

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO. E1493 OF 2023

DENNIS WACHENJE MAGHANGA.....
APPELLANT

=VERSUS=

ABEID WALID ALIAS.....
RESPONDENT

**(Being an appeal from the Ruling of Hon. Kiongo Kagenyo
(RM/Adjudicator) in Nairobi Small Claims Court Case No.
E2791 of 2022 delivered on 1st December 2023)**

JUDGMENT

1. The trial Court delivered a Ruling on 1st December 2023 directing that orders issued on 19th April 2023 be set aside and further that the suit be reinstated for hearing de novo.
2. The Court had given directions that the case proceeds by way of submissions and the Judgment was slated for 1st December 2023.
3. However, on 18th April 2023 the claim had been dismissed. The Respondent filed an application dated 20th April 2023

seeking to reinstate the case and the Court allowed the said application in the Ruling dated 1st December 2023.

4. The Appellant who was the Respondent in the Nairobi Small Claims Court Case No. E2791 of 2022 has appealed against the said Ruling on the following grounds:-

- (i) The Learned Adjudicator/Resident Magistrate erred in both fact and law by failing to appreciate that the Claimant's Claim was dismissed on 19th April 2023 and not 18th April 2023 as pleaded by the Claimant in the application dated 20th April 2023.**
- (ii) The Learned Adjudicator/Resident Magistrate erred in both fact and law by failing to appreciate that parties are bound by their pleadings and therefore there was no order capable of being granted that would re-instate the Claimant's claim.**
- (iii) The Learned Adjudicator/Resident Magistrate erred in both fact and law by failing to appreciate that the Small Claims Court lacked jurisdiction to hear and determine this claim after the lapse of the mandatory sixty day period provided by Section 34 of the Small Claims Court Act.**

(iv) The Learned Adjudicator/Resident Magistrate erred in both fact and law by failing to appreciate that Section 34 of the Small Claims Court Act does not allow the court to extend the time for hearing of matters before the Small Claims Court beyond the mandatory Sixty (60) days.

(v) The Learned Adjudicator/Resident Magistrate erred in both fact and law by basing his ruling on irrelevant considerations.

5. The parties filed written submissions as follows; The appellant submitted that this appeal challenges the ruling of the Small Claims Court which reinstated a claim that had been dismissed.
6. The core argument is that the lower court's ruling is a nullity for two fundamental reasons.
7. First, the Small Claims Court acted without jurisdiction. The Appellant contends that the court's power to hear and determine any matter is strictly limited to 60 days from the date of filing, as mandatorily required by Section 34 of the Small Claims Court Act.

8. The word "shall" in the statute is imperative, making this time limit a foundational element of the court's jurisdiction.
9. Once this 60-day period lapsed, the court became functus officio—its mandate expired.
10. Therefore, any action taken by the court after this period, including the impugned ruling delivered well over a year after the claim was filed, was done in a legal vacuum and is void.
11. This position is supported by a consistent line of authorities which hold that a court cannot confer jurisdiction upon itself retroactively and that a decision made outside a statutory time frame is a nullity, devoid of any legal force.
12. Second, even if the court had jurisdiction, its ruling was based on a factual error that renders it invalid.
13. The Adjudicator purported to set aside an "order of 18th April 2023." However, the official court record shows that the suit was dismissed on 19th April 2023, and no order exists from the 18th.
14. A court cannot legally set aside an order that never existed; to do so is an exercise in futility and a violation of basic judicial discipline.
15. The ruling is thus flawed not only by a lack of jurisdiction but also by having no factual foundation in the record.

16. In conclusion, the Appellant urges the Court to allow the appeal, set aside the reinstatement ruling, and affirm the original dismissal of the claim.
17. The Appellant argues that to do otherwise would undermine the rule of law, the predictable and expeditious nature of the Small Claims Court system, and the principle that courts must act within the strict confines of their statutory authority and the factual record before them.
18. The Respondent urges the Court to dismiss the Appellant's appeal and uphold the ruling of the Small Claims Court which reinstated the Respondent's claim.
19. The core of the Respondent's argument is that the 60-day timeline for determining cases under Section 34 of the Small Claims Court Act is aspirational and directory, not a mandatory and inflexible jurisdictional limit that invalidates proceedings if exceeded.
20. The Respondent relies on a consistent line of High Court authorities, including **Biosystems Consultants v Nyali Links Arcade and Crown Beverages Limited v MFI Document Solutions Limited**, which hold that the primary purpose of the Act is to facilitate expeditious and affordable justice

without allowing procedural timelines to defeat the ends of justice.

21. It is argued that the legislative intent is not to create bottlenecks, and a court's failure to adhere to the 60-day period does not automatically nullify its proceedings or decisions.
22. Furthermore, the Respondent contends that the trial magistrate correctly exercised discretion in reinstating the claim.
23. The dismissal of the original suit was a result of an administrative error, as the case was heard a day earlier than scheduled without notice to the Respondent, and the court file subsequently went missing for months.
24. The Respondent asserts that the minor error in the reinstatement application regarding the date of dismissal is a procedural technicality that should not, in light of Article 159(2) (d) of the Constitution, prejudice the substantive merits of the case, especially since the Appellant has not demonstrated any prejudice that would result from the matter proceeding to a hearing on its merits.

