

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E221 OF 2024

LEGAXY LUXURY SHUTTLE APPELLANT
- VERSUS -
LIVINGSTONE OKWEMBA RESPONDENT

(Being an appeal from the judgment and decree of **Hon. G.C. Serem RM/Adjudicator** delivered on the 1/8/2024 in the **Ksm SCCCase No. E235 of 2023, Livingstone Okwemba v Legacy Luxury Shuttle Limited**)

J U D G M E N T

1. The respondent filed a claim through his statement of claim dated **27/7/2023** in which he claimed for **Kshs. 800,000/-** from the appellant for injuries sustained following a road traffic accident that occurred on the **2/6/2023**.
2. The appellant entered appearance and filed a Response to Statement of claim denying all material allegations of fact pleaded against him and further stating that if at all any accident occurred, the same was caused due to negligence and/or omission on the part of the respondent.
3. In her judgment, the trial adjudicator found in favour of the respondent and entered judgment as follows: -
 - a) ***Liability – 100% as against the appellant***
 - b) ***General damages – Kshs. 600,000/-***
 - c) ***Claimant is granted cost of the suit and interest from the date of judgment.***

4. Being dissatisfied with the said Judgment/decreed, the appellant lodged this appeal vide the Memorandum of Appeal dated 7/3/2024 and raised five (5) grounds of appeal as follows: -

a) That the learned trial magistrate erred in law and in fact in finding in favour of the respondent against the appellant as the particulars of negligence and injuries were not pleaded by the claimant hence lacked jurisdiction to hear and determine the matter.

b) That the learned trial magistrate erred in fact and in law by holding the appellant 100% liable for the accident.

c) That the learned trial magistrate erred in law and in fact in holding that the respondent had proved injuries and awarded general damages of Kshs. 600,000/- that was overly in excess in the circumstances of the case.

d) That the learned trial magistrate erred in fact and in law in failing to consider the appellant's submissions on jurisdiction, liability and quantum by completely disregarding the submissions and authorities of the appellant and as a result arrived in unjustified decision.

e) That the learned magistrate's decision was unjust and was based on misguided points and wrong principles of law and has occasioned a miscarriage of justice.

5. The appeal was disposed of by way of written submissions although the respondent failed to participate in these proceedings and did not file submissions.

6. The appellant submitted that the trial court being a small claims court lacked the jurisdiction to handle matters arising out of tortuous acts as was held in the case of **Jerusha Auma Ogwari v Ibrahim Aisha Hersi Alias Aisha Hersi Ibrahim (Civil Appeal 223 Of 2022) [2023] Kehc 20111 (KLR).**
7. That the respondent failed to discharge the burden of proof on the occurrence of the accident and thus the trial court erred in apportioning liability at 100% against the respondent.
8. That the respondent failed to plead and prove any particulars of injuries as he failed to produce any initial treatment notes and discharge summary before court thus the award of general damages of **Kshs. 600,000/=** was excessive.
9. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See **Selles & Anor vs. Associated Motor Boat Co Ltd & Others [1968] EA 123.**
10. Before the trial court, the respondent testified as **Cw1**. He adopted his witness statement dated **17/7/2023** as his evidence in chief and testified that, on the **2/6/2023** while aboard motor vehicle registration number **KDH 615P**, Toyota Matatu which was carelessly and recklessly driven, he was involved in an accident in which he sustained injuries.
11. That he suffered injuries to his tongue, bleeding left hand, injuries to his leg and ruptured scrotum. That he was first treated at JOOTRH and later taken to a private hospital. That he was not fully healed at the time of the trial.

12. **Cw2, No. 71508 PC Christoph Cheruiyot** produced a Police Abstract, **C Exh 2**, of **OB 3/02/03/23** which was in reference to the accident that occurred on the **2/6/2023** between the suit vehicle and Truck registration no. KBS 53GT, Trailer ZE 2248 Mercedes Benz Actros. That the owner of the suit vehicle was the appellant while the respondent was a passenger therein.
13. **Cw3, George Murila**, a Senior Clinical Officer at Ahero. He produced a P3 form **CExh1**, he filled on **14/6/2023** after examining the respondent 10 days after the accident. He testified that the respondent sustained loose upper frontal teeth, lost upper frontal teeth, a ruptured scrotum, backache, chest pains and bruises on the knee joints.
14. That despite the fact that he used a discharge summary and dental review form from JOOTRH, he did examine the respondent and noticed that some of his injuries had not healed. That some of the injuries sustained by the respondent were permanent such as the loss of teeth and injuries to the scrotum.
15. The respondent closed his case at this point and when it came to hearing the appellant's case, despite the judgment of the trial court stating that the appellant called one (1) witness, the appellant closed its case without calling any witness.
16. I have considered the evidence tendered before the trial court and the submissions made before me. 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 foregoing that jurisdiction of this Court from the Small Claims Court will only be on matters of law and not factual issues.
18. In this appeal, the question for determination by this Court is whether the trial court, being a Small Claims Court, had jurisdiction to hear and determine personal injury claims.
19. The question of jurisdiction is obviously one of law, in respect of which this Court has jurisdiction. It is trite law that jurisdiction emanates from either a Statute or the Constitution and no court assumes jurisdiction on its own.
20. The appellant impugned the trial court’s jurisdiction to handle the claim before it stating that the trial court had no jurisdiction to handle personal injury claims. In the *locus classicus* **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.”

21. *Section 12 of the Small Claims Court Act* 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.”

22. *Section 13 of the Small Claims Act* provides for the matters which the Small Claims Court has no jurisdiction to entertain. These matters are particularly listed under Section 13 (5) of the Act. 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.” [emphasis added].

23. It is thus evident that that the Small Claims Court has jurisdiction to determine matters relating to contracts for sale and supply of goods, relating to money held and received, liability in tort in respect to loss or damage caused to any property or for delivery of movable property, compensation for personal injuries and set off and counter claim under any contract with the pecuniary jurisdiction fixed at one million shillings.
24. Conversely, the Act is very clear on the matters which that court has no jurisdiction to entertain. The matters include cause of action founded on defamation, libel, slander, malicious prosecution or dispute over a title or possession of land or employment and labour relations.
25. The appellant’s claim before the trial court relates to personal injury and 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 Court has jurisdiction over personal injury claims.
26. In **Gichovi v Kilem (Civil Appeal E020 of 2024) [2024] KEHC 10859 (KLR) (18 September 2024) (Judgment)**, it was 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.”

27. The claim for personal injuries may not be suitable in that court because of the issues of proof of negligence and other matters which make such claims complicated. I state so because, the strict rules of evidence are inapplicable in that court yet matters of personal claims require strict proof of negligence. However, so long as the statutory provision is there, the jurisdiction exists notwithstanding my said observation. Unsuitability is not the same as lack of jurisdiction.
28. Accordingly, I find and hold that the trial court indeed had the jurisdiction to determine the case pursuant to ***section 12(1)(d) of the Small Claims Court Act.***
29. The upshot of the above is that I find that the appeal lacks merit and dismiss the same with costs.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **28th** day of **November, 2025**.

A. MABEYA, FCI Arb

JUDGE