

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CIVIL APPEAL NO. E088 OF 2024**

**FREDRICK KIPSANG KIRUI.....**  
**.....APPELLANT**

**VERSUS**

**SAMUEL ODUOR HADULO.....1<sup>ST</sup>**  
**RESPONDENT**

**WILFRED KONOSI.....2<sup>ND</sup>**  
**RESPONDENT**

*(Being an appeal from the Ruling of Small Claims Court at Nakuru Honourable E.M Oboge, Resident Magistrate/Adjudicator in Nakuru SCC No. E558 of 2023, delivered on 17<sup>th</sup> April 2024)*

**JUDGMENT**

1. The appellant was the claimant in the lower court and vide the statement of claim dated 22<sup>nd</sup> September 2023 sued the respondent claiming general damages for pain and suffering, special damages of kshs. 12,230/= and costs of the suit plus interest at court rates.
2. In his statement of claim, the appellant stated that on or about 30<sup>th</sup> April 2023, he was lawfully standing off the road on the right-side facing Ravine direction along Nakuru-Ravine road. At around Rubis petrol station the respondents authorized driver, agent, servant and/or employee so negligently, and/or carelessly drove,

managed and/or controlled motor vehicle registration number KCS 175 A in such a manner that it lost control and veered off the road knocking him before falling into a ditch and as a result he sustained serious injuries.

3. The respondents filed responses to the statement of claim together with the preliminary objections dated 29<sup>th</sup> February 2024 and 9<sup>th</sup> March 2023. The trial court in its ruling delivered on 17<sup>th</sup> April 2024 found that the preliminary objections had merit and the same were allowed with costs.
4. The appellant being aggrieved by the whole ruling lodged this appeal on 17<sup>th</sup> April 2024 setting out the following grounds;
  - i. That the Leamed Trial Magistrate/Adjudicator erred in law and in fact in striking out the Appellant's claim for want of jurisdiction yet the Small Claims Court Act expressly provides that the aforesaid Court has jurisdiction to hear and determine claims for compensation for personal injuries.***
  - ii. That the Leamed Trial Magistrate/Adjudicator erred in law and in fact in failing to find that the doctrine of stare decisis does not override the express statutory provisions of the law.***
  - iii. That the Learned Trial Magistrate/Adjudicator erred in law and in fact in failing to find that the Honourable Judge in Civil Appeal No. 223 of 2022, Jerusha Aumma Ogwari Vs Ibrahim Aisha Hersi alias Hersi Ibrahim did not nullify or***

***declare section 12(1)(d) of the Small Claims Court Act unconstitutional hence the court therein had jurisdiction to hear and determine the Appellant's claim.***

5. The appellant urged the court to allow the appeal, set aside the ruling by the trial court and the claim be reinstated, heard and determined on merit. He also prayed for costs and any other relief deemed fit by this court.
6. The Appeal was canvassed through written submissions.

**Appellant's submissions**

7. These were filed by Fransisca & Chelangat Company Advocates and are dated 9<sup>th</sup> September, 2025. Counsel identified one issue for determination which is whether the small court has the jurisdiction to hear and determine claims for compensation for personal injuries. Counsel submitted that the claim by the appellant was for compensation for personal injuries arising from a road traffic accident. That Section 12(1)(d) of the Small Claims Court Act expressly provides that the small claims court has jurisdiction to hear and determine such matters. Thus, the said court has jurisdiction to hear and determine the appellant's claim.
8. The court's attention was drawn to the decision in **Irungu v Karanja (Civil Appeal E037 OF 2024) [2024] KEHC 8162 (KLR)** where the court held as follows:  
***"In interpreting the provision of the Small Claims Court Act, it is prudent to interrogate why the court was established. Some of the main reasons include***

***the enhancement of ease of doing business, to reduce backlog of cases by having disputes resolved through simple, inexpensive and expeditious procedures thereby enhancing access to justice. Section 3 of the Act provides that the court in exercise of its jurisdiction shall be guided by the principles of judicial authority prescribed under Article 159(2) of the Constitution. The provision further stipulates that the courts shall adopt procedures which shall ensure the timely disposal of all proceedings before the court using the least expensive methods, equal opportunities to access judicial services under the Act, fairness of process and simplicity of procedure. Therefore, it is evident that in establishing the court, the main aim was to expeditiously dispose of cases and provide a platform for litigants to access justice. It is therefore my considered view that by interpreting Section 12(1)(d) of the Act to exclude compensation for personal Injuries in road traffic accidents would have the effect of defeating access to justice. I therefore find that the Small Claims Court is possessed of the jurisdiction to hear and determine cases for compensation for injuries provided that the compensation shall be within its pecuniary jurisdiction.”***

9. He urged the court to set aside the ruling by the trial magistrate/adjudicator and the appellant's claim be reinstated. He also prays for costs of the appeal.

