

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**APPELLATE DIVISION**  
**CIVIL APPEAL NO. E1037 OF 2024**

**RUTH MAKASI KILONZO.....**  
**APPELLANT**

**VERSUS**

**JACK AMBOLE ASEMBO.....**  
**RESPONDENT**

**( BEING AN APPEAL FROM THE JUDGMENT AND DECREE  
OF HON J.W.NASIMIYU (RM) DELIVERED ON 19<sup>th</sup> AUGUST  
2024 IN NAIROBI SCCC NO E3269 OF 2024 )**

**BETWEEN**

**RUTH MAKASI KILONZO.....**  
**.....CLAIMANT**

**VERSUS**

**JACK AMBOLE ASEMBO..... RESPONDENT**

**J U D G M E N T**

**A. INTRODUCTION**

1. The Appellant filed her statement of claim dated 8<sup>th</sup> July 2024 against the respondent before the small claims court and stated that on or about the 14<sup>th</sup> June 2024, she was

lawfully and carefully crossing the road at Roysambu Zebra crossing, when the respondents motor vehicle registration Number **KDE 760J** was so negligently and carelessly driven that it lost control and violently hit her thereby occasioning her life threatening injuries.

2. In response, the Respondent admitted that the accident did occur but denied the particulars of negligence pleaded. He further averred that the accident occurred due to the appellants negligence as she crossed the road without looking out for other road users especially the respondent motor vehicle and thus hit its side mirror. They were thus not to blame for the occurrence of the said accident and urged the court to dismiss the Appellants claim.
3. At the hearing of the said suit the parties consented to proceeding by way of documentation under **Section 30 of the small claims Act** and filed their respective submissions in support of their case. The trial Magistrate in her considered judgment, suo moto raised the issue of jurisdiction, though not canvassed by any party, while finding guidance in the case of **Nasra Ibrahim Ibren Vrs Independet Electrol & boundaries Commission & 2 others (2018) Eklr** and proceed to dismiss the suit on the basis that unquantified claims ( RTA- personal injury claims ) were not suited to be heard in the small claims court. She therefore proceeded to struck out the suit for want of jurisdiction.

## **B. THE APPEAL**

4. The Appellants, being dissatisfied with the said Judgment, raised six (6) grounds of appeal, namely: -

- a) ***That the learned Magistrate erred in law in determining issues that had not been raised before the court by any party and thereby denied the Appellant the right to be heard on the issues raised by the court suo moto..***
- b) ***That the learned Magistrate erred in law by finding that the small claims court lacks jurisdiction to hear and determine claims arising from personal injury claims contrary to the provisions of section 12(1)(d) of the Small claims Act 2016.***
- c) ***That the learned Magistrate erred in law and in fact in relying on the obiter dictum decision of ogwari Vs Hersi ( Civil Appeal No 223 of 2022) in striking out the suit.***
- d) ***That the learned Magistrate erred in law and fact in placing reliance on extraneous matters in arriving at her decision by assuming that the appellant would have filed a declaratory suit in execution of the courts judgment and decree.***
- e) ***That the learned Magistrate erred in law and in fact in failing to consider the recent binding precedent issue din Irungu Vs Karanja ( Civil Appeal e037 of 2024),(2024) KEHC 8162 (KLR), which held that the small claims court had jurisdiction to hear and determine personal injury claims.***
- f) ***That the learned Magistrates decision was unjust, against the weight of evidence and was based on misguided points of fact and***

**wrong principles of law and thereby occasioned a miscarriage of justice.**

5. The Appellant thus prayed that the appeal be allowed and the judgment of the trial court be set aside and her claim be referred back to a different Magistrate/adjudicator for determination.

### **C. ANALYSIS AND DETERMINATION**

6. I have considered the entire record of Appeal and pleadings filed, the grounds of appeal raised, the submissions filed by the Appellant, and the cited authorities. This being an appeal from the Small Claims Court, it is important to point out that **Section 38 of the *Small Claims Court Act*** provides that appeals from the said court shall be only on issues of law. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts. See **John Munuve Mati Vr The returning officer, Mwingi North Constituency & 2 others (2018) eKLR**
7. This Appeal is centered on the question of jurisdiction of the small claims court to hear and determine personal injuries claims. While it is true that in the case of **Ogwari v Hersi (Civil Appeal 223 of 2022)** it was held that the small claims court has not jurisdiction to hear and determine RTA claims, in other High court cases including; In **Joseph Njuguna Irungu v David Karanja [2024]**

