

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPELLATE DIVISION

HCCA NO. E516 OF 2024

VIVIENNE

EYASE.....APPE

LLANT

VERSUS

IMPULSE HOLDINGS

LIMITED.....RESPONDENT

***(Being an appeal from the Ruling and Order of the
Milimani Small Claims Court delivered on 8th April 2024
in SCCCOMM No. E470 of 2024)***

JUDGMENT

1. The Appellant was the Claimant in the Small Claims Court where he sought, inter alia, Kshs. 21,500 being a refund of a sum paid to the Respondent as security deposit for rent and utilities, together with costs and interest.
2. The Respondent opposed the claim and filed a defence together with a counterclaim alleging that expenditure on repairs went over and above the deposit sum.
3. The trial court raised the issue of jurisdiction *suo motu*, directed parties to file submissions, and subsequently held

that it lacked jurisdiction, resulting in the striking out of the claim.

4. The Appellant was aggrieved by the ruling and lodged this appeal, essentially contending that the learned adjudicator misapprehended the scope of Section 12(1)(b) of the Small Claims Court Act (the Act) and wrongly treated a claim for refund of a deposit as a tenancy dispute outside the court's mandate.
5. The Appeal challenges the impugned ruling on several grounds, the substance of which is that the learned adjudicator erred in law and fact by finding that the Small Claims Court lacked jurisdiction to hear and determine the claim and for failing to distinguish a claim for rent from a claim for security deposit. It was the Appellant's case that the trial court erred in holding that security deposit for rent is still rent and for anchoring her findings on wrong and irrelevant considerations thereby denying justice to the Appellant.
6. The Appellant relied on several including the case of ***Lisa Kristine Christoffersen vs. Kavneet Kaur Sehmi t/a The Random Shop (Civil Appeal E036 of 2022) [2022] KEHC 14035 (KLR)*** on the distinction between rent and deposit/security, and the scope of the Small Claims Court jurisdiction.
7. The Respondent's position before this Court, as in the trial court, is that the dispute emanated from a tenancy

relationship and was therefore excluded from the jurisdiction of the Small Claims Court as provided under Section 12(1) of the Act, and that the claim was properly struck out. The Respondent cited the decisions in ***Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR***, for the principle that jurisdiction is everything and without it a court has no power to proceed; and ***Samuel Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others [2012] eKLR***, for the proposition that a court’s jurisdiction flows from the Constitution or statute and cannot be assumed.

8. The appeal was canvassed by way of written submissions which I have considered.
9. Having considered the record of appeal and the parties’ respective submissions, I find that the main issue for determination is whether the Small Claims Court had jurisdiction to hear and determine the Appellant’s claim.

Analysis and Determination

10. It is settled law that jurisdiction is foundational and without it a court has no power to take any further step. This principle was authoritatively stated in ***Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR***, where the court held that jurisdiction is everything and without it a court must down its tools.

11. In ***Samuel Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others [2012] eKLR***, the Supreme Court reiterated that a court's jurisdiction flows either from the Constitution or statute, and a court cannot arrogate to itself jurisdiction not donated by law.

12. The question in this appeal is whether the claim lodged by the Appellant before the Small Claims Court fell within the jurisdiction conferred by Section 12 of the Small Claims Court Act which provides for the nature of claims that the Small Claims Court may determine, which include claims relating to the following matters: -

- i) contracts for sale;***
- ii) supply of goods and services;***
- iii) money held and received;***
- iv) liability in tort relating to loss or damage;***
- v) compensation for personal injuries; and***
- vi) set-off and counterclaim under any contract.***

13. The Appellant's case, both before the trial court and in this appeal, is that the monies sought were not rent arrears but a security deposit, which is refundable and constitutes money held by the Respondent.

14. The trial court however found that:

- a) The tenancy agreement was not a contract contemplated under Section 12(1)(b);**
- b) Security deposit for rent is still rent; and**
- c) The Appellant's cause of action flowed from a rental dispute outside the purview of the Act.**

15. The Appellant, on the other hand, maintained that the dispute fits under “money held and received” and is therefore within the purview of Section 12(1)(b) of the Act, and that the trial court misdirected itself by treating the refund claim as a tenancy dispute excluded from jurisdiction.

16. I have considered the case of **Lisa Kristine Christoffersen (supra)**, which was cited by both parties where the Court dealt with the Small Claims Court jurisdiction involving rent and rent arrears, and held that the Small Claims Court lacked jurisdiction and upheld striking out of the claim.

17. The foregoing authority supports the proposition that claims for rent and rent arrears, arising from tenancy relationships, fall outside the Small Claims Court jurisdiction. The question in this case is however narrower as it involves the issue of whether a claim for refund of a security deposit, framed as money held and received, should automatically be treated as a tenancy dispute excluded from Section 12 of the Act.

18. The Appellant relied on **Muhanda vs. LP Holdings Ltd [2025] eKLR**, where the Court held that the Appellant's claim for refund of a rent deposit fell within Section 12(1)(b)

of the Act, being a contract relating to money held and received.

19. The Appellant further cited the reasoning of the Business Premises Rent Tribunal decision in ***Derrick James Kimani vs. Kingoo Investment Ltd & Another (2021) eKLR***, which emphasized the distinction between rent and deposit/security, and that such deposit cannot be converted into rent or defrayed against rent arrears contrary to the tenancy terms.

20. This Court is persuaded that the proper approach is not to treat all claims related to tenancy arrangements as automatically excluded, but to examine the nature of relief sought and the legal character of the money claimed.

21. My take is that a security deposit, though paid within a tenancy arrangement, is ordinarily held as a form of security pending performance of obligations and is refundable subject to lawful deductions. It is therefore distinguishable from rent, which is consideration paid periodically for the use and occupation of premises.

22. Where the claim before the Small Claims Court is purely for refund of a deposit, without the court being invited to determine questions of occupation, eviction, distress, rent arrears, or enforcement of tenancy terms beyond the deposit refund, the matter may properly be framed as a claim for money held and received.

23. Guided by the reasoning in the above cited case, I find that the trial court fell into error by treating the deposit as rent and by concluding that it lacked jurisdiction without properly interrogating whether the claim fitted under Section 12(1)(b) of the Act.

24. I further note that the dispute on jurisdiction is a point of law and properly lies within the scope of appellate consideration. The appellate role in correcting misdirection in law is well captured in ***Mbogo & Another vs. Shah [1968] EA 93***, and in ***Otieno, Ragot & Company Advocates vs. National Bank of Kenya Limited [2020] eKLR***, cited in the Appellant's submissions, on the limited basis upon which an appellate court may interfere with discretion of a lower court.

25. In the end, I am satisfied that the claim as framed by the Appellant, being one for refund of Kshs. 21,500 as security deposit, was capable of falling under Section 12(1)(b) of the Act as money held and received, and the trial court misdirected itself in striking it out purely on the basis that it arose from a tenancy relationship.

26. Accordingly, I find that the appeal is merited and I therefore allow it in the following terms: -

a) The Ruling and Order of the Milimani Small Claims Court delivered on 8th April 2024 in SCCCOMM No. E470 of 2024 striking out the claim for want of jurisdiction is hereby set aside.

b) The Appellant's claim is reinstated for hearing and determination on the merits before the Small Claims Court (or such other competent forum as the law may direct).

c) Costs of the appeal are awarded to the Appellant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH
DAY OF FEBRUARY 2026.**

**HON W. A. OKWANY
JUDGE**

**In the presence of
Mocha for Eyase for Appellant
Cherono for Bonventure for Respondent
Abdirzak - Court Assistant**