



**Nyachae v Moraa (Civil Appeal E089 of 2024)
[2025] KEHC 16126 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16126 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E089 OF 2024
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

ENOCK MOKAYA NYACHAE APPELLANT

AND

REBECCA MORAA RESPONDENT

(Being an appeal from the judgment and decree of the Small Claims Court at Kisii (W.C. Keter, Adjudicator) delivered on 29th April 2024 in Kisii SCCC No. E060 of 2024)

JUDGMENT

1. In her statement of claim dated 12th February 2024, the respondent averred that the appellant was the registered, equitable or beneficial owner of motor vehicle registration number KCP 480V Toyota S. Wagon. On 15th November 2021, the respondent was a pillion passenger aboard a motorcycle along the Kisii-Keroka road. It was here that the respondent's driver drove the suit vehicle so negligently that it lost control, veered off the road and hit the motorcycle.
2. Resultantly, the respondent sustained whiplash neck injuries, chest contusion, fracture of the right clavicle, abdominal and pelvic contusion and abrasions on the right knee. It is for those reasons that the respondent sought general damages, special damages of Kshs. 7,050.00, costs of the suit and interest. By judgment of the trial court dated 29th April 2014, the appellant was found 100% liable for the accident. The court awarded general damages of Kshs. 350,000.00 and special damages of Kshs. 7,050.00. the respondent was further awarded costs of the claim together with interests.
3. The appellant is dissatisfied with those findings. Vide his memorandum of appeal dated 27th May 2024, the appellant raised nine grounds impugning the findings of the trial court. In summary, the following grounds were raised: that the court lacked jurisdiction to determine the matter; by dint of time, the court's jurisdiction was ousted since the suit was not determined within 60 days; the finding on liability was in error since the trial court relied on extraneous issues and failed to consider the evidence adduced



- by the appellant; and the award of general damages failed to consider the appellant's submissions as well as the principles applicable in the award of general damages that were inordinately high.
4. For the above reasons, the appellant prayed that the appeal be allowed, the judgment of the trial court dated 29th April 2024 be set aside, the quantum of general damages be reviewed, costs of this appeal and costs of the suit at trial.
 5. The appeal was heard on the basis of the parties diametrically opposed written submissions. The appellant's written submissions dated 3rd September 2025 abridged the facts giving rise to the dispute to submit that section 34 (1) of the *Small Claims Court Act* was violated. He computed that since the statement of claim was filed on 26th February 2024, it ought to have been concluded by 25th April 2024. However, judgment was delivered four days later. The appellant argued that the provision was couched in mandatory terms. Since no extension was available in that provision, he submitted that upon the expiry of the 60 days, the court lacked jurisdiction and the determination was a nullity. Several decisions were cited in support of that proposition.
 6. On whether the trial court was vested with jurisdiction to hear and determine a claim on negligence and personal injuries arising from a road traffic accident, the appellant pointed out that it had raised this issue by way of preliminary objection dated 11th March 2024. The trial court delivered a ruling on 23rd March 2024 holding that it was vested with the requisite jurisdiction. That decision was challenged in the memorandum of appeal before this court. While acknowledging the dictates of section 12 (1) of the *Small Claims Court Act*, the appellant argued that personal injury claims are not quantifiable claims and thus do not fall under the jurisdiction of the Small Claims Courts.
 7. Finally, the appellant observed that from the proceedings, the matter was first heard on 15th April 2025 where the appellant applied to have the respondent undergo a second medical exam on 7th May 2024. However, the court noted that its jurisdiction was restricted to limited timelines urging the appellant to conduct the same before 22nd April 2025. The respondent's case was heard. On 24th April 2024, the appellant informed the court that it was unable to secure the services of the insurance doctor. Due to the strict time limit, no adjournment was granted. That the appellant proceeded with the suit in violation of section 10 (3A) of the *Insurance (Motor vehicles Third Party Risks) Act*. In its view, because of this, the trial court was not the proper forum to determine the dispute. He prayed that his appeal be allowed.
 8. The respondent opposed the appeal. She filed her written submissions dated 4th September 2025 arguing against all the grounds espoused in the appellant's memorandum of appeal. Firstly, she submitted that the allegation that the trial lacked jurisdiction was without foundational basis and unmerited. She explained that the dispute arose out of a tort arising from the negligence acts of the appellant. In addition, the trial court awarded a sum that fell below the statutory threshold of below Kshs. 1,000,000.00. She added that the trial court could not be faulted for finding that it was vested with jurisdiction when determining the appellant's preliminary objection. That argument was baseless, she submitted, urging this court to dismiss it.
 9. On the ground that the decision of the trial court was a nullity on account of section 34 (1) of the *Small Claims Court Act*, the respondent cited several decisions to submit that the appellant failed to demonstrate the prejudice he suffered resulting from the dispute being determined after 60 days.
 10. Turning to the merits of the appeal, the respondent submitted that section 10 (3A) of the *Insurance (Motor Vehicles Third Party Risks) Act* was not to be abused by a litigant. Explaining why, the respondent reproduced the proceedings at trial to submit that it was the appellant who failed to book her for a second medical examination as per the directions of the trial court. She submitted that orders of the court are not made in vain. The appellant was thus the author of his own misfortune for failing



