



REPUBLIC OF KENYA



**KENYA LAW**  
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**Circuit Cleaning Services Limited v Wanyama (Civil Appeal E180 of 2023)  
[2025] KEHC 16179 (KLR) (Civ) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16179 (KLR)

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

**CIVIL**

**CIVIL APPEAL E180 OF 2023**

**TW OUYA, J**

**NOVEMBER 6, 2025**

**BETWEEN**

**CIRCUIT CLEANING SERVICES LIMITED ..... APPELLANT**

**AND**

**ERIC WANYAMA ..... RESPONDENT**

*(An appeal against the Ruling and order of honourable Velma Mochache, Adjudicator, RM  
in Milimani Small Claims Court Civil case no. 3852 of 2022 delivered on 7th February 2023)*

**JUDGMENT**

1. The instant appeal emanates from an accident claim filed vide a Statement of Claim dated 2<sup>nd</sup> December 2022. The Appellant claimed Kshs. 920,200.00 from the Respondent as compensation for loss or damage to property which occurred on 7<sup>th</sup> December 2019 following a road traffic accident which resulted in material damage to motor vehicle registration no. KCH 118K.
2. The claim was based on the fact that an accident occurred involving the Appellant's insured motor registration number KCH 118K and KCJ 111L. It was alleged that the driver of motor vehicle registration number KCJ 111L drove recklessly thus causing extensive damage onto the Appellant's motor vehicle registration number KCH 118K. The police abstract revealed that the driver of KCJ 111L was to blame for the accident. As a result, Kenya Orient Insurance Company indemnified the Appellant for the loss and other incidental costs amounting to Kshs. 920,200.00 comprising towing charges and repair charges. Therefore, the claim was filed on behalf of Kenya Orient under the doctrine of subrogation.
3. The Respondent opposed the claim through its response to statement of claim dated 30<sup>th</sup> December 2022 where it denied the claim for damages as the suit was incompetent for failing to disclose the material particulars. The Respondent therefore prayed that the Claim be dismissed with costs.



4. The matter was listed for hearing on 7<sup>th</sup> March 2023 but the Appellant was not ready to proceed on the basis that he had not informed his witness about the hearing. The court proceeded to schedule the hearing for 10.45 am on the basis that the reason advanced by the Appellant was not sufficient. When the Appellant was unable to avail the witness at the scheduled time, the court proceeded to order the withdrawal of the suit on the basis that the court is bound by strict timelines. Noting that the 60 days period lapsed on 2<sup>nd</sup> February 2022 the case having been instituted on 2<sup>nd</sup> December 2021, the court ordered that the claim be withdrawn as the reasons advanced by the Appellant did not fall within Section 34 (3) and (4) of the *Small Claims Court Act*. The court further noted that although the Respondent was ready with his witness before court but the Appellant was still out to delay the matter.
5. Aggrieved and dissatisfied with the ruling of the court, the Appellant lodged the instant appeal vide a Memorandum of appeal dated 8<sup>th</sup> February 2023 on the following grounds:
  - i. The learned trial magistrate erred in law and fact in wrongly issuing a withdrawal order, on its own motion, contrary to the provision of Section 36 of the *Small Claims Court Act*;
  - ii. The learned magistrate erred and misdirected herself as to the law applicable in withdrawal of suit and or that her decision to withdraw the suit with costs, reveals a misapprehension of the law;
  - iii. The order subject of the appeal, poses a danger of miscarriage of justice since the Appellant will not only be deprived of fairness and justice but also a substantial amount of Kshs. 920,200.00 which is subject to the claim thereon.
  - iv. The learned magistrate also failed to take into account the principles of justice enunciated in Article 159 (2) in *the Constitution* of Kenya 2010 and specifically Article 159 (2) (d) of *the Constitution* which provides that justice shall be administered without undue regard to procedural technicalities.
  - v. The learned magistrate failed to take into account the principles of justice and fairness and the overriding objectives under the *Civil Procedure Act* and specifically Order 50 Rule 6 of the Civil Procedure Rules which allows a judicial officer to enlarge time where such time has expired and it is in the interest of justice that such time be enlarged.
6. The Appellant therefore prayed that the order of the trial court dated 7<sup>th</sup> February 2023 be set aside and Nairobi SCCMCC No. E3852 of 2022 be readmitted for full hearing.
7. By order of the court the appeal was disposed through written submissions.
8. The appellant's submitted that the magistrate erred in law and fact in issuance of the withdrawal order on its own motion as only the Appellant can, by law, withdraw a suit pursuant to Order 25 of the Civil Procedure Rules and Section 35 of the *Small Claims Court Act*. Therefore, the trial court's decision to withdraw the suit was founded in an incorrect provision of law and that the decision revealed a misapprehension of the law. the order for withdrawal was not one of the orders contemplated under Section 35 of the *Small Claims Court Act*.
9. Flowing from the above, the appellant invited this honourable court to exercise its discretion and justifiably interfere with the withdrawal order issued as it was founded on wrong principles of law. Reliance was placed on the case of Mbogo & Another vs Shah [1968] EA 93.
10. It was also submitted that the Respondent would not suffer any prejudice if the appeal is allowed as prayed. It was in the interest of justice that the appeal be allowed so that the Appellant presents his



