



**Ziro v Onyango & another (Civil Appeal E073 of 2025)  
[2025] KEHC 17582 (KLR) (Family) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17582 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E073 OF 2025  
PM NYAUNDI, J  
NOVEMBER 27, 2025**

**BETWEEN**

**EUNICE KIGHENDA ZIRO ..... APPELLANT**

**AND**

**CAPTAIN ISAAC OCHIENG ONYANGO ..... 1<sup>ST</sup> RESPONDENT**

**DR HABIL ONYANGO ..... 2<sup>ND</sup> RESPONDENT**

*(Being and Appeal from the judgment and decree of Hon. Everlyne  
S. A. Olwande on 28th April 2025 in CMCC No. E064 of 2024)*

**JUDGMENT**

**Introduction**

1. In the judgment delivered on 28<sup>th</sup> April 2025 the Trial Court decreed as follows-
  - a. A declaration be made and is hereby made that the conduct of the respondent retaining the sum of Kshs. 15,000.000/- from Kenya Airways PLC amounts to economic and domestic abuse of the 1<sup>st</sup> applicant
  - b. Consequently, a protection order is hereby issued protecting the 1<sup>st</sup> applicant from domestic and economic abuse by the respondent.
  - c. The respondent is hereby ordered to refrain from retaining further the sum of Kshs 15,000,000 meant for the critical care of the 1<sup>st</sup> applicant
  - d. The preservation Order issued by this Court on 24<sup>th</sup> October 2024 is hereby vacated primarily to facilitated compliance with order © above and in its place an order is hereby issued directing



the respondent to pay the 1<sup>st</sup> applicant the said sum of Kshs 15 million with interest at court rates from the date of filing suit within the next 7 days from the date of this ruling failing which the applicants shall be at liberty to lawfully seek enforcement.

- e. The respondent shall be allowed to visit the 1<sup>st</sup> applicant under the supervision of his professional caregivers.
  - f. The respondent shall be allowed to participate in meetings held by the Captain Isaac Onyango Core group that is concerned with matters pertaining to the care and well-being of the 1<sup>st</sup> respondent.
2. The appellant herein has lodged a Memorandum of Appeal dated 15<sup>th</sup> May 2025, challenging the judgment of the trial court delivered on 28<sup>th</sup> May 2025 on the following grounds-
- a. The Learned Magistrate erred both in law and fact by holding that the Court had jurisdiction to hear and determine the suit notwithstanding the fact that the value of the subject matter of the suit is Kshs 116, 000, 000/- which is in contravention of Section 7 of the Magistrate's Court Act No. 26 of 2015.
  - b. The learned Magistrate erred both in law and fact by failing to appreciate the fact that she had no jurisdiction to hear and determine the matter in her official capacity as the Chief Magistrate by virtue of Section 24 of the *Protection Against Domestic Violence Act* 2015 which make it mandatory that the Court is the Resident Magistrate and NOT a Chief Magistrate.
  - c. The Learned Magistrate erred both in law and fact by failing to appreciate the fact that the Court had no jurisdiction to hear the matter as the issue of retirement benefits that arose between the Appellant and Respondents falls squarely under the Retirement Benefits Tribunal Authority Act (No. 3 of 1997) and not under the *Protection Against Domestic Violence Act*, 2015.
  - d. The learned trial Magistrate erred both in law and in fact by failing to appreciate that the action was commenced by way of a plaint dated 8<sup>th</sup> October 2024 and that an account for the sum of Kshs 15,000, 000/- is one of the substantive prayers sought under number (D) and the admission by the Appellant that she had signed vouchers worth Kshs 116,000,000/- automatically ousted the Court's pecuniary jurisdiction to hear and determine the matter. The Family Court established under the *Protection Against Domestic Violence Act*, 2015 had no jurisdiction to hear and determine a liquidated claim commenced by way of a plaint.
  - e. The Learned Trial Magistrate erred both in law and fact by failing to appreciate that the sum of Kshs. 15,000,000/- in dispute was paid directly to the Appellant by Kenya airways Limited and that Kenya Airways Limited was not a party to the suit which is in contravention of the doctrine of privity of contract and the *Law of Contract Act* Chapter 22 Laws of Kenya and thus arrived at a wrong decision.
  - f. The Learned trial Magistrate erred both in law and fact by failing to appreciate that the matter did not proceed to full hearing as neither the Appellant nor the Respondents testified and cross examined and further no directions on Pretrial Conference were taken as provided under Order 11 of the Civil procedure Rules, 2010 and thus proceeded to deliver a judgment irregularly and thus arrived at a wrong decision.
  - g. The Learned trial Magistrate erred both in law and fact by failing to appreciate the facts of the case and the law applicable and particularly the inalienable right to a fair hearing as provided for under Article 50 of *the Constitution* of Kenya and thus arrived at a wrong decision.



