

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. E1332 OF 2023**

**MUA INSURANCE (KENYA) LIMITED** .....  
**APPELLANT**

**VERSUS**

**DAVID MOMANYI OMWENGA** .....  
**RESPONDENT**

**(Appeal from the judgement and decree of Hon. G. Simatwo,  
Adjudicator/Resident Magistrate, of 25<sup>th</sup> October 2024, in  
Nairobi SCCC No. E2587 of 2023)**

**JUDGEMENT**

1. The claim, at the Small Claims Court, was by the respondent, for Kshs. 750,000.00, being compensation for loss and damage to a motor vehicle, belonging to the respondent, comprehensively covered by the appellant. It was allegedly written off, in an accident that happened on 13<sup>th</sup> January 2021, along Kangundo Road, Nairobi. The appellant filed a response, repudiating the claim, on grounds that there was breach of the contract of insurance.
2. A trial was conducted. The respondent testified and called 3 witnesses. The appellant called 2 witnesses. Judgement was delivered, on 25<sup>th</sup> October 2024, in favour of the respondent.
3. The appellant was aggrieved, hence the instant appeal. The grounds revolve around various issues, including the trial court misinterpreting the provisions of the Data Protection Act.
4. Directions were given, on 14<sup>th</sup> May 2025, for disposal of the appeal, by way of written submissions. I have seen, in the

record, written submissions by both sides, which I have read and considered.

5. I shall determine the appeal herein, not on the basis of merit, but jurisdiction.
6. The claim, at the Small Claims Court, was founded on the Small Claims Court Act, Cap 10A, Laws of Kenya. Section 34(1) of the Small Claims Court Act grants the adjudicator a 60-day jurisdiction, from the date of filing, to hear and determine the claim. That would mean any determination, made outside the 60 days, would be null and void, and any appeal, founded on it, would be incompetent, except to the extent that it raises a question of jurisdiction.
7. It is not quite clear when the statement of claim was filed, but I see that the matter was mentioned for the first time, before the trial court, on 26<sup>th</sup> June 2023. That would mean that the claim had been filed on or before that date. The 60 days, from when the claim was filed, whatever date it was, should have lapsed before 26<sup>th</sup> August 2023. The final determination, by the trial court, came on 25<sup>th</sup> October 2024. That was way outside the 60 days allowed by section 34(1) of the Small Claims Court Act, and that determination was a nullity. Consequently, the instant appeal, challenging that invalid judgement, on merits, would be incompetent.
8. The lapse of the jurisdiction, did not render the suit invalid or non-viable. Given that the suit hereby was filed within limitation, the same would still be viable, and can be entertained by the other courts with jurisdiction, such as the Magistrate Court and the High Court.
9. The dispute, before the Small Claims Court, hinged on terms of an insurance contract, around breach. Under the Limitation of Actions Act, Cap 22, Laws of Kenya, the limitation period for such claims is 6 years. The breach

herein allegedly occurred in 2021, and the suit was initiated in 2023, within the limitation period.

10. Consequently, I do hereby order transfer of the said suit, out of the Small Claims Court, to the Magistrate Court, at the Milimani Commercial Courts, for hearing and final disposal. To facilitate that process, I do hereby vacate the proceedings that were conducted by the Small Claims Court. The appeal is hereby resolved in those terms. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN  
CHAMBERS, AT BUSIA, ON THIS 22<sup>ND</sup> DAY OF DECEMBER  
2025.**

**WM MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.**

**Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.**

**Advocates**

**Ms. Aluang'a, instructed by OG LAW LLP, Advocates for the appellant.**

**Mr. Ongoto, instructed by Ongoto & Company, Advocates for the respondent.**