## **Respondent's submissions**

10. These were filed by G & G Advocates LLP and are dated 8<sup>th</sup> September, 2025. Counsel gave a brief background of the case and identified one issue for determination which is whether the appeal herein is merited.
11. Counsel submitted that the learned trial magistrate rightfully applied the doctrine of stare decisis and rightly held that it was bound by the decision of the superior court on the issue of the jurisdiction of the small claims court to handle personal injuries claims. He placed reliance on the decision in **Ogwari v Hersi (Civil Appeal 223 of 2022) [2023] KEHC 2011 (KLR) (3 July 2023) (Judgment) eKLR** where the court held as follows;  
**"The claim to that was being dealt with clearly beyond scope of the small claims court. I therefore hold that such matters involving negligence and injuries arising from road traffic accidents should be filed in Chief Magistrate court."** (Emphasis mine).
12. Counsel further submitted that as far as the founding statute expressly states, the small claims court has pecuniary jurisdiction of not more than kshs. 1,000,000/= . Thus, general damages for personal injury claims arising from traffic accident are invariably unquantified and can therefore not lie before the said court. He placed reliance on the decision in **Nyamabati Nyaswabu Erick v Toyota Kenya Ltd & 2 others [2019] eKLR** where the court held as follows;

***“General damages are damages at large and the court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same.” (Emphasis ours)***

13. The courts’ attention was drawn to the decisions in **Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 others Supreme Court Petition No. 4 of 2012, [2013] eKLR, Akinyi v Mshila (Civil Appeal E098 of 2024) [2025] KEHC 2659 (KLR) (6 March 2025) (Judgment) eKLR** which cited with approval the decision in **Gichovi v Kilem (Civil Appeal E020 of 2024) [2024] KEHC 10859 (KLR)(18 September 2024) (Judgment)eKLR**.
14. He concluded by urging the court to dismiss the appeal with costs to the 2<sup>nd</sup> respondent.

**Analysis and determination**

15. I have considered the record of appeal, grounds of appeal, the submissions by both parties, and the cited authorities. 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.”***

16. It is clear from the aforementioned provision that the jurisdiction of this court in respect to claims from the small claims court will only be on matters of law and not factual issues. In this appeal, the question for determination is whether the small claims court had jurisdiction to hear and determine the appellant's claim arising from personal injuries. The question of jurisdiction is obviously one of law, in respect of which this court has jurisdiction.

17. 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.”***

18. The jurisdiction of the small claims court is anchored in Section 12 of the Small Claims Court Act. It provides as follows; -

***“1. Subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to—***

***a. a contract for sale and supply of goods or services;***

***b. a contract relating to money held and received;***

***c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;***

***d. compensation for personal injuries; and***

***e. set-off and counterclaim under any contract.***

***2. Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law.***

***3. The pecuniary jurisdiction of the court shall be limited to one million shillings.***

***4. Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the court as the Chief Justice thinks fit.”***

19. In view of the above provisions of the law, it is clear that the small claims court has jurisdiction to determine matters relating to compensation for personal injuries and set off and counter claims under any contract. The pecuniary jurisdiction is fixed at one million shillings.

20. Further, Section 13 (5) of the Small Claims Act provides for the matters which the small claims court has no jurisdiction to entertain. It provides as follows;

***“A claim shall not be brought before the court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.”.***

21. The appellant through his counsel argued that the appellant’s claim was for compensation for personal injury arising from a road traffic accident and that Section 12(1) (d) of the Small Claims Court Act expressly provides that the Small Claims Court has jurisdiction to hear and determine such matters. The respondent on the other hand argued in the negative and urged the court to uphold the trial court’s decision.