- h. ThatAT the learned trial Magistrate erred both in law and fact by taking into account extraneous matters that were not placed before her and thus arrived at a wrong decision.
3. The Appeal was canvassed via written submissions. The Appellant's submissions are dated 24<sup>th</sup> September 2025. The Submissions of the Respondents are dated 2<sup>nd</sup> October 2025.

### **Summary Of The Appellant's Submissions**

4. The Appellant frames the issues for determination thus-
  - a. Whether the trial Court had jurisdiction to hear and determine the suit
  - b. Whether the appellant economically abused the 1<sup>st</sup> Respondent
5. The appellant relies on the locus classicus decision in Owners of the Motor Vessel Lillian S v Caltex Oil [1989] KECA 48 (KLR) and Adero & Another vs Ulinzi Sacco Society Limited [2002] 1 KLR 577 to urge that the Court erred in arrogating itself jurisdiction. It is argued that the Court lacked both mandate and pecuniary jurisdiction. It is submitted that the court erred in finding that the claim was properly presented under the *Protection Against Domestic Violence Act*.
6. It is submitted that the matter falls within the purview of the Retirement Benefits Tribunal and reference made to the decision in Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 Anor V Ann Wangui Ngugi & 524 Others [ 2018] KECA 710 (KLR) on the procedure that ought to have been followed.
7. On the 2<sup>nd</sup> issue, it is submitted that the court erred in its finding that the appellant economically abused the 1<sup>st</sup> respondent. It is submitted that apart from the Kshs 15 million the subject of these proceedings the 1<sup>st</sup> respondent's employer has also made payments of Kshs 101,848,519 which are under the control of the 2<sup>nd</sup> respondent. It is her submission that if what she has done is framed as abuse, the same charge should apply to the 2<sup>nd</sup> respondent who has control over that amount and funds mobilised for his medical fund from well-wishers.
8. She contests that the sum she is holding is solely for the medical treatment of the 1<sup>st</sup> respondent and states that exercising her financial acumen she has made the prudent decision of investing the money in a fund that has periodic yields that would cater for homecare and provide monthly upkeep and daily running costs (for the family).
9. It is submitted that the respondent's approach to the Court for an equitable remedy they did not meet the legal prerequisites for that remedy as laid out in the decisions of Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR) and Archiblas Waburu Kahora v National Bank of Kenya Limited & Another [2013] KEHC 6776 (KLR). It is her submission that she has acted as would be expected of a spouse and the orders are condemning her to a life of want.

### **Summary Of Respondent's Submissions**

10. The respondent frames the issues for determination as-
  - a. Whether the trial court had jurisdiction to entertain this suit
  - b. Whether this suit falls in the purview of the *Retirement Benefits Act* (RBA)
  - c. Whether the 1<sup>st</sup> Respondent was economically abused by the appellant
  - d. Who should be condemned to bear the costs of this suit



