

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
HIGH COURT COMMERCIAL & ADMIRALTY
APPEAL NO. E005 OF 2025

PIONEER EXECUTIVE LIMITEDAPPELLANT
-VERSUS-
JOSEPH KIMANZI MUTHUI.....RESPONDENT

JUDGMENT

1. On 2 October 2024, the respondent contracted the appellant to deliver a parcel to Kenya Wildlife Service, the respondent’s client, in Kwale. According to a statement of claim dated 22 October 2024, the parcel was a computer toner described as “*type 59A*” and the appellant, being a courier company that provided parcel delivery services, was contracted to deliver the parcel at a fee.
2. The appellant lost the parcel and, therefore, the respondent sued the appellant for the value of the toner which was said to be Kshs. 20,880/=. The respondent also prayed for Kshs. 12,000/= as “*damages*” and costs to be assessed by the court.
3. The respondent’s suit was filed in the Small Claims Court at Mombasa Claim No. E354 of 2024. The appellant did not file a defence to the claim and, instead, filed an application by way of a motion seeking to strike out the suit for want of jurisdiction. The motion was dated 2 November 2024 and was expressed to be brought under Section 17 of the Civil Procedure

Act, cap. 21 and Regulations 2 & 3 of the Kenya Information & Communication (Dispute Resolution) Regulations, 2010.

4. The grounds upon which the court was moved were that according to regulation 2 of the Kenya Information and Communications (Dispute Resolution) Regulations, 2010, the respondent is defined as a consumer while the appellant a licensee. Being so defined, the appellant's and the respondent's dispute could only be resolved through an in-built dispute resolution mechanism in accordance with the Kenya Information and Communications (Dispute Resolution) Regulations, 2010. To be precise, it was urged that Regulation 3(1) of the Kenya Information and Communications (Dispute Resolution) Regulations, 2010, clothes the Communication Authority with jurisdiction to resolve disputes between a consumer and a licensee.
5. The respondent opposed the application insisting that under section 12 of the Small Claims Court Act, 2016, the court was seized of jurisdiction to determine the dispute before it.
6. The court disposed of the application and the entire suit together and in the judgment delivered on 23 December 2024, the court dismissed the appellant's application and held, *inter alia*, that:

“8. Having combed through the entire piece of legislation, this Court is not persuaded by the Respondent's argument that it is not clothed with the requisite jurisdiction to entertain the claim

by the Claimant. Under Section 102 of the Kenya Information and Communications Act and the attendant Second Schedule for instance, it is crystal clear that the kind of disputes envisaged there are a world apart from that raised by the Claimant in this matter.”

7. The court held that it had jurisdiction to determine the dispute and entered judgment for the respondent in the sum of Kshs. 20,880/=. The respondent’s claim of Kshs. 12,000/= was declined for want of proof.
8. It is this decision that is now the subject of the instant appeal. The grounds of appeal have been set forth in the memorandum of appeal as follows:

“1. The learned adjudicator erred in law by dismissing the Appellant’s motion dated 2nd November 2024 seeking to strike out the suit for want of jurisdiction;

2.The learned adjudicator erred in law by assuming the jurisdiction of the Communications Authority;

3.The learned adjudicator erred in law by misdirecting himself on the provisions of the Kenya Information and Communications (Dispute Resolution) Regulations, 2010;

4.The learned adjudicator erred in law by failing to abide by the dictates of the principle of precedent/ stare decisis.

5.The learned magistrate erred in law by allowing the Claimant’s suit against the Respondent.”

9. The appellant wants this Honourable Court to allow the appeal and strike out the respondent’s claim in the lower court. It also seeks costs of the appeal and the suit in the lower court.

10.The only question in this appeal is a point of law and looking at the grounds of appeal and the submissions of the learned counsel for the appellant and the respondent, this question is whether the Small Claims Court had the requisite jurisdiction to determine the claim before it.

11.In the celebrated case of **Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Ltd (1989) KLR 1** the Court of Appeal addressed this question of jurisdiction and quoted a passage from **Words and Phrases Legally Defined, Volume 3** at page 113 where it is stated:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented before it in a formal way for its decision. The limits of this authority are imposed by statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of actions and matters of which the particular court has cognisance, or as to the area over

which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of particular facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. 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.”

The court then concluded:

“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 the 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.”

12. The Small Claims Court’s jurisdiction is defined in section 12 of the Small Claims Court Act cap.10A. This provision of the law reads as follows:

12. Nature of claims and pecuniary jurisdiction

(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.

(Emphasis added).

13. The respondent's claim would fall under section 12(1)(c) of the Act.

Admittedly, the appellant is a company providing courier services which, in the words of this provision of the law, entail delivery of movable property. The claimant's parcel would fall in this category of property which the appellant holds itself out as capable of delivering at a fee,

amongst other services for which it may have been incorporated to provide. A dispute arising out of the loss and recovery of property with which the appellant is entrusted to deliver also falls within the ambit of section 12 (1)(c) of the Act.

14. This provision of the law is clear and unambiguous that the respondent's claim was well within the jurisdiction of the Small Claims Court. In interpreting this part of the Small Claims Court Act, I am entitled to presume that the legislature says in the statute what it means and means in a statute what it says there.

15. It is inconceivable that the appellant would be relying on subsidiary legislation to question the jurisdiction of the Small Claims Court. Subsidiary legislation cannot upstage primary legislation. Section 31 of the **Interpretation and General Provisions Act, cap. 2** speaks to this principal of law and states:

(b) no subsidiary legislation shall be inconsistent with the provisions of an Act;

16. And as to the specific question on jurisdiction, it's trite that jurisdiction can only be conferred by the constitution or the statute or both. This was reiterated by the Supreme Court in **Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR)** where the court noted:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

17. For the reasons I have given, I do not find any merit in the appellant’s appeal. It is hereby dismissed with costs.

Signed, dated and delivered on 7 November 2025

Ngaah Jairus
JUDGE