22. The trial magistrate/adjudicator in his ruling observed as follows;

***“7. I am aware of the Mombasa High Court decision that stripped the Small Claims Court of the jurisdiction to entertain matters contemplated in the statement of claim, to be specific personal injury claims from road accidents. According to learned Justice Kizito Magare, the draft person of the small claims court Act intended the matters and or disputes arising thereunder to exclude injury claims arising from road accidents.***

***8. He reasoned that the said claims are strictly governed by the Insurance Act cap 405 which has***

***specific timelines not compatible with the 60 days for determining disputes in this court.***

***12. In the Mombasa High Court decision, the court stated that the term personal injury claim as provided in the Small Claims Act section 12 relates to other bodily injuries other than those emanating from accidents such as assaults and allied injuries.***

***13. Without an amendment to the Small Claims Act especially on the meaning of personal injuries, the meaning given by the Mombasa High Court remains as such. This court is bound by judicial precedence so that an attempt to dissent with the good judge will amount to sheer insubordination.”***

23. Based on the said findings in the decision in **Ogwari v Hersi (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR) (3 July 2023) (Judgment)**, the trial magistrate/adjudicator allowed with costs the preliminary objections raised by the respondents urging that the court lacked jurisdiction to hear and determine the appellant’s claim for personal injuries.

24. In **Irungu v Karanja (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR) (4 July 2024) (Judgment)**, Muchemi J stated as follows;

***“28. That notwithstanding, the said section has not been declared unconstitutional by any superior court. In interpreting the provision of the Small Claims Court Act, it is prudent to interrogate why the court was established. Some of the main reasons include the enhancement of ease of doing***

***business, to reduce backlog of cases by having disputes resolved through simple, inexpensive and expeditious procedures thereby enhancing access to justice. Section 3 of the Act provides for that the court in exercise its jurisdiction shall be guided by the principles of judicial authority prescribed under Article 159(2) of the Constitution. The provision further stipulates that the courts shall adopt procedures which shall ensure the timely disposal of all proceedings before the court using the least expensive methods, equal opportunities to access judicial services under the Act, fairness of process and simplicity of procedure. Therefore, it is evident that in establishing the court, the main aim was to expeditiously dispose of cases and provide a platform for litigants to access justice. It is therefore my considered view that by interpreting Section 12(1)(d) of the Act to exclude compensation for personal injuries in road traffic accidents would have the effect of defeating access to justice. I therefore find that the Small Claims Court is possessed of the jurisdiction to hear and determine cases for compensation for injuries provided that the compensation shall be within its pecuniary jurisdiction.” (Emphasis mine)***

25. Similarly, in **Gichovi v Kilem (Civil Appeal E020 of 2024) [2024] KEHC 10859 (KLR) (18 September 2024) (Judgment)**, Njuguna J stated as follows:

***“I do not associate myself with the arguments by the court in the case of Ogwari v Hersi (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR) where it reasoned that the personal injury claims only relate to assault. Further, the decision of the court in that matter is not binding to this court since both are courts of concurrent jurisdiction. Being a claim in negligence resulting in personal injury, the adjudicator has the jurisdiction to consider the evidence placed before her and assess compensation for the injuries. In the case of Irungu v Karanja (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR), the court was faced with a similar appeal and it declined to be guided by the case of Ogwari v. Hersi (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR), being a court of concurrent jurisdiction as itself. The court found that the Small Claims Court bore the relevant jurisdiction under section 12(1)(d) of the Small Claims Court Act.”***

26. The appellant’s claim before the trial court which is a Small Claims Court, relates to personal injury and is not among the exclusions under Section 13 (5) of the Act. To the contrary, Section 12(1) (d) of the Act clearly provides that the said court has jurisdiction over personal injury claims. A personal injury remains a personal injury whether caused by assault or road accident. What to me is key is the extent of the injury as that is what determines the amount of compensation. I concur with the decisions in **Irungu v Karanja** (supra) and **Gichovi v Kilem**

(supra) that 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. Further, the decision in **Ogwari v Hersi** (supra) by Magare J which the learned magistrate/adjudicator relied on is not binding on this court since both are courts of concurrent jurisdiction.

27. In the circumstances, I find and hold that the trial court indeed had the jurisdiction to determine the appellant's claim pursuant to section 12(1)(d) of the Small Claims Court Act.

28. Accordingly, I allow the appeal with costs to the appellant. The order striking out the appellant's claim is set aside. The claim is hereby reinstated and this file returned to the trial court for hearing on merit.

29. Orders accordingly.

**Delivered virtually, dated and signed this 13<sup>th</sup> day of November, 2025 in open court at Nakuru.**

**H. I. ONG'UDI**  
**JUDGE**