11. On the 1<sup>st</sup> Issue, whether the Court has jurisdiction; The respondent responds to 3 issues-
  - a. Whether the Court lacked pecuniary jurisdiction
  - b. Whether Section 24 of the PADVA vests exclusive jurisdiction in the Resident Magistrate's Court
  - c. What is the consequence of the Court's failure to issue pretrial directions.
12. It is submitted that the Court having in this ruling of 9<sup>th</sup> April 2025 found it has jurisdiction, the same is res judicata noting that no appeal was preferred against the ruling. Reference is made to the decision in MJK v FML [2019] KEHC 10908 (KLR) which highlighted that it is possible to present separate concurrent suits as the PADVA is limited to the provision of protection orders. It is submitted in any event, that on the authority of the decision in Stanley Mombo Amuti v Kenya Anti-Corruption Commission [2019] KECA 783 (KLR), the respondent has the prerogative on how he elects to present and lead his case.
13. On the provisions of Section 24 of the PADVA and whether then the Chief Magistrate's Court had jurisdiction, it is submitted that the Court held that the matter was resolved when the parties submitted to her jurisdiction consequent to the directions of the directions of Hon. Aduke and Hon. Gitonga who both held that they lacked the pecuniary jurisdiction. It is submitted the issue is therefore res judicata. In addition, it is submitted that a ruling and directions were given on this same issue on 1<sup>st</sup> November 2024 and 13<sup>th</sup> March 2025. It is submitted that by virtue of Section 7 of the Magistrate's Act, it was the Chief Magistrate's Court that had the requisite pecuniary jurisdiction.
14. It is submitted that nothing turns on the failure to give pretrial directions as all the issues raised were comprehensively addressed and urged that as was held in Wafula v Maru (Civil Appeal E094 of 2023) [2024] KECA 1435 (KLR), this Court should find there was no prejudice occasioned.
15. On whether the matter ought to have been presented under the *Retirement Benefits Act* (RBA), it is submitted that the purpose and scope of the *Retirement Benefits Act* is to be discerned from its preamble (See National Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others (Civil Appeal No. 656 of 2022) [2023] KECA 80 (KLR) and it is submitted that the mandate does not extend to domestic violence which was the issue before the Court. It is submitted that the Court should be guided by the decision of the Supreme Court in Mumba & 7 Others ( Sued on their own behalf and on behalf of predecessors and or successors in title in their capacity as the Registered trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 Others ( Suing on their own behalf and on behalf of Plaintiff and other members/ beneficiaries of the Kenya Ports Authority Pensions Scheme) ( Petition 3 of 2016) [2019] KESC 83 ( KLR) on the scope of the RBA Act.
16. It is submitted that the money subject of the suit was not paid by a pension scheme, but was a payment on an insurance policy, critical care and illness. The respondent contends that in raising the issue at this stage the applicant is attempting to change their case and should not be accommodated in doing this.
17. It is submitted that the appellant did abuse the 1<sup>st</sup> respondent economically and reference made to Sections 2, 3, 4,13 and 19 of the PADVA. It is submitted that the action of withholding the funds without justification, constitutes domestic violence.it is submitted that should therefore remit the funds. Further it is submitted that the appellant should be condemned to pay costs and reference made to the decision in Rai & 3 Others v Rai & 4 Others (Petition 4 of 2012) KESC 20 (KLR).



