

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SMALL CLAIMS APPEAL NO. E105 OF 2025
(formerly Nairobi HCCA No. E151 of 2025)

SGA GUARDING KENYA LIMITED

alias SGA KENYA LIMITED.....

APPELLANT

VERSUS

MANIPAL INTERNATIONAL

PRINTING PRESS LIMITED.....

RESPONDENT

**(Appeal from judgement and decree of Hon. Kiongo Kagenyo,
Resident Magistrate and Adjudicator, of 30th January 2024, in
Nairobi SCC No. E3476 of 2023)**

JUDGEMENT

1. The suit, at the primary court, was initiated by appellant, against the respondent, for recovery of a sum of Kshs. 879,459.00, in respect of services rendered, under contract, but not paid for. The claim was resisted by the respondent, on grounds that no money was owing, as the appellant had been guilty of breach of contract, hence payment was withheld.

2. The claim was processed, vide section 30 of the Small Claims Court Act, Cap 10A, Laws of Kenya, where the suit was determined based on documents only. Judgement was delivered, on 30th January 2024, in favour of the respondent, on grounds that none of the parties had invoked the termination clauses in the contracts, which ought to have been triggered by the alleged breaches.

3. The appellant was aggrieved, hence the instant appeal, revolving around diverse grounds, set out in the memorandum of appeal, dated 19th May 2025.
4. Directions were taken on 2nd May 2025, for disposal of the appeal, by way of written submissions. The only written submissions that I see, in the record before me, were filed by the appellant. I have read through the said submissions, and noted the arguments made therein.
5. Before I advert to the merits of the appeal, if at all, let me first address a preliminary issue, which the appellant has not dealt with, and which goes into jurisdiction, and that is whether there is a valid appeal before me.
6. The claim at the trial court was lodged in the nature of a small claim in the Small Claims Court, which 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. It is granted, under section 12, jurisdiction to handle a defined class of cases, and the instant one falls within that bracket. Its pecuniary jurisdiction is fixed at Kshs. 1,000,000.00 and below.
7. 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.

8. The claim in Nairobi SCCC No. E3476 of 2023 was filed on 19th May 2023. Judgement was delivered on 30th January 2024.
9. The question then would be, did the trial court have jurisdiction, as at 30th January 2024, to deliver the judgement, or to determine the matter, in view of section 34(1) of the Small Claims Court Act.
10. 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 19th May 2023, and should have expired on or about 19th July 2023. After 19th July 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 30th 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 30th January 2024 is hereby vacated, quashed or set aside.
11. As there was no jurisdiction to handle the matter, on merits, after jurisdiction expired, there should be no occasion for me to consider the merits of what was before that court. I would only do that if the trial court had jurisdiction to determine what was before it. I cannot, therefore, substitute the final decision of the trial court, on the merits of that case, with my own, on merits.
12. The setting aside of the judgement of the trial court would mean that there would be no final decision, and that the suit at the trial court is still alive, for it was not finally determined, for lack of jurisdiction. That suit can still be

continued, and prosecuted to finality. That, however, cannot be undertaken at the Small Claims Court, for the jurisdiction of that court to handle the matter is now spent.

13. There is still light, though, at the end of the tunnel. 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 the limitation period for civil actions is governed by the Limitation of Actions Act, Cap 22, Laws of Kenya. The provisions of the Small Claims Court Act do not purport to change the law on limitation of actions, with respect to claims that can be handled by the Small Claims Court.
14. 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, for it had been properly filed within the appropriate limitation period, according to the relevant limitation of actions law. It would lose viability only for the purposes of the Small Claims Court Act and the Small Claims Court, only on account of the adjudicator lacking jurisdiction to dispose of it. That loss of jurisdiction would not render the suit bad.
15. The suit, although filed under the Small Claims Court Act, would still, for all practical purposes, be a civil suit, within the meaning of the Civil Procedure Act, Cap 21, Laws of Kenya, and the High Court and the Magistrate's Court would still have jurisdiction to entertain it, should the same be placed before those courts. 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. See

Welcome Properties Ltd vs. Jackson Kamau Karuga & 2 others [2001] eKLR (Ringera, J).

16. The suit, at the Small Claims Court, would only be paralysed, under 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, and the general law on civil proceedings, which is governed by the Civil Procedure Act and the Rules made under it.
17. The proper position in law should be that an adjudicator, who loses jurisdiction under section 34 of the Small Claims Court Act, ought not continue with the matter, in the absence of such jurisdiction, but should lay down his tools, in accordance with *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA). He may advise the parties to move the High Court, for transfer of the matter, under section 18 of the Civil Procedure Act, to the Magistrate's Court, for trial and disposal. The High Court also does have jurisdiction over such claims, on account of its original civil jurisdiction, as stated in Article 165(3) of the Constitution. It can handle any civil claim, whatever its value, and its civil jurisdiction is only limited to the extent stated in Article 162(2) and 165(5) of the Constitution. The High Court may cause transfer to itself, of such cases.
18. 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 continuing the futile exercise of hearing the matter. The Small Claims Court

should not be stuck with the suits filed before it, so that the adjudicators have to handle them with or without jurisdiction. That would not be the proper way to go. Once jurisdiction is lost, let the matter be moved to the courts with jurisdiction. There are clear legal pathways of getting there.