evidence before the trial court and to exhaustively canvass the issues in dispute and the court to render a just and conclusive determination.

11. The Appellant also submitted that justice should not be unreasonably restricted by procedural technicalities as provided under Article 159 (2) (d) and (e) of *the Constitution*. Reliance was also placed on the Overriding Objective under Section 1A & 3A of the Civil Procedure Rules to urge that Nairobi SCCC E3852 of 2023 be readmitted and determined on merit.

12. The Respondent's submissions are not in file.

13. Section 78(2) of the *Civil Procedure Act* grants the appellate court the same powers and nearly the same duties as are conferred and imposed by the Act on courts of original jurisdiction in respect of suits instituted herein.

14. Being a first appeal, the court relies on a number of Principles as set out in *Selle and another vs. Associated Motor Boat Company Ltd & others* (1968) 1 EA 123:

“This court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”

15. I have considered the pleadings submissions and the record of appeal. The issue that commends itself for determination is whether the appeal is merited.

16. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the *Small Claims Court Act* provides for the jurisdiction of this court in determining appeals from the Small Claims Court. It provides thus:

- “1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
2. An appeal from any decision or order referred to in subsection (1) shall be final.”

17. It is clear from the aforementioned provision that jurisdiction of this Court from the Small Claims Court will only be on matters of law and not factual issues. In this appeal, the question for determination by this court is whether the trial court, being a Small Claims Court, had jurisdiction to withdraw the suit on its own motion. The question of jurisdiction is obviously one of law, in respect of which this court has jurisdiction.

18. It is trite law that jurisdiction flows from either a Statute or *the Constitution*, and no court assumes jurisdiction on its own. In the case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) eKLR, the Court held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction... Where a court takes it upon itself to



exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

19. The Small Claims Court has jurisdiction over all civil suits where the amount claimed is not more than one million shillings and does not fall among those specifically excluded under Section 13(5) of the Act. The suit herein therefore fell within the jurisdiction of the Small Claims Court.

20. Section 36 of the [Small Claims Court Act](#) outlines the orders that the court might make. It provides thus:

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(1) The Court may, in relation to any claim within its jurisdiction, make one or more of the following orders—

- a. order to pay money either in lump sum or by instalments;
- b. an order for the restitution of any movable property;
- c. an order for the recovery of any sum in relation to performance of a contract;
- d. an order dismissing the claim to which the proceedings relate; or
- e. any such consequential or ancillary orders as may be necessary including, any stipulations or conditions for the enforcement of its orders or directions.

.....

4... Nothing in this section precludes the Court from making any order or giving any direction it thinks necessary for the achievement of the purposes of this Act.

21. I have noted that the trial court made the order to withdraw the suit on the basis that the court is bound by strict timelines. Indeed Section 34 of the Act provides that:

All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.

22. The key issues that emanate from the above provision is that Small Claims Courts are premised on the expeditious disposal of cases. Towards this end, the adjudicator is required to undertake steps or develop a framework that would facilitate the expeditious disposal of cases.