## Analysis And Determination

18. This being a first appeal, the Court as was held in the celebrated decision of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, has a duty to re-evaluate and reassess the evidence presented in the trial court and to arrive at its own independent conclusions, bearing in mind that it did not see or hear the witnesses first hand. The Court is not bound by the trial court's findings of fact and can substitute its own judgment if it finds the trial court's conclusions clearly wrong.
19. On the directions of the Court, the matter proceeded to hearing based on the affidavits on record and submissions filed by the parties. The pleadings considered by the Court were-
  - a. The Complaint dated 8<sup>th</sup> October 2024
  - b. Defence
  - c. Affidavits sworn by 1<sup>st</sup> and 2<sup>nd</sup> Respondent on 8<sup>th</sup> October 2024, in support of Notice of Motion dated 8<sup>th</sup> October 2024
  - d. Replying affidavit sworn by the appellant on 1<sup>st</sup> November 2024
  - e. Further affidavit sworn by the 2<sup>nd</sup> Respondent on 13<sup>th</sup> November 2024
  - f. Respondent's Submissions dated 14<sup>th</sup> February 2025
  - g. Appellant's Submissions dated 23<sup>rd</sup> April 2025
20. The matter was initiated by complaint dated 8<sup>th</sup> October 2024, in which the respondents herein sought-
  - a. A declaration that the conduct of the appellant of receiving and retaining the sum of Kshs 15,000,000 from Kenya Airways PLC amounts to domestic and economic abuse of the 1<sup>st</sup> Respondent
  - b. A protection order issued protecting the 1<sup>st</sup> respondent from domestic and economic abuse by the appellant
  - c. An order do issue freezing the appellant's bank account number xxxx held at Standard Chartered Bank of Kenya Limited and Bank Account Number xxxx held at Equity Bank Kenya Limited
  - d. The appellant to pay to the 1<sup>st</sup> respondent the sum of Kshs 15 million
  - e. Interests on (d) above at Court rates from 23<sup>rd</sup> May 2023 until payment in full
  - f. Costs
21. The complaint was accompanied by Notice Motion of even date along with supporting affidavits, seeking interim orders of preservation and protecting pending determination of the suit. The Respondent's case at the trial court was that the 1<sup>st</sup> respondent and the appellant were in a domestic relationship as provided for under the PADVA. The 1<sup>st</sup> respondent fell ill in 2022 and has been diagnosed to be suffering from Amyotrophic Lateral Sclerosis a progressively debilitating illness. He is currently under home care and requires massive resources to cater for his treatment and care. That in 2023 the appellant received the sum of Kshs 15million from the 1<sup>st</sup> respondent's employer on account of a critical care medical cover taken out with Sanlam Insurance, the appellant has withheld this money and refused to surrender it to the 1<sup>st</sup> respondent. This action of the appellant is what constitutes economic violence as provided for under PADVA.



22. In defence filed by the appellant she contended that on account of his illness, the 1<sup>st</sup> respondent was not of sound mind and therefore lacked the capacity of suing or giving instructions, or donating a power of attorney. She further contended that the power of attorney was in any event unenforceable as it was not properly executed. She asserted that as wife of the 1<sup>st</sup> respondent she was within her rights to care for her husband and to safeguard his interests. Her withholding of the money should be viewed in this light. She contended that the Court was devoid of jurisdiction and the suit was incurably defective. She submits that the action of investing the funds was in the best interests of the 1<sup>st</sup> respondent.
23. The Court proceeded to deliver its judgment in which it isolated the following as the issues for determination
- a. Whether this Court has jurisdiction to hear this matter filed under the PADVA
  - b. Whether the failure to enjoin Kenya Airways to this case is a fatal omission
  - c. Whether this matter is properly filed under PADVA
  - d. Whether the respondent's receipt and retention of Kshs. 15 million meant as compensations to the 1<sup>st</sup> applicant's critical condition constitutes economic and domestic abuse?
  - e. Whether the 1<sup>st</sup> applicant is entitled to a protection order as against the respondent for economic and domestic abuse and whether the sum of Kshs 15 million ought to be repaid by the respondent?
  - f. Whether a freezing order of the respondent's bank account number xxxx held at Standard Chartered Bank of Kenya Limited and Bank Account number xxxx held at Equity Bank Limited should issue?
- And then proceeded to issue orders as set out in paragraph 1 above
24. Having considered the proceedings in the trial court and the pleadings herein along with submissions filed I discern the following to be the issues for determination?
- a. Whether the Court erred in determining that it had jurisdiction in the matter?
  - b. If the answer to (a) above is in the negative, whether the failure for the Court to issue pre trial directions prejudiced the appellant's case?
  - c. If the answer to (b) above is in the negative, whether the Court erred in finding that the 1<sup>st</sup> respondent was economically abused by the appellant
  - d. What are the consequential orders that should be made
25. The appellant challenges the jurisdiction of the Court on several fronts. In response the respondent's urge that the issue is res judicata the same havng been determined by the trial court in its ruling of... which ruling has not been appealed against. Suffice it to state that the Courts have held that jurisdiction is a threshold issue that can be raised at any stage of the proceedings, including at an appeal. The Supreme Cour reiterated this in the case of Dina Management Limited v County Government of Mombasa & 5 Others Petition No. 8 ( E010) of 2021.
26. The appellant challenges the trial court's jurisdiction on 3 fronts; Mandate, pecuniary and statutory prescription. On the first ground it is submitted that the proper forum was the Retirement Benefits tribunal and not under the Prevention of Domestic Violence Act. It is not in dispute that the money subject of the proceedings was paid out under a policy of insurance that the 1<sup>st</sup> respondent's employer had taken out for critical illness in favour of the 1<sup>st</sup> respondent. It is also not in dispute that the appellant