25. In conclusion, the Respondent submits that the appeal is without merit and should be dismissed with costs, allowing the original small claim to be determined substantively.

26. The issues for determination in this appeal are as follows;

(i) Whether the Small Claims Court was divested of jurisdiction to reinstate the claim by the lapse of the 60-day period prescribed under Section 34 of the Small Claims Court Act,

(ii) Whether the minor factual error in the reinstatement application regarding the date of dismissal was fatal to the court's ruling.

27. This Court has given due and anxious consideration to the appeal before it, the compelling submissions of counsel, and the overriding objective of the court as enshrined in the Constitution of Kenya.

28. The Appellant's arguments, while technically sound, invite this Court to elevate a procedural timeline to an altar where substantive justice is sacrificed.

29. The central contention is that the Small Claims Court became functus officio upon the lapse of the 60-day period prescribed under Section 34 of the Small Claims Court Act.

30. The Appellant relies on a strict, literal interpretation of the word "shall" to argue that any action taken thereafter is a nullity.
31. However, the jurisprudence of this Court has evolved to recognize that the purpose of the Small Claims Court Act is to provide expeditious, accessible, and affordable justice.
32. To use the very mechanism designed to ensure expeditious justice as a technical doorway to eject a legitimate claim would be to defeat the entire spirit of the Act.
33. The High Court, in the case of **Biosystems Consultants v Nyali Links Arcade & 2 Others [2021] eKLR**, while acknowledging the importance of the 60-day timeline, firmly situated it within the context of the court's primary goal: to do substantive justice without undue regard to technicalities.
34. The issue of timeline, while imperative, does not automatically extinguish the court's jurisdiction, particularly where delays are attributable to the court's own processes, as is alleged in the present case where the court file went missing.
35. This Court finds that the 60-day period in Section 34 is a mandatory directive to the court to manage its business efficiently, but it is not a self-executing guillotine that severs

the court's jurisdiction the moment the clock strikes midnight on the sixtieth day.

36. Jurisdiction, once properly invoked by the filing of a claim, is not automatically lost by the court's failure to adhere to an internal timeline, especially where a litigant is not responsible for the delay.

37. To hold otherwise would be to allow the administrative challenges of the court to defeat the constitutional right of access to justice.

38. The danger is that files would go missing and claims would be dismissed after the 60-day statutory period.

39. This would result in allowing the court's own administrative failures to sever a litigant's constitutional right of access to justice.

40. The overriding objective commands courts to look at substance over form, ensuring that claims are heard on their merits rather than being extinguished by procedural mishaps beyond a litigant's control.

41. Regarding the discrepancy in the date of dismissal, this Court finds that this is precisely the kind of technicality that Article 159(2)(d) of the Constitution commands the courts to disregard.

42. The substance of the Respondent's application before the lower court was clear: to challenge the dismissal of his suit for non-attendance.
43. The error of citing the 18th instead of the 19th of April was a minor and inconsequential variance that did not prejudice the Appellant in any way in understanding the case he had to meet.
44. The learned Adjudicator was correct to look at the substance and not the form.
45. The power to reinstate a suit that has been dismissed for non-attendance is a discretionary power vested in the trial court.
46. This Court will not interfere with the exercise of that discretion unless it was exercised capriciously or upon wrong principles.
47. The record shows that the Respondent's absence was allegedly due to the case being called a day early. In such circumstances, the learned Adjudicator's decision to grant a hearing on the merits was a proper, judicious, and just exercise of discretion aimed at preserving the claim.

48. The Appellant has not demonstrated any substantial prejudice that would be suffered by having the matter determined on its merits.
49. The Appellant in this case can be adequately compensated by an award of costs.
50. The greatest prejudice of all is to have a potentially valid claim terminated without a hearing.
51. In the final analysis, the law is not a mere collection of rigid rules, but a living instrument for doing justice.
52. The Small Claims Court is a statutory embodiment of this principle, created to ensure that justice is not delayed, denied, or made prohibitively expensive.
53. To allow this appeal would be to subvert this very purpose. The appeal is therefore devoid of merit and is hereby dismissed.
54. The ruling of the learned Adjudicator delivered on 1st December 2023 is upheld.
55. The Respondent's claim in Nairobi Small Claims Court Case No. E2791 of 2022 shall proceed to a hearing on its merits with utmost priority before any other adjudicator other than the one who gave the Ruling on 1st December 2023.

56. However, the Respondent to pay the Appellant thrown away costs of Kshs. 20,000 before the case is heard de novo.

57. Each party to bear its own costs of this appeal.

58. ORDERS TO ISSUE ACCORDINGLY.

**Dated, signed and delivered this 1st day of December 2025
virtually via MT at Voi High Court.**

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistants: Millicent/Mabishi

.....**for the Appellant**

.....**for the Respondent**