to comply with those orders. He could not thus come and complain to this court that the said section was not complied with.

11. Still on the above provision of statute, the respondent submitted that the documents she adduced were proper and the appellant failed to establish that they were obtained by means of fraud. The medical evidence that she adduced, she continued, was bereft of any fault. She thus submitted that they were properly considered by the trial court. She prayed that the appeal be dismissed with costs.
12. I have considered the submissions, examined the record and analyzed the law. Section 38 (1) of the Small Claims Courts Act limits the jurisdiction of this court to only determine an appeal on matters of law.
13. The appellant impugned the jurisdiction of the trial court to determine the dispute. He cited that he challenged the jurisdiction of the court by way of a preliminary objection dated 11th March 2024. The trial court dismissed the same on 23rd March 2024. It is crucial to point out that a party dissatisfied with a decision of a subordinate court must lodge an appeal against that decision by challenging that particular decision. In this case, the appellant devised crafty machinations to introduce the ground without formally challenging it on the face of his memorandum of appeal. In my view, that was an afterthought. He never intended to challenge that decision. Be that as it may, it has not been properly challenged.
14. Having said that, this issue was addressed by this court in the case of *Kimingi & another vs. Onuko* [2025] KEHC 6268 (KLR) that held as follows:
 20. This Court has taken the burden of almost reproducing the entire Part III of the Act with a view to ascertain the legislative intention in respect to the jurisdiction of the Small Claims Court. The drafters of the Act were very particular and intentional in coming up with Part III of the Act. Each of the section therein was aimed at serving a certain particular and specific purpose. For instance, Section 13 of the Act excluded the matters in which the Court cannot exercise jurisdiction over. Sub-section 5 excludes claims ‘... 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. On the flipside, Section 12[d] of the Act specifically grants jurisdiction to the Court in respect of claims on ‘compensation for personal injuries.’ Therefore, had it been the intention of the Legislature to exclude claims on compensation for personal injuries from the ambit of the Small Claims Court, nothing would have restrained the law makers from doing so. In this case, it is apparently clear that the law intended and indeed granted the Small Claims Court the powers to adjudicate over claims on compensation for personal injuries. Even in doing so, the law makers were well aware that claims on compensation for personal injuries would attract assessment of damages and were, hence, damages at large, but nevertheless, asserted their intention.
 22. Having said as much, this Court further asserts that just like the correct position taken by the Court of Appeal in *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* case [supra] that ‘... a party cannot through its pleadings confer jurisdiction to a court when none exists. Jurisdiction is conferred by law not through pleading and legal draftsmanship....’ equally a Court cannot decline jurisdiction through legal craftsmanship especially in instances where Parliament expressly vests jurisdiction in a Court unless that law is declared unconstitutional or is duly amended. With the said caveat at hand and in upholding the constitutional imperative of separation of powers, Courts ought to resist the temptation of usurping the role of Parliament in law-making.