**KEHC 8162 (Thika High Court, Civil Appeal No. E037 of 2024), Mercy Muthoni Gichovi v Jane Wanjiku Kilem [2024] KEHC 10859 (Embu High Court, Civil Appeal No. E020 of 2024), Njuguna J and Ahmed Omer v James Mshila [2025] KEHC 3081 (Nairobi High Court, Civil Appeal No. E097 of 2024)** amongst several other cases, it has been conclusively held that

**“The Small Claims Court is possessed of jurisdiction to hear and determine personal injury claims that arise from road traffic accidents that are within the pecuniary jurisdiction of the court. Any reading that excludes such claims from section 12(1) (d) would defeat the letter and spirit of the Act.”**

8. Back to the Appeal at hand, while the law allows the trial court to raise and determine a fundamental legal issue even if not canvassed by the parties, in this instance based on the several conflicting decisions of the High court, it would have been prudent to have given both parties an opportunity to canvass the jurisdictional issue raised. The Appellant was definitely prejudiced by the trial Magistrate action and was condemned unheard on an issue not yet settled in law.
9. Subsequent to this Appeal being filed, a three-bench judgment dated 22<sup>nd</sup> January 2026 issued in **Gathaiya v Attorney General & 2 others; & 176 Interested Parties (Petition E008 & E010 of 2024(Consolidated)**

**[2026] KEHC 290 (KLR) (22 January 2026)**  
**(Judgment), Neutral citation: [2026] KEHC 290 (KLR)**

held that

At paragraph 26

**A cursory plain reading of the above provisions would show that the Small Claims Court is given jurisdiction to entertain claims for personal injuries. However, as held in the case of The County Government of Nyeri & Another v Cecilia Wangechi Ndungu [2015] eKLR, the fundamental rule of interpretation is that a statute is to be expounded according to the intent of Parliament that made it. That intention is to be found by an examination of the language used in the statute as a whole and not selectively.**

**10.** But also on further analysis of the Small claims Act, and its legislative intent, the learned judges in the said **Gathaiya v Attorney General & 2 others (Supra)** did proceed to hold that;

At paragraph 65

**“In this regard, we find and hold that claims for compensation for injuries arising out of road traffic accidents were not contemplated to be part of the matters to be entertained by the Small Claims Court under Section 12(1) (d) of the Act. Their inclusion as part of that Section would introduce the doctrine of strict liability on such claims. If the Legislature intended to introduce strict liability on personal claims in RTA, nothing would have been easier than to expressly state so.**

.....  
.....  
**(67) Accordingly, we find and hold that the Small Claims Court has no jurisdiction to entertain claims for compensation for personal injuries arising out of road traffic accidents under Section 12(1)(d) of the Act.**

**(87)We are alive to the fact that because of the findings we have made above, there will be some difficulties. There are so many litigants who have their cases for claims for personal injuries in RTA that are pending in the Small Claims Court throughout this country. They must have filed them before the issue of jurisdiction was determined. As we have already found, a casual reading of Section 12(1) of the Act could not have disclosed that such claims were never intended for that Court.**

**88.In the premises, we must guard against such litigants suffering any prejudice in the interests of justice. Further, we should not make orders that may prejudice the cases already pending in those Courts having in mind that even costs, albeit minimal have been incurred. We must be alive to the dictates of Article 48 of the [Constitution](#).**

11. In conclusion, the learned judges in the said petition did not dismiss the RTA claims filed before the small claims court but directed that they be transferred to the Magistrates court within their respective jurisdiction.

### **C. DISPOSITION**

12. I do therefore find and hold that this Appeal has merit.

13. The Judgement/Decree issued in **NAIROBI SCCC E3296 OF 2024** dated 19<sup>th</sup> August 2024 dismissing the Appellant suit is hereby set aside and substituted with an order directing that the same be heard afresh before the Magistrates court, within the jurisdiction, where the accident occurred
14. Each party will bear their own costs of this Appeal
15. It is so ordered.

**Dated, signed, and delivered** in open court at **MARSABIT** this **20<sup>th</sup>** day of **FEBRUARY 2026**.

**FRANCIS RAYOLA OLEL**  
**JUDGE**

Delivered on the virtual platform, Team this **20<sup>th</sup>** day of **FEBRUARY 2026**.

**In the presence of: -**

N/A.....Appellant

N/A..... Respondent

Mr. Jarso.....Court Assistant

ORIGINAL