

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E621 OF 2022

MOSES MUTHEE MAGANJO.....APPELLANT
VERSUS
VICTOR ODUOR NYAJUOGA.....1ST RESPONDENT
JOSELINE NYIKULI OGUTU..... 2ND
RESPONDENT

(Appeal from the judgement and decree, of Hon. VM Mochache, Resident Magistrate, RM, of 8th July 2022, in SCCC No. E690 of 2022)

JUDGEMENT

1. The original trial court records, in respect of the matter, the subject of the instant appeal, were not availed, hence I can only rely, for the purposes of determining the appeal, on the record of appeal, which is itself incomplete.
2. I doubt that the trial court had the requisite jurisdiction to deliver the judgement, it purported to deliver on 8th July 2022.
3. The claim, at the trial court, was filed at the Small Claims Court. Cases filed at the Small Claims Court are governed by the Small Claims Court Act, Cap 10A, Laws of Kenya. Section 34(1) of the Small Claims Court Act limits the jurisdiction of the Small Claims Court to 60 days, calculated from the date the claim was filed.
4. The material, in the record of appeal, is unclear, as to the date when the claim was filed at the Small Claims Court. The statement of claim is dated 3rd January 2022. The 2nd respondent appeared, vide a notice, dated 8th April 2022, and filed a response, dated 7th April 2022. The matter was first

mentioned, before the Adjudicator, on 4th April 2022, which would mean that the claim had been filed before that date. If 4th April 2022, is taken to be the effective date of filing, 60 days, from 4th April 2022, would lapse on or about 4th June 2022. A judgement, delivered on 8th July 2022, would, therefore, be well outside the 60 days allowed under section 34(1) of the Small Claims Court Act. That would make that judgement a nullity.

5. The trial court had lost jurisdiction, by 4th June 2022. It would not have had jurisdiction to go on to deliver a valid judgement thereafter. It ought to have had downed its tools, in line with *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA).
6. The claim related to the accident that had happened on 26th March 2019. It was founded on the tort of negligence. Under the Limitation of Actions Act, Cap 22, Laws of Kenya, the limitation period, within which such claims ought to be filed, is 3 years. 3 years., from 26th March 2019 lapsed on 25th March 2022. All indications are that the suit was filed before 25th March 2022, and was, therefore, filed within limitation. The loss of jurisdiction by the Small Claims Court, or by the Adjudicator, ought not have rendered the claim non-viable, as the Magistrate Court and High Court would still have jurisdiction to hear and determine it. It was for Kshs. 445,337.00, and, therefore, within the pecuniary jurisdiction of the Magistrate Court.
7. To do justice to the parties, since the appeal herein is incompetent, to the extent that it is founded on a null judgement, which it challenges on its merits, I shall exercise jurisdiction, under Article 165(6)(7) of the Constitution, to order transfer, as I hereby do, of the matter, under section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, from the Small Claims Court to the Magistrate Court, at the

Milimani Commercial Courts, for hearing and final disposal. The appeal herein is disposed of in those terms. Each party shall bear their own costs.

8. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 15TH DAY OF DECEMBER
2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

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

Advocates

Mr. Mwanzia, instructed by G&G, Advocates for the appellant.

**Ms. Gatherer, instructed by Wangui Gatherer & Company,
Advocates for the 1st respondent.**