received the money on behalf of the 1<sup>st</sup> respondent as he is the intended beneficiary. This payment was not made under the employer's pension scheme.

27. The Retirement Benefits Act, that the appellant urges is the correct forum is established for – the regulation, supervision and promotion of retirement benefits schemes, the development of the retirement benefits sector and for connected purposes

28. Having regard to the scope of the Act and conceding that jurisdiction can only be conferred by statute ( See the decision in *Cheruiyot v Kikaya* [2025] KEHC 820 (KLR) ). I find that this limb challenging the jurisdiction of the Court must fail.

29. The 2<sup>nd</sup> limb on which the appellant challenges the jurisdiction of the Court is pecuniary limit of the Chief Magistrate's Court. Section 7 of the Magistrate's Act provides-

Civil jurisdiction of a magistrate's court

(1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- (a) twenty million shillings, where the court is presided over by a chief magistrate;
- (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (c) ten million shillings, where the court is presided over by a principal magistrate;
- (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
- (e) five million shillings, where the court is presided over by a resident magistrate.

30. The Appellant urges that the subject matter of the dispute herein was Kshs 116,000,000/- as pleaded under paragraph 33 of her defence filed in Court. This submission is on very shaky ground as there was no counterclaim filed by the appellant. The claim therefore before the Court was for Kshs 15 million as pleaded by the respondents. The Chief Magistrate's pecuniary jurisdiction is as set out under Section 7 (1)(a) of the Magistrate's Court, currently Kshs 20 million. For this reason I find that the challenge to the Court's pecuniary jurisdiction on this limb will also fail.

31. The 3<sup>rd</sup> challenge by the appellant is on the basis of the provisions of Section 24 of the Prevention of Domestic Violence Act which states

24. Application by victims of domestic violence.

(1) Jurisdiction for any proceedings under this Act shall be vested in the Resident Magistrates' Courts.

32. It is argued that this provision ousts the Chief Magistrate from presiding over matters presented under the Act. This is an erroneous interpretation as the statute that prescribes the jurisdiction of the Resident Magistrate's Court is the Magistrates Court Act and therefore as was correctly stated by Hon. Aduke and Hon. Hon. Gitonga the matter exceeded their pecuniary jurisdiction.

33. The rationale of vesting jurisdiction in the Resident Magistrate's Act is to ensure access for victims seeking the relief the Act offers. The widespread presence of Resident Magistrate's Court facilitates the objective of access. This however does not exclude the Chief Magistrate's Court on account of the hierarchy of courts and the concurrent jurisdiction of courts. So by necessary implication, in light of the pecuniary limits set by the Magistrate's Act, the Chief Magistrate's Court being a court within the



