

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
CIVIL APPEAL NO. E462 OF 2025

-between-

PATRICK **MWENDWA**
FRANCIS**APPELLANT**

-versus-

THE **NAIROBI** **SOUTH** **HOSPITAL**
LIMITED**RESPONDENT**

(Being an appeal from the Judgment and Decree of Hon. V.K. Momanyi, (Adjudicator) in Small Claims Court Commercial Claim No. E26101 of 2025, delivered on 9th April 2025)

JUDGMENT

Background:

1. *The Nairobi South Hospital Limited, the Respondent herein, is a hospital facility. It sought to recover monies allegedly owed for medical services rendered to a patient, one Rose Ndanu Kieti.*
2. *The Respondent's cause of action was anchored on a Guarantee Agreement dated 28th September 2022, wherein Patrick Mwendwa Francis, the Appellant herein, guaranteed the payment of the patient's hospital bill and deposited a Title Deed (Title No. Kyangwithya/Mulundi/1112) as collateral. On 9th April 2025, the trial Court entered a default judgment against the Appellant. Aggrieved, the Appellant lodged the instant appeal which was disposed of by way of written submissions.*

The Appeal:

3. *Through the Memorandum of Appeal dated 17th April 2025, the Appellant sought to set aside the default judgment on the following grounds of appeal: -*

1. *THAT the trial court erred in law and in fact by entering a default judgment against the appellant without affording him an opportunity to be heard or tender evidence during the hearing of the claim herein.*
2. *THAT the trial court was biased against the appellant. The trial court had a fixed mind in determining the claim herein. The trial subordinate court contravened the doctrine of fair hearing.*
3. *THAT the trial court erred in law and fact by entertaining and determining a claim that exceeds the monetary jurisdiction of the Small Claim Court, contrary to Section 12(1) of the Small Claims Court Act, which limits jurisdiction to claims not exceeding Kshs. 1,000,000/=.*
4. *THAT the claim before the subordinate court was premature. The contract of the engagement was to be referred before an arbitrator before filing anything before the trial court.*
5. *THAT the trial court erred in fact and in law by failing to consider or inquire into the fact that part of the claim had been settled as evidenced by payment documents and correspondences that were not presented due to the appellant not being heard.*
6. *THAT the trial court erred in fact and in law by finding the appellant liable for the entire claim when the same was unproven, and the circumstances surrounding the alleged guarantee and security were in dispute and required evidence.*
7. *THAT the trial court failed to subject the Respondent's claim to proper scrutiny, thereby arriving at a finding that was unjust, excessive, and not supported by cogent evidence.*
8. *THAT the judgment was against the weight of the law and evidence and occasioned a miscarriage of justice by condemning the appellant unheard.*

The Submissions

4. In his written submissions dated 15th August 2025, the Appellant consolidated his arguments into three main issues. On jurisdiction, he submitted that the judgment was for Kshs. 1,162,283.38, which exceeds the pecuniary limit of the Small Claims Court as set by Section 12(1) of the Small Claims Court Act. Relying on *Republic -vs- Magistrates Court, Mombasa; Absin Synergy Limited* [2022] KEHC 10 (KLR) and *Ondindo -vs- Ouma*

[2024] KEHC 11298 (KLR), he argued that the proceedings were *nullity ab initio* because jurisdiction is a matter of law and cannot be expanded by judicial discretion.

5. On the right to a fair hearing, the Appellant contended that the default judgment violated Article 50(1) of the Constitution and the principle of *audi alteram partem*. He relied on the case of *Kiprop -vs- Republic* [2024] KEHC 5478 (KLR) to argue that he was condemned unheard and denied the chance to challenge the validity of the guarantee or prove partial settlement.
6. Finally, he submitted that the claim was unproven and required evidence, specifically disputing the signature on the guarantee.

The Respondent's case:

8. The Respondent challenged the appeal through written submissions dated 25th August 2025. At the outset, it was its case that under Section 38(1) of the Small Claims Court Act, appeals to the High Court are limited to matters of law, whereas the Appellant's grounds largely revolved around factual disputes including evidence of payment and signature.
9. On jurisdiction, the Respondent conceded that the Small Claims Court is capped at Kshs. 1,000,000 but pointed out that in its Statement of Claim, it had expressly waived and forfeited any sum in excess of this limit and as such the lower court acted within its mandate.
10. Regarding the fair hearing, the Respondent cited the decision in the case of *TKM -vs- YAO* [2020] KEHC 7349 (KLR) on the doctrine of laches, arguing that the Appellant slept on his rights by failing to file a response despite being granted time to do so.

