

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**HCCA NO.E124 OF 2024**

**COUNTY GOVERNMENT OF UASIN GISHU  
.....APPELLANT**

**VERSUS**

**EDWARD KIPTEK .....1<sup>ST</sup>  
RESPONDENT**

**UASIN GISHU OVERSEAS EDUCATION TRUST .....2<sup>ND</sup>  
RESPONDENT**

**JONATHAN KIMELI BII .....3<sup>RD</sup> RESPONDENT**

**JOHN BAROROT .....4<sup>TH</sup> RESPONDENT**

**JACKSON KIPLAGAT MANDAGO .....5<sup>TH</sup> RESPONDENT**

**MESHACK RONO .....6<sup>TH</sup> RESPONDENT**

**JOSEPH MARITIM .....7<sup>TH</sup> RESPONDENT**

**JOEL RUTO .....8<sup>TH</sup>  
RESPONDENT**

**JOSHUA LELEI .....9<sup>TH</sup> RESPONDENT**

*(Being an appeal against the ruling of Hon. R. Otieno (Adjudicator/RM)  
delivered on 20/05/2024 in Eldoret SCCCOMM No. E878 of 2023)*

**JUDGMENT**

1. This is an appeal from the ruling of Hon. R. Otieno Adjudicator in **Eldoret Small Claims Court Claim No. E878 of 2023** delivered on 20/05/2024. The Small Claims Court Case the subject of this Appeal was selected to be the test case in a claim in which over 50 students and parents sued the Appellant and the 2<sup>nd</sup> – 9<sup>th</sup> Respondents in a matter involving the issuance of Scholarships by the County Government of Uasin Gishu to young people to further their studies in Finland and Canada.
2. The background leading to the said ruling is that the matter in the test case herein was heard and the evidence of all parties taken before Hon. T. Mbugua (RM). Thereafter the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed an application dated 26/03/2024 seeking to have the said Adjudicator recuse herself. Having heard the application, the Hon Adjudicator recused herself and transferred the matter to Hon. R. Otieno (RM).
3. Consequently, on 6/05/2025 when the matter came up for mention for directions before the Hon R. Otieno, Counsels for the Claimant and the 5<sup>th</sup> Respondent stated that the matter should proceed from where it had reached before Hon T. Mbugua arguing that the matter was already behind the statutory timelines of the **Small Claims Court**. On the other hand, Counsel for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents urged the Court to order that the matter starts de novo.
4. In declining to start the matter afresh, the Hon Adjudicator in his ruling dated 20/05/2024 observed that Section 3 of the **Small Claims Act** offers a guiding framework on the timely disposal before the said Court. The Hon Adjudicator noted that these principles are the timely disposal of

proceedings using the least expensive method, equal opportunity to access judicial services, fairness of process and simplicity of procedure and that it is based on these principles that Section 34 of the Act provided that matters in the said court should be determined within 60 days from the date of filing.

5. Further, the Court noted that the filing of written submissions was the only pending issue in the matter and that a perusal of the Application which sought the recusal of the Hon T. Mbugua and the Ruling thereto did not in his finding provide a basis for him to order that the matter starts afresh apart from the fact that the parties urging for a de novo hearing did not give any specific reason to support that request and/or state any prejudice they would suffer if the matter proceeded from where it had reached.
6. Being dissatisfied with the ruling, the Appellant filed a Memorandum of Appeal dated 3/06/2024 on grounds that;
  - 1) **The trial Magistrate erred in law and in fact in ruling that the hearing of the matter should not begin afresh following the recusal of the trial Magistrate, Tabitha Mbugua.**
  - 2) **The trial Magistrate erred in law and fact in making a finding that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in their application dated 26/03/2024 did not demonstrate the nature of their prejudice should the trial not start afresh.**

- 3) **The trial Magistrate erred in law and fact in overriding the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents'/Applicants' right to justice in the interest of the time limits of the lower Courts.**
- 4) **The trial Magistrate erred in law and fact in failing to acknowledge that reliance on a flawed trial transcripts and/or proceedings will prejudice the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents/Applicants.**
- 5) **The trial Magistrate erred in law and in facts by allowing the matter to proceed to submissions without addressing the issues by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents/Applicants.**
- 6) **The trial Magistrate erred in law and fact by proceeding with the trial while relying on evidence that had been brought into question by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents' Applicant's application dated 26/03/2024.**
7. The Court directed that the appeal be disposed of by way of written submissions. Parties were given timelines within which to comply. As at the time of writing the judgment herein, the only submissions that were on record were those filed by the firm of Kimaru Kimutai Advocates on behalf of the 1<sup>st</sup> Respondent. A summary of the said submissions is as hereunder;
8. Counsel cited **Order 42 Rule 6 of the Civil Procedure Rules 2010** and Submitted that the conditions therein set for the granting of a stay have not been met by the Appellant to warrant the orders sought. In this regard, he

cited the decision of the Supreme Court in the case of **Moses Mwicigi and 14 Others and Independent Electoral and Boundaries Commission and 5 Others [2016] eKLR** where the court impressed upon the need for parties to adhere to the laid down Rules and Procedures which the court held are very important for it goes without saying that they are handmaidens of justice.

