral evidence, where multiple witnesses would be required to be lined up, whose testimonies cannot be received and recorded within the 60 days. There could be other factors.
19. Once the features, discussed above, come to the fore, the claimant, or the parties, in general, depending on the circumstances of each case, ought to consider applying to have the claimed moved to the High Court or the Magistrate's Court. Where the parties themselves fail to take that initiative, the adjudicator may take the bull by the horns, and direct them appropriately. Where they fail to act, and do the needful, the adjudicator, upon effluxion of the 60 days, ought to down tools, and leave it to the parties to have the matter transferred to the Magistrate's Court, through an appropriate application at the High Court. By no means should the adjudicator determine the matter outside the jurisdiction, for that would be a wasted effort.
20. There has also developed, in recent times, a practice, by magistrates, of simply forwarding a file to the Deputy Registrar of the High Court, for placing of a file before the Judge, in instances where the magistrates form opinion that they do not have jurisdiction, or are not clear on the matter; or where they desire to get directions or guidance from the Judge, in one way or other, over some issue or question. It circumvents or obviates the need for parties to formally move the High Court, either under section 18 of the *Civil Procedure Act* or any other provision. It saves time. It satisfies the dictates of Articles 50 and 159 of the *Constitution*, about fair hearing and access to justice. It has gained currency, and is now conventional.
21. It is something that the adjudicators should consider. So that, where they sense that 60 days would not be adequate for disposal of a matter before them, instead of asking the parties to formally apply to the High Court, under section 18 of the *Civil Procedure Act*, to simply forward the file to the Deputy Registrar of the High Court, with the request that the file be placed before a Judge, for the purpose of consideration of transfer of the matter, from the Small Claims Court to the Magistrate's Court for trial and disposal.
22. I have set out the above, as a precursor to the orders that I am about to make. The judgement, that was delivered on 25<sup>th</sup> January 2024, was a nullity, for want of jurisdiction. It did not dispose of the matter, for disposal could not come on the back of a null outcome. That meant that the suit remained alive, for the reasons that I have given above. It is still a viable suit. But, what should I do with it?
23. The Small Claims Court is a subordinate court, under Article 169(d) of the *Constitution* of Kenya. The High Court has jurisdiction, under Article 165(6) of the *Constitution*, to exercise a supervisory jurisdiction over it. In exercise of that jurisdiction, the High Court can, by dint of Article 165(7), call for the record of any proceedings, which are before any subordinate court, and may make any order or give any directions it considers appropriate to ensure the fair administration of justice. Legislation has not been passed, to give effect to Article 165(6)(7) of the *Constitution*, by way of prescription of rules of procedure. However, that should not be an excuse for the court not to do justice, in accordance with those provisions.
24. Under Article 159(1), the High Court, and the Judiciary in general, exercises delegated judicial authority. Delegated, because judicial authority is derived from the people of Kenya, and vested in the courts, to be exercised under the *Constitution*. Under Article 159(2), the courts must, while exercising that judicial authority, be guided by the principles, among others, that justice must be done to all, must



be administered without undue regard to procedural technicalities, and the purposes and principles of the Constitution are to be protected and promoted. These purposes and principles include fair hearing and access to justice.

25. A provision on the jurisdiction of a court or tribunal is not a matter of technicality of procedure. It goes to the core or substance. A party who has approached the seat of justice should not be driven from it, where a second chance exists. A second chance does exist in this instance. The suit is not statute-barred, for it was not filed outside the limitation period. The effluxion of time under section 34 of the Small Claims Court Act has not affected its viability, as discussed above. Rather than dismiss it, or strike it out, the High Court has residual and inherent power, under Articles 159(2) and 165(6)(7) of the Constitution, as read with sections 1A, 1B, 1C and 3A of the Civil Procedure Act, to offer a solution or way out to the parties in the suit in Nairobi SCCC No. E1532 of 2023.
26. That solution lies with exercise of the power conferred upon the High Court, by section 18 of the Civil Procedure Act, to transfer a suit from one subordinate court to another, or even to the High Court itself, for trial and disposal. Consequently, I do hereby order that the cause and file, in Nairobi SCCC No. E1532 of 2023, shall be transferred from the Small Claims Court, Nairobi, to the Chief Magistrate's Court, at the Milimani Commercial Courts, Nairobi, for hearing and disposal.
27. The appeal herein is disposed of in accordance with paragraphs 11 and 26 of this judgement. Each party to bear its own costs. The files in these 2 appeals shall be closed. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

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

Advocates

Mr. Mwangi, instructed by Taibjee & Bhalla, Advocates for Auto Industries Limited.

Ms. Wairimu, instructed by Kabugu & Company, Advocates for Mark Holdings Limited.

Mr. Migiro, instructed by G&G, Advocates for Mark Nyamita.