23. It is on the foregoing basis that this Court, respectfully so, break ranks with the decisions excluding the Small Claims Courts from entertaining claims on compensation for personal injuries. In saying so, this Court remains alive to the truism that indeed there are multiple challenges facing the Small Claims Courts as well as the parties in adjudicating the claims on compensation for personal injuries. To this Court, the most ideal intervention would instead be law reform.
15. This court takes the same approach to find that that Small Claims Courts have jurisdiction to hear and determine matters of personal injuries. For those reasons, the appeal on that ground must fail and is accordingly dismissed.
16. Secondly, the appellant submitted that the jurisdiction of the trial court was ousted when it rendered its decision four days after 25th April 2024. The basis of that argument lies in section 34 (1) of the Small Claims Court which provides as follows:
- “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.”
17. This court has time and again taken different positions regarding the interpretation of that provision. There is a wealth of decisions in that respect. Some decisions have rendered that the application of the provision be couched in mandatory terms while other decisions call for the administration of justice depending on the circumstances of the dispute.
18. It is not denied that the suit was filed on 26th February 2024. Judgment was entered on 29th April 2024; four days after the laps of the sixty-day time period. Instructively, in the course of proceedings, the appellant raised a preliminary objection challenging the jurisdiction of the trial court. The appellant now comes before this court to claim that the jurisdiction of the trial court was ousted. I do not think those submissions were made in good faith. The court did its utmost best to deliver justice within the statutory timeliness including addressing a preliminary objection raised by the appellant. The trial court cannot be faulted for the delay as to nullify its decision; a fact of delay that was also attributable to the appellant’s preliminary objection.
19. Based on this, I find that this case called for the administration of justice rather than the adherence to strict timeliness. I therefore adopt the ruminations of Majanja, J. (as he then was) who in his wisdom pronounced himself as follows in the case of:

“While the intention of Parliament in codifying the 60-day timeline in the *[Small Claims Court Act](#)* (SCCA) was to ensure timely disposal of all proceedings before the Small Claims Court (SCC), the said 60-day timeline was not cast in stone and discretion of the court totally shut out as was with the *[Public Procurement and Asset Disposal Act](#)* (PPAD) which provided for the consequence of the failure of the High Court to make the decision within the prescribed timeline. The intent of the PPAD and the consequence for failure to comply with the timelines was set out bearing in mind the fact that procurement was a one-off process.

Whereas the timelines were valid, it should not be lost that the SCCA granted the court flexibility to do justice to the parties and the said court had the right to impose any terms and conditions to ensure that the hearing could proceed within the time limited. The 60-day timeline in the SCCA was directory and not mandatory as it was not the intention of the SCCA to invalidate any proceedings that violate the statutory timelines. To adopt such



a position would undermine the statutory objects and cause injustice to the parties as the case would have to be reheard afresh with attend costs to the parties

The phrase, ‘so far as is practicable in the circumstances’ as used in section 34(1) of the *Small Claims Court Act* meant that where the circumstances rendered it impossible to deliver judgment within the 60- day period, then the judgment of the Small Claims Court would still be valid. It was not possible to deliver the judgment within the said 60 days from the date of filing the suit as the appellant herself did not file her response on time and the matter was adjourned at least once due to unavailability of the respondent’s witness. The appellant, having benefitted from the adjudicator’s discretion that allowed her to file her response to the claim late and the interlocutory judgment entered against her set aside, could not plead strict timelines when she was partly responsible for the delay in hearing the matter. The ground that the judgment delivered outside the 60-day period prescribed in section 34 of the SCCA was invalid was dismissed.”

20. The appellant challenged the trial court’s findings on liability and quantum. However, they were not addressed in his submissions. Perhaps it was based upon the reality that this court shall only entertain appeals on issues of law and not of fact. On quantum, the appellant failed to demonstrate how the trial court applied incorrect principles of law as to justify the interference by this court with the exercise of the discretion of the trial court in awarding quantum.
21. Ultimately, it is my finding that the issues raised by the appellant were a red herring and a deviation from the fact that he was not compliant with the strict timelessness observed by the Small Claims Court. The appellant wanted to have his cake and eat it. The appellant was simply determined to delay the substratum of the matter in order for it to be defeated by statutory timelessness.
22. The upshot of my above findings is that the present appeal lacks merit. It is hereby dismissed with costs to the respondent.

It is so ordered.

JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5TH DAY OF NOVEMBER, 2025.

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HON. J.K.NG’ARNG’AR

JUDGE

Judgement delivered in the presence of;

Siele (Court Assistant).

Wafula for the Appellant

Nyandoro for the Respondent