23. I am aware of the divergent views of the High Court on the jurisdictional time limits of the Small Claims Court. In *Biosystems Consultants v Nyali Links Arcade Limited Mombasa Civil Appeal No E195 of 2023*, Justice Magare in appreciating this tension remarked that:

“... A purposive interpretation should be given to statutes so as to reveal the intention of the statute. The purpose of the [Small Claims Court Act](#) was to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result was that balancing the two may result at times to overshooting the 60 days. The 60 days did not have penal consequences for good reason. They were aspirational. That was part of having access to justice over amounts that needed not be in the normal system. Allowing the application would open floodgates that would eventually defeat the purpose of the Act.”



24. In *Wekesa v Karumbu* (Civil Appeal E682 of 2022) [2024] KEHC 8283 (KLR), JN Njagi, J. opined thus:

“The court has to look into what the intention of the legislature was when it passed the section. I do not think that the legislature intended to mean that the court ceased to exercise jurisdiction over a matter filed in that court which was not finalized within 60 days. If that were the case, it would defeat the purpose of the whole Act. I thereby dismiss the argument that the judgment of the Adjudicator in this matter was a nullity.”

25. I hold a similar position to the views taken by the courts above. That the purpose of the *Small Claims Court Act* was to facilitate expeditious disposal of cases and not to bar litigants from the seat of justice.

26. I am also cognizant of the Court of Appeal decision in *Nicholas Kiptoo Arap Korir Salt v IEBC & 6 Others* [2013] eKLR where Kiage J.A stated;

“... I am not in the least persuaded that Article 159 of *the Constitution* and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned ....”

27. Upon perusing the trial court record, I note that the matter was first scheduled for hearing on 7th March 2023. The Appellant’s counsel notified the court that he was unable to proceed because he had mistakenly failed to notify his witness of the court session. As a result, he sought for an adjournment, but the same was denied. The court subsequently proceeded to withdraw the suit.

28. It is evident that the Appellant’s counsel admitted to have failed in informing/apprising the witness of the need to attend court and testify as required. It is an established principle of law that the mistakes of a counsel ought not be visited upon a client.

29. In the case of *Tana And Athi Rivers Development Authority v Jeremiah Kimigho Mwakio & 3 Others* [2015] eKLR, the Court of Appeal offered insight on the effect of mistakes by Counsel and stated thus:

“From past decisions of this Court, it is without doubt that courts will readily excuse a mistake of Counsel if it affords a justiciable, expeditious and holistic disposal of a matter. However, it is to be noted that the exercise of such discretion is by no means automatic. While acknowledging that mistake of counsel should not be visited on a client, it should be remembered that Counsel’s duty is not limited to his client; he has a corresponding duty to the court in which he practices and even to the other side. .... Under this duty, Counsel is unequivocally obliged to exercise candor and not aid a litigant in subversion of justice. Even though the determination of whether or not Counsel has failed in his obligation is



dependent on the circumstances of a case, as a custodian of justice, the Court must always stay alive to the interests of both parties. This is of paramount importance.”

30. In as much as the advocate had a duty of candor to the court, the court ought not to have visited the mistake of the counsel upon the client. The appellant contends that his application for adjournment was not only denied but that the adjudicator went ahead to order that the suit be withdrawn.
31. Withdrawal of suits at the Small Claims court is governed by Section 35 of the Act which provides that:
  1. A claimant or joint claimant may, at any time before final judgment withdraw the claim.
32. From the above provision, it is evident that only a claimant or a joint claimant may withdraw a claim at any time before the final judgment. The adjudicator, cannot on its own motion withdraw any suit. This is unlike the High Court, which is empowered by Section 18 (1) (b) of the *Civil Procedure Act*, to withdraw on its motion any suit or any proceeding before a subordinate court and transfer it. The Small Claim Court or any other subordinate court is not vested with such power to withdraw a suit on its own motion.
33. It is my finding that the adjudicator, in ordering the withdrawal of the suit on its motion, acted without jurisdiction.
34. The upshot of the matter is that the appeal succeeds and the ruling of the trial adjudicator withdrawing the matter is set aside.
35. I hereby order that the trial file be placed before the Deputy Registrar and be re-assigned to another adjudicator other than Hon. Velma Mochache to expeditiously handle the case within 30 days.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

