



**Osodo v Wachira (Civil Appeal E332 of 2024)  
[2025] KEHC 14956 (KLR) (Civ) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14956 (KLR)

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

**CIVIL**

**CIVIL APPEAL E332 OF 2024**

**TW OUYA, J**

**OCTOBER 23, 2025**

**BETWEEN**

**DAISY OKOTH OSODO ..... APPELLANT**

**AND**

**ANTHONY MWANGI WACHIRA ..... RESPONDENT**

*(Being an appeal from the Ruling and Order of the Small Claims Court at Nairobi  
Hon. Caroline K. Ireri delivered on 26th February, 2024 in SCCC/E3607/2023)*

**JUDGMENT**

1. The Appellant approached this Court through a Memorandum of Appeal dated 6<sup>th</sup> March 2024 seeking judgment for the following Orders as against the Respondent:
  - i. The appeal be allowed with costs.
  - ii. The Ruling delivered on 26<sup>th</sup> February 2024 be set aside and the matter be referred to the trial Court for hearing and determination on merit.
  - iii. This Honourable court be pleased to give further or other Orders as it shall deem fit in the eyes of justice.
2. The Appellant's (then Claimant) Statement of Claim dated 5<sup>th</sup> June 2023 filed before the trial Court sought special damages in the amount of Kshs. 271,140/- as against the Respondent arising out of an accident which occurred on 7<sup>th</sup> March 2023 between the Appellant's motor-vehicle registration number KDC 276F and the Respondent's motor-vehicle registration number KCT 298K at the Sarit Center roundabout in Westlands Nairobi County.



3. In response, the Respondent filed a Notice Application dated 31<sup>st</sup> October 2023 seeking to the striking out and/or dismissal of the Claimant's suit on grounds that both parties' insurers were party to a Knock-for-Knock Agreement referring all matters between its members to Arbitration. Relying on the aforesaid Clause, the Respondent challenged the trial Court's jurisdiction to hear and determine the Claimant's cause.
4. The Appellant resisted the Respondent's Application dated 31<sup>st</sup> October 2023 through her Replying Affidavit dated 3<sup>rd</sup> November 2023 on grounds that the Respondent was mischievously seeking to stay of proceedings pending Arbitration pursuant to Section 6(1) of the [Arbitration Act](#), No. 4 of 1995.
5. In its impugned decision dated 26<sup>th</sup> February, 2024, the trial Court ruled in favor of the Respondent, upholding the Knock-for-Knock Agreement executed by both parties' insurance companies. The Appeal is premised on the following eight (8) grounds:
  - i. The trial Court misdirected itself in dismissing the Appellant's suit with costs to the Respondent.
  - ii. The trial Court fell into error and misdirected itself in law by failing to appreciate, or carefully considering at all, that the Respondent's application sought to strike out the Claimant's claim and/or stay the proceedings and refer the matter for Arbitration as per the Knock for Knock Agreement.
  - iii. The trial Court erred in law by failing to read mischief by the Respondent that even though the Respondent's Application dated 31<sup>st</sup> October, 2024 did not invoke Section 6 of the [Arbitration Act](#), the said Application sought to stay the proceedings and refer the matter for Arbitration.
  - iv. The trial Court fell into error and misdirected itself in law by failing to consider the Claimant's submissions that an application for stay of proceedings and referral of the claim to Arbitration should comply with the mandatory provisions of Section 6 of the [Arbitration Act](#).
  - v. The trial Court fell into error by failing to return a finding that the Respondent by filing his notice of Appointment and the Response to the Statement of claim made the Application for stay of proceedings time-barred thus submitted to the jurisdiction of the trial court.
  - vi. The trial Court fell into error and misdirected itself in law and in fact in dismissing the Appellant's claim despite indicating in her ruling that the claim was subject to Arbitration.
  - vii. The trial Court fell into error by failing to return a finding that the Application by the Respondent for dismissal of the suit and stay of execution of proceedings was time-barred, when she acknowledged by her very same ruling that the parties were bound by the terms of the subject Knock for Knock Agreement to settle the dispute through Arbitration.
  - viii. The trial Court fell into error and misdirected itself in law by dismissing the Appellant's case without considering the evidence on record.
6. The Appeal was admitted under Section 79G of the [Civil Procedure Act](#) with directions that it be dispensed by way of written submissions. The Appellant filed written submissions dated 15<sup>th</sup> July 2024 through his Counsel on record and identified two issues for resolution by the court to be: Whether the Respondent met the threshold for stay of proceedings and reference to arbitration and Who shall bear the cost of this application.