9. Further Counsel also cited the provisions of **Section 34 of the Small Claims Court Act** that the Hon Adjudicator relied upon in reaching his determination as already herein summarized. He urged that the same should be read alongside **Article 2(b) of the Constitution of Kenya 2010 (sic)** which provides that justice should not be delayed.

10. That over and above this, the Appellants in their Application for stay failed to invoke the provisions of **Order 42 Rule 6 of the Civil Procedure Rules** thus rendering their Application incompetent and a candidate for dismissal. In support of this submission, Counsel cite the decision of the 5 - Judge Bench of the High Court in the case of **William Odhiambo Ramogi and 2 Others v the Attorney General & 3 Others [2019] eKLR** wherein the court laid down the 6 principles to be considered in an application for stay.

11. Lastly, Counsel, placing reliance (*now correctly*) on **Article 159(2)(b) and (d) of the Constitution** which provides that justice shall not be delayed and shall be administered without undue regard to procedural technicalities; **Section 1B of the Civil Procedure Act** that provides for the need for the timely disposal of cases and **Section 34 of the Small Claims Court Act** that provides that cases filed before these court must be determined within 60 days from the date of filing submitted that the Appellant by his conduct in

having their appeal had and disposed of expeditiously has demonstrated bad faith, a condescending attitude towards the court, an affront to the timely disposal of the suit as provided under the **Small Claims Court Act**.

12. In this regard, Counsel referred the court to his submissions which he indicates he made on 12/4/2024 (and which are not on record) which he stated aptly captured the conduct of the Appellant as herein above referred to. Counsel then proceeded to further submit at length on whether the Hon T. Mbugua ought to have recused herself. This last limb of the submissions in my considered opinion is irrelevant to these proceedings and the court shall therefore not delve into the same. Counsel then urged that the Application be dismissed.

### **Determination**

13. Ordinarily, duty of the first appellate Court is to re-evaluate and assess the evidence and make its own conclusions. But even with this provision, the Appellate Court must always keep in mind the fact that the Trial Court unlike the Appellate Court, had the advantage of observing the demeanor of the witnesses and hearing their evidence first hand.

14. However, with regard to appeals from the Small Claims Court, not only is an appeal to the High Court the first and last Appeal, but it must also be on matters of law only as provided under the provisions of **Section 38(1) and (2)** of the **Small Claims Court Act No. 2 of 2016**, as is hereunder reproduced;

### **Section 38 Appeals**

**(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.**

**15.**In essence therefore, the aforementioned provision means that under **Section 38** of the **Small Claims Court Act, 2016**, the High Court, while handling an appeal from the Small Claims Court is not permitted to substitute that Court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them.

**16.**The above said and before delving into the merits and demerits of the matter in its entirety, there are several issue of significance that the court needs to bring to the fore at this preliminary stage for purposes of the completeness of the record. This court got seized of the matter on 29<sup>th</sup> May 2025 at the stage of confirming whether or not the Record of Appeal had been filed. The matter was allocated to the court by the Deputy Registrar of the High Court.

**17.**From what the court was able to glean from the correspondence exchanged between Counsel Kimaru Kimutai for the Claimants and the Deputy Registrar filed in the court file, an oral application for stay of the proceedings of the Small Claims Court was made to the High Court and the same was allowed and the Lower Court proceedings stayed.

**18.** However, I have been unable to trace the proceedings of the court, or any proceedings at all before the Judge pertaining to this oral application. There is also formal application for stay of proceedings filed in the court file and/or in the CTS. In these regard then I am unable to discern under which provision of the law the said application was made, when it was made, before which Judge it was made, under which provision of the law it was made, whether the application was for stay of execution or stay of proceedings or both, the exact orders that were issued and/or even when they were issued. For this reason, I am not able to connect any application to the submissions made by the Counsel for the Claimant with regard to the provisions of **Order 42 Rule 6** of the **Civil Procedure Rules** as herein above summarized specifically, and/or with the rest of the submissions anchored on an application.

**19.** The court is therefore flying blind so to speak in this regard. This scenario is compounded by the fact that the Appellant in the matter did also not file any submissions at all. This being the case, it is extremely difficult for the court, having taken up this matter mid-stream, to even know what it's decision ought to be about, as in whether this matter is at the stage of the inter-parties hearing of an application or whether it is at the stage of the consideration of the Appeal, for want of proceedings to guide on what had hereto before transpired.