19. Equally, the parties themselves ought to be alive to the fact that the adjudicator could lose jurisdiction, on account of various factors, and they 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, without having to wait for prompting from the adjudicator.

20. The impracticality 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 complicated by the filing of a counterclaim, or set-off, or the joinder of a third party. It could also be that the case would require proof by oral evidence, where multiple witnesses would have to be lined up, whose testimonies cannot be received and recorded within the 60 days.

21. There is also the practice of simply forwarding the file to the Deputy Registrar of the High Court, for its placing before the Judge, in instances where the subordinate court is of the opinion that there is no jurisdiction, or there is lack of clarity on the matter; or directions or guidance of some sort, over some issue or other. That avoids the process of having to apply formally, under section 18 of the Civil Procedure Act, and it saves time. It meets the aspirations of Articles 50 and 159 of the Constitution, on fair hearing and access to justice.

22. Adjudicators should consider that approach. 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, they should forward the file to the Deputy Registrar of the High Court, for placing before a Judge, for consideration of having it transferred, from the Small Claims Court to the Magistrate's Court, or even to the High Court itself, for trial and disposal.
23. As 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 supervisory jurisdiction over it. The High Court can, by dint of Article 165(7), and should, call for the record of the proceedings before the Small Claims Court, make such orders or give such directions as may be appropriate, to ensure the fair administration of justice, which could include transferring the matter, in the manner discussed above. Parliament is yet to pass legislation to give effect to Article 165(6)(7) of the Constitution, by way of rules of procedure, however, that should not bar the court from doing justice, in accordance with those provisions.
24. The supervisory jurisdiction of the High Court has never been defined in legislation nor by judicial pronouncement, in terms of its contours, how it should be accessed and exercised. Yet, it would appear to be a critical jurisdiction. Some of the courts that the High Court is meant to supervise, under Article 165(6)(7), like the Magistrate's Court and the Small Claims Court, do not have a titular head, unlike the other courts, that is to say the High Court and courts of equal status, the Court of Appeal and the Supreme Court. It is not clear who leads them, for they have no overall presiding judicial head. They both have substantive

Registrars, but these only provide administrative support, and not judicial leadership.

25. I suppose that the omission to create the office of a titular head for them was deliberate, in view of the supervisory provisions in Article 165(6)(7), and that would then mean that judicial leadership for them has to come from the supervisor, the High Court, and that should call for a more robust interaction, in terms of the processes, between the Magistrate's Court and the Small claims Court, on one hand, and the High Court, on the other. That should require legislation, rules of procedure or practice directions. I presume that the supervisory jurisdiction that Article 165(6)(7) talks about goes beyond that exercised through appeals, review, revision and Judicial Review.

26. By dint of Article 159(1) of the Constitution, the High Court exercises delegated judicial authority, from the people of Kenya, in accordance with the principles set out under the Constitution. Under Article 159(2), the High Court must be guided by principles, which include fair hearing, access to justice, and justice being done to all, in a manner that eschews undue procedural technicalities. It is also required that the purposes and principles of the Constitution must be protected and promoted.

27. A provision, on the jurisdiction of a court or tribunal, is not a matter of technicality of procedure, which ought to be overlooked or explained away, for it goes to the core, substance and essence of that court or tribunal. However, a party who has approached the seat of justice should not be driven from it, without alternative approaches being considered.

28. In the scenario herein, the suit at the trial court is not statute-barred, for it was not filed outside of the limitation

period. The effluxion of time, under section 34 of the Small Claims Court Act, of the jurisdiction of the adjudicator, has not affected its viability or efficacy, as discussed above. Instead of having the suit dismissed, or struck out, on account of that, there is residual and inherent power, in the High Court, 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 way out to the parties.

29. The High Court should exercise the power given to it by section 18 of the Civil Procedure Act and 165(6)(7) of the Constitution. Consequently, I do hereby order that the cause and file, in Nairobi SCCC No. E3476 of 2023, shall be and is hereby transferred from the Small Claims Court, Nairobi, to the Chief Magistrate's Court, at the Milimani Commercial Courts, Nairobi, for hearing and final disposal.

30. The appeal herein is disposed of in those terms. Each party shall bear its own costs. The appeal file herein shall be closed. Orders accordingly.

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

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Ojwang, instructed by Olao & Rai, Advocates for the appellant.

Mr. Ochieng, instructed by Teddy & Company, Advocates for the respondent.