Analysis:

11. Upon careful consideration of the Grounds of appeal, the Record of Appeal and the rival submissions, the following issues crystallize for determination:

- i. *Whether the Small Claims Court acted in excess of its pecuniary jurisdiction.*
- ii. *Whether the Appellant was denied his constitutional right to a fair hearing.*
- iii. *Whether the default judgment was merited in law.*

12. A look at the above issues now follows.

[a] Whether the Small Claims Court acted in excess of its pecuniary jurisdiction:

13. The Appellant's primary attack on the judgment is that the Small Claims Court entertained a claim for Kshs. 1,162,283.38, thereby exceeding its statutory ceiling of Kshs. 1,000,000/=. *Section 12(3) of the Small Claims Court Act provides as follows:*

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12. Nature of claims and pecuniary jurisdiction

(3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.

14. As correctly cited by the Appellant in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd*, without jurisdiction, a Court must down its tools. However, a perusal of the Record of Appeal reveals a critical oversight in the Appellant's argument. Paragraph 5 of the Respondent's Statement of Claim dated 29th January 2025 explicitly stated as follows: -

By filing this Claim, I (the Claimant) hereby waive and forfeit the recovery of all sums in excess of Kshs 1,000,000, excluding costs and interest.

15. The jurisdiction of a Court is determined by the pleadings. By expressly abandoning the portion of the claim exceeding the statutory limit, the Respondent brought the suit squarely within the ambit of the Small Claims Court. The Trial Court's notes on the judgment indicate "*Default Judgment is entered against Respondent in in the sum of Kshs. 1,000,000/-*". Since the prayer in the Statement of Claim was capped at Kshs. 1,000,000, the judgment is effectively for that capped sum. The

Appellant's reliance on the case of *Ondindo -vs- Ouma (supra)* is distinguishable because, in that case, the Court awarded damages exceeding the limit without a waiver. Here, the waiver was pleaded.

16. Consequently, this Court finds and hold that the Small Claims Court had the requisite pecuniary jurisdiction to determine the matter.

[b] Whether the Appellant was denied his constitutional right to a fair hearing:

17. The Appellant contended that he was condemned unheard. The right to a fair hearing under Article 50 of the Constitution encompasses the right to be served, the right to be present, and the right to present one's defence. The record, however, contradicts the Appellant's assertion of being unheard. The Appellant was served on 25th February 2025. On 17th March 2025, the Appellant's Counsel, *Mr. Matugo*, appeared before the trial Court and requested for 7 days to file a response. That request was granted.
18. By 9th April 2025, which was the hearing date, no response had been filed. Whereas the maxim *audi alteram partem* guarantees every person an opportunity to be heard, it is not an indefinite indulgence to a party who chooses not to utilize that opportunity. The Appellant was afforded time to file his defence but failed to do so. It is noteworthy that on the date of the impugned judgment, the Appellant's Counsel appeared and stated thus:

"My client wishes to pursue an out of court settlement. He intends to sell a property to pay the amount".

19. The foregoing was an unequivocal admission of liability made in open Court by the Appellant's legal representative. It is disingenuous for the Appellant to now claim, on appeal, that he disputes the signature on the guarantee or that the debt was partially settled, when his Counsel on record admitted the debt and sought time to pay.

20. The Respondent's reliance on the case of **TKM -vs- YAO** case (supra) that equity aids the vigilant is meritorious. The Appellant cannot claim a violation of fair hearing when he voluntarily squandered the opportunity to defend the suit and instead admitted the claim through counsel.

[c] Whether the default judgment was merited in law:

21. Section 38(1) of the *Small Claims Court Act* restricts appeals to this Court to matters of law. It provides thus;

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.*

22. The Appellant sought to introduce new factual defences regarding the authenticity of the guarantee and partial payments, issues that were never pleaded before the trial Court because the Appellant failed to file a response.

23. A default judgment is a lawful consequence of a failure to file a defence. Given the admission of the debt by the Appellant's Counsel and the failure to file a response within the extended time, the trial Court was within its rights to enter judgment summarily. There was no error of law in the trial Court's decision.

Disposition:

24. The appeal is, hence, devoid of merit. The Small Claims Court acted within its jurisdiction, and the Appellant was afforded a fair hearing which he waived by failing to file a defence and admitting liability.

25. In the premises, the following final orders hereby issue: -

[a] The appeal is hereby dismissed in its entirety.

[b] The Judgment and Decree of the Small Claims Court in *Claim No. E26101 of 2025* is hereby upheld. For the avoidance of doubt, the principal sum awarded is capped at Kshs. 1,000,000/= as per the waiver in the Statement of Claim.

[c] The Appellant shall bear the costs of this appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 20th day of February, 2026.

**A. C. MRIMA
JUDGE**

Judgment virtually delivered in the presence of:

Miss Ogolla, Learned Counsel for the Appellant.

Miss Aswani, Learned Counsel for the Respondent.

Michael/Amina - Court Assistants.