**20.** But even assuming the court is to consider the Appeal filed, what convolutes the quagmire that the court finds itself in even further is that from the grounds of Appeal filed, what is apparent is that the main ground of contention is an Application that was made before the Trial Court dated

26/03/2024. From the tone of the grounds of appeal, it appears that this was the Application that sought the Hon T. Mbugua's recusal.

21. This application together with the appurtenant pleadings, submissions and Ruling are not in the record of the trial court as submitted nor on the record of appeal. As already herein summarized, Hon R. Otieno then directed that the matter proceeds from where it had reached and that decision was contested hence the Appeal.

22. However, the submissions on the de novo application are also not in the record of the trial courts proceedings as submitted or on the record of appeal. Further to the above, the record of the proceedings of the Small Claims Court shows that an application for stay of the proceedings was made before Hon R. Otieno on 3/6/2024, submissions filed, and the Hon R. Otieno delivered his Ruling on this Application on 4/7/2024. Again, the pleadings submissions and the Ruling relevant to this application are also not in the record of the proceedings as submitted or on the record of appeal.

23. With all these omissions as above highlighted, the court is not in a position to appreciate and put into context the gist of the Appellant's Appeal as well. A perusal of the list what is contained in the Record of Appeal as filed as indicated by the Appellants themselves indicates that only the following documents were filed;

**1. Memorandum of Appeal**

**2. Ruling**

**3. Proceedings**

24. Further, the court also notes that the Memorandum of Appeal filed has no parties listed therein to indicate who the Appellant is and who the Respondents are. The above said, it should be noted that the court is very much alive to the provisions of **Section 32** of the **Small Claims Act** which stipulates that the Small Claims Court shall not be bound wholly by the strict rules of evidence in the discharge of its functions. This is understandably so for reasons of the expediency with which the court is mandated to hear and determine the cases before it.

25. However, when it comes to appeals, it is important to note that nowhere in the operating statute of the Small Claims Court, which is the **Small Claims Court Act** have the provisions of the **Civil Procedure Act** been excluded in any way. For this reason, then, it is indeed mandatory that parties seeking to appeal from a decision of the Small Claims Court to the High Court must comply with the provisions of **Order 42 Rule 13(4) of the Civil Procedure Rules**. It should further be noted that these provisions are couched in mandatory terms by use of the word ***shall***. The said provisions are as follows;

**Order 42, rule 13(4)**

**(4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—**

**(a) the memorandum of appeal;**

**(b) the pleadings;**

**(c) the notes of the trial magistrate made at the hearing;**

**(d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;**

**(e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;**

**(f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:**

**26. Section 22 of the Small Claims Court Act** describes the Record of the Court, which then would comprise of the pleadings, the proceedings and the Orders and/or Decrees of the court as envisaged in the above provisions of **Order 42 Rule 13(4) of the Civil Procedure Rules** as follows;

The record of a Court shall include—

(a) claims and responses filed with the Court by parties;

(b) summaries of the facts of the issues in dispute in respect of t

(c) orders made by the Court in relation to those claims.

27. With all the above anomalies relating to the appeal herein filed as observed by the court and herein above enumerated, it is clear that the Appellant herein has fallen far too short of compliance. This want of compliance goes beyond the procedural technicalities that are envisaged in **Article 159(2)(d) of the Constitution** for the simple reason that noncompliance affects the very substratum and substance of the appeal in the sense that without all the listed documents enumerated in **Order 42** above that the court ought to satisfy itself form part of the record of appeal before admitting the appeal, the court is not able to appreciate and relate the grounds of appeal listed in the Memorandum of Appeal with the Record of Appeal as filed.

28. This is because it is the record of appeal that informs, lends credence to and justifies the grounds of appeal for which the impugned decision of a Trial Court is sought to be overturned.

29. The need and reason for the adherence to procedural fidelity by parties in the filing of their pleadings was underscored by the Court of Appeal in the case of **Mumo Matemu v Trusted Society of Human Rights Alliance [2014] eKLR** as follows;

**“...In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) ...Procedure is also a handmaiden of the just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in**

**controversy. Pleadings assist in that regard and are a tenant of substantive justice as they give fair notice to the other party. ....**

**30.**In light of the above and guided by the above decision of the Court of Appeal and the mandatory provisions of **Order 42 Rule 13(4) of the Civil Procedure Rules 2010** herein cited, it is my finding that the appeal filed as filed by the appellant herein is grossly incompetent for want of procedural compliance and fidelity.

**31.**Accordingly, the same is struck in its entirety with no orders as to costs. The apparent oral interim stay orders herein issued against the decision of the Hon R. Otieno to proceed with the matter from where the Hon T. Mbugua had left it off as can be gleaned from the various correspondences between the Deputy Registrar and Counsel for the 1<sup>st</sup> Respondent are now hereby vacated. It is so ordered.

**Read Dated and Signed at ELDORET on 20<sup>th</sup> February 2026**

**E. OMINDE**  
**JUDGE**