7. Relying on the holding of the Court in *Meshack Kibunja & 3 Others V Kirubi Kamau & 5 others, Central Highlands Tea Co. Ltd (Interested Party)* (2021) eKLR, the Appellant submitted that if the Respondent intended to invoke the Arbitration Clause, he ought to have filed an application for stay of proceedings no later than the time he entered appearance. That by filing his Defence and pre-trial documents, the Respondent submitted himself to the jurisdiction of the trial Court and thereby lost the right to refer the matter to Arbitration. Further guidance was sought in the reasoning of the Court in *Corporate Insurance Company v Loise Wanjiku Wachira* [1996] eKLR to buttress the preceding argument.
8. On the issue of costs, reliance was placed in the holding of the Court in *Hussein Janmohamed & Sons Vs Twentesche Overseas Trading Co. Ltd* [1967] EA 287 in support of the proposition that the Appellant is entitled to costs at the trial Court and in respect of the appeal.
9. The Respondent filed written submissions dated 19<sup>th</sup> July 2024 through his Counsel and isolated three (3) issues for determination by the Court, as follows:
  - i. Whether the suit by the Appellant can be sustained at a subordinate Court.
  - ii. Whether the notice for referral of the matter for determination in accordance with the Knock for Knock Agreement was served within time.
  - iii. Whether there was a dispute arising from the interpretation and implementation of the provisions of the Knock for Knock Agreement.
10. Relying on Clause 9 of the Knock for Knock Agreement, it was submitted that the Appellant's insurer having commenced the primary suit under the doctrine of subrogation, was bound by the aforesaid Agreement to resolve its dispute under Clause 9 of the said Agreement, not otherwise. Reliance was placed on the holding of the Court in *Kangethe & Company Advocates V Kenya AirPorts Authority & 2 Others* [2020] eKLR; *National Bank of Kenya Ltd V Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR; *County Government of Kirinyaga V African Banking V Corporation Ltd* [2020] eKLR, and, *Kenneth Kinoti & 5 others Vs Dinara Developers Limited & Others* [2020] eKLR to buttress the argument that the trial Court did not misdirect itself in downing its tools for lack of jurisdiction.
11. The Respondent further argued that the trial Court's jurisdiction to entertain the Appellant's suit was ousted on 1<sup>st</sup> May, 2007 when the Knock for Knock Agreement entered into force.
12. That the Claim before the trial Court although brought in the name of the Appellant was sustained by the Appellant's insurer under the doctrine of subrogation.
13. The Court has carefully perused the record of Appeal, the Respondent's response thereto, parties' rival submissions in respect of the appeal, together with the entire record of the proceedings at the trial Court. The following two issues were identified as commend themselves for resolution:
  - i. Whether the trial Court misdirected itself by holding that it lacked jurisdiction to entertain the Appellant's Claim?
  - ii. Whether the appeal is merited.
14. The Appellant's main argument in the appeal is that the trial Court misdirecting itself by declining to exercise jurisdiction over the cause before on the basis of the existence of the Knock for Knock Agreement dated 1<sup>st</sup> May, 2007 execution between the Appellant's insurer and the Respondent's insurer.



15. Relying on the doctrine of “subrogation”, the Respondent upheld the trial Court’s holding that the terms of the Knock for Knock Agreement dated 1<sup>st</sup> May, 2007 bound the parties before it to submit any dispute as between the two entities to arbitration as per clause 9 therein.
16. In *Octagon Private Investigation Security Services v Lion of Kenya Insurance Co.* [1994] KECA 105 (KLR), the Court of Appeal understood the meaning and import of the right of subrogation in insurance contracts as hereunder:

“The right of subrogation in a contract of insurance cannot create privity of contract between the insurance company and third parties. All that it gives an insurance company is the right to take over the rights and privileges of the insured under an insurance policy but if the insurance company wishes to exercise against third parties the rights and privileges so taken over from the insured, then it (the insurance company) can only do so on behalf of and in the name of the insured.”
17. The foregoing position was reiterated by the Court in *Kenya Power & Lighting Company Limited versus Julius Wambale & Another* [2019] eKLR, as follows:

“The parameters within which the principle of subrogation applies are now well settled. The doctrine applies where there is a contract of insurance and following crystallization of the risk insured, the insurer had compensated its insured for financial loss occasioned thereby, usually by a third party. Under this doctrine, the insurer is in law entitled to step into the shoes of the insured and enjoy all the rights, privileges and remedies accruing to the insured including the right to seek indemnity from a third party. The action must however be instituted in the name of the insured with his consent and must relate to the subject of the contract insurance.” (Emphasis added).”
18. In the subject appeal, the Appellant subscribed to the position that the Respondent’s application seeking stay of the proceedings ought to have been dismissed, and the trial Court ought not have referred the matter to Arbitration because the Respondent entered appearance in the cause before it and filed his Response to the Appellant’s Statement of Claim. He argued and submitted that the Respondent consented to the trial Court’s jurisdiction when he entered appearance in the Appellant’s suit.
19. Having carefully perused the entire record of the proceedings before the trial Court, this Court is persuaded that the Appellant’s claim giving rise to the instant appeal was brought pursuant to the right of subrogation as evidenced by the Witness Statement and Replying Affidavit filed by the Appellant’s insurer on behalf of the Appellant, appearing on pages 101 and 121 to 125 of the Record of Appeal.
20. As such, the Courts holds and finds that both parties insurers’ having executed the Knock for Knock Agreement dated 1<sup>st</sup> May, 2007, were bound to resolve any disputes between themselves through arbitration pursuant to the terms of clause 9 of the same Agreement.
21. Notwithstanding the foregoing, the Court is alive to the fact that the Respondent entered appearance at the trial Court. Furthermore, the Respondent filed a List of Witness and List of Documents dated 23<sup>rd</sup> October 2023 in response to the Appellant’s suit. In the event the Court is persuaded that by defending the Appellant’s suit, the Respondent submitted himself to the trial Court jurisdiction; thereby, waiving his right to have the Appellant’s claim resolved through arbitration as set out under clause 9 of the Knock for Knock Agreement dated 1<sup>st</sup> May, 2007.



22. Accordingly, the Court holds and finds the trial Court's holding declining jurisdiction over the Appellant's suit to be unmerited. In the premises, the Court hereby allows the appeal and substitutes the impugned decision with an Order directing the Appellant to file his suit afresh and same to be heard by a Magistrate other than the Hon. Caroline K. Ireri who entered the decision giving rise to the appeal.
23. Being the successful party in the appeal, the Appellant is entitled to and shall have the costs of the appeal and also at the trial Court.
24. Final orders: Appeal succeeds with costs to the Appellant.
25. Thirty (30) days stay of execution orders to apply.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**HON. T. W. OUYA**

**JUDGE.**