- same tier as the Resident Magistrate's Court would have jurisdiction. This issue was actually resolved during the trial.
34. Further I note that our Prevention of Domestic Violence Act is of the same genetic pool as the South African Domestic Violence Act No. 116 of 1998. Like our Act Section 2 of that Act defines Court under the Act as- means any magistrate's court for a district contemplated in the Magistrate's Court Act, 1944;
35. As happens in Kenya the jurisdiction of the Magistrate's Court is prescribed by statute. In *The State and Lebohang Emmanuel Mokone* ( High Court of South Africa, Free State Division, Bloenfontein), Case No. R23/2024, the Court was called upon to determine the proper procedure to follow when the the sentence attached to an offence exceeded the jurisdiction of the Magistrate's Court. The Court upheld the decision of the Magistrate's Court to refer the matter to the regional magistrate's Court. The Court observed as follows, in relation to how the concurrent jurisdiction of the superior court comes in to play-
- (5) The question is therefore whether only a regional court or a high court has the competence to hear cases which carry minimum sentences after a potential conviction.
- (6) I am of the view that such a proposition cannot be correct, because the section in question only refers to the imposition of sentences, and not to the hearing of cases on their merits. I find support for this view in the unreported review judgment in *The State v William Kobe* ( Case No. 50/2023 in the Guateng Local Division, Johannesburg, dated 16<sup>th</sup> January 2024). A very similar situation to the present matter presented itself in that case, except that the trial magistrate proceeded after conviction to sentence the accused to the relevant minimum sentence, which exceeded the normal penal jurisdiction of the magistrate's court. The review judges could not find any fault with the conviction, and only set aside the sentence and committed the accused for sentence by a regional court having jurisdiction.
- (7) It follows that in the present case, the conviction of the accused and his referral to the regional court for sentence, must stand.
36. From the foregoing I find that Section 24 of the PADVA as read with Section 7 of the Magistrate's Act does not oust the Chief Magistrate's Court from hearing matters under the Act, especially where the subject matter exceeds the pecuniary jurisdiction of the Resident Magistrate's Court. Accordingly I find that the challenge to the Court's jurisdiction on this ground will also fail.
37. The next issue for consideration is whether the failure to give pre trial directions and the directions that the matter proceed by submissions occasioned a violation of the appellant's right to a fair trial as guaranteed by *the Constitution*. This ground is hinged on case management protocols established by statute. The Constitutional guarantee, protects the right to be heard and to have the case considered on its full merit. In this instance it is not in dispute that the 1<sup>st</sup> respondent has a debilitating illness, the Court cannot be faulted under these circumstances in finding that the matter could proceed by the pleadings on record.
38. I have looked at the record of the proceedings of the trial court, the appellant did not challenge this direction by the Court. The Court rendered a well reasoned decision in which she considered the case of the respective parties. I do not see the prejudice that the appellant suffered. She was afforded an opportunity to present her case and it was determined on merit.
39. Did the Court err in finding that the 1<sup>st</sup> respondent was economically abused?



The prevention of Domestic Violence Act, gives effect to Article 29 of the Constitution of Kenya, 2010 which provides-

Freedom and Security of the Person

29. Every person has the right to freedom and security of the person, which includes the right not to be-
- (a) ...
  - (b) ...
  - (c) subjected to any form of violence from either public or private sources;
  - (d) ....
  - (e) ...
  - (f) ....

40. Section 3 of the PADVA defines violence to include economic abuse and defines it to include-
- (a) the unreasonable deprivation of economic or financial resources to which an applicant is entitled or which the applicant requires, including household necessities, medical expenses, school fees, rent, mortgage expenses or other similar expenses; and
  - (b) the denial to the applicant of the right to seek employment or engage in any income-generating activity;

41. It is not disputed that the 1<sup>st</sup> respondent is critically ill, the money was paid out under a policy where he is the beneficiary. The appellant is holding onto the money against the will of the 1<sup>st</sup> respondent. She has made unilateral decisions touching on that money. The 1<sup>st</sup> respondent does not agree with her. It is his money. Her continued withholding of the money under these circumstances is a clean and cut case of abuse. The Court cannot be faulted for finding that this a matter properly under the PADVA.

42. In light of the foregoing I find that the appropriate orders that should issue are-
- a. The appeal is dismissed in its entirety
  - b. The funds deposited in Court be released forthwith into the 1<sup>st</sup> respondent's account
  - c. Each party will bear their own costs.
  - d. Leave to appeal is granted, any party exercising their right of appeal to do so within 30 days.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**P .M. NYAUNDI**

**JUDGE**

In the Presence of

Fardosa Court Assistant

Mrs. Oduor for Respondents

Lagat for Appellant/Applicant



Lagat holding brief for Ondabu

