



REPUBLIC OF KENYA



**Cheruiyot v Kikaya (Civil Appeal E160 of 2023)  
[2025] KEHC 820 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 820 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E160 OF 2023  
SC CHIRCHIR, J  
JANUARY 30, 2025**

**BETWEEN**

**ELIJAH CHERUIYOT ..... APPELLANT**

**AND**

**DAVID KIKAYA ..... RESPONDENT**

*((An appeal arising from the Judgment of Hon. Cheruiyot(SRM) in Kakamega small claims court commercial claim No E 71 of 2022 delivered on 31st August 2022))*

**JUDGMENT**

1. The Respondent herein filed a claim against the Appellant at the Small Claims Court at Kakamega seeking for rent arrears amounting to Kshs 545,000 and compensation for loss arising from material damage a, all amounting to Kshs. 865,935/=. The respondent failed to enter appearance and the hearing proceeded exparte.
2. In a judgment delivered on 31/8/2022 the trial court found that the appellant was indebted to the claimant/ respondent herein in the sum of Kshs. 420,000/= in rent arrears and damages of Kshs. 267,375.

**Memorandum of Appeal**

3. The Appellant was aggrieved by the outcome and hence the present Appeal. He has set out the following grounds:
  - a. That the Hon. Trial court failed in dispensing its duty thus erred in fact and in law in conducting the said suit as it lacked jurisdiction.
  - b. That the Hon. Trial court failed in fact and in law by denying the applicant herein a chance to defend himself going against his constitutional rights of a fair trial



- c. That the learned trial magistrate failed to apply herself judicial and adequately by failing to evaluate evidence
4. He seeks for the setting aside of the judgment and dismissal of the suit. He further seeks for the costs of the Appeal.
5. The Appeal was prosecuted by way of written submissions.

### **Appellant's submissions**

6. It is the appellant's submissions that he was not aware about the suit in the lower court and only came to know about it when warrants of attachment were issued against him.; that there was no proper service as the court documents were sent to a wrong address.
7. It is further submitted that the small court lacked the jurisdiction to hear and determine the claim . He bases his argument on the provisions of section 12 of the Small claims Act 2016. He has further relied Samuel Kamau Macharia vs. Kenya commercial Bank and others SCK application No.2 of 2011. Where the court held that a claim for rent or rent arrears is not within the jurisdiction of the small claims court.
8. The respondent did not file any submissions.

### **Determination**

9. The Appeal raises two issues, namely : whether the trial court had jurisdiction to entertain the claim and whether the Appellant should have been given the chance to defend himself.
10. The question of jurisdiction is core . It is the basis upon which a court can proceed to determine any issue in the case. In the famous case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, the Court of Appeal laid the law on jurisdiction as follows:

"Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction .... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

11. In the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR it was held:

A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. .... the court must operate within the constitutional limits. It cannot expand jurisdiction craft or innovation."

12. Therefore the first issue for determination is the question of whether the trial court had jurisdiction to entertain the claim that forms the subject matter of this Appeal.



13. The jurisdiction of the Small Claims Court (SCC), is set out under Section 12(1) of the *Small Claims Court Act* No. 2 of 2016,. The section provides as follows:
- “ 12(1) Subject to this Act, the rules and any other law the court has jurisdiction to determine any civil claim relating to –
- a. A contract for sale and supply of goods or services.
  - b. Contract relating to money held and received.
  - c. Liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property.
  - d. Compensation for personal injuries, and
  - e. Set off and counter claim under any contract.”
14. A perusal of the statement of claim dated 15<sup>th</sup> July 2022 shows that , the claim was for rent arrears and damage caused to the the property that was in the leased premises . The basis of the relationship between the parties , and indeed the claim in court was a tenancy agreement entered by the parties on 29<sup>th</sup> November 2016.
15. While testifying before court, the respondent , then as claimant, stated inter alia: “ my plea therefore to this court is that Cheruiyot has violated all the tenancy provisions contained in the agreement .... Therefore I pray as follows:
1. Rental arrears of ksh. 545,000
  2. Compensation for loss of damage
  3. Water bill unpaid amounting to 3,770
  4. Electricity arrears of ksh. 10,400.....”
16. There is no dispute therefore that the claim was for rent arrears and other expenses incidental to or was in relation to the occupation of the Respondent’s premises. The loss or damage of items within the premises happened during the occupation of the premises. The question then is whether the claim for rent falls under the jurisdiction of the small claims as set out under section 12 of the SCCA.
17. In Civil Appeal E036 of 2022 Lisa Kristine Christoffersen and Kavneet Kaur Sehmi t/a The Random Shop Justice Majanja (as he was then) having ruled out recovery for rent and rent arrears as falling under section 12(1) of the Act went on to state as follows: noted “As regards the other categories in section 12(1) (b), (c) and (d) of the SCCA, it is clear that a claim for rent does not fall within the sphere of “money held and received” as the landlord in a claim for rent arrears does not hold any money that is due to a tenant. Nor does a claim for rent give rise to tortious liability or a claim for compensation for injuries. I therefore find and hold that a claim for rent or rent arrears is outside the jurisdiction of the Small Claims Court and ought not to have been entertained.
18. Rent arrears and water Bill are payments attached to tenancy and compensation for loss are incidental to the occupation of the premises. They are therefore issues to do with Landlord- tenant relationship. The recovery of rent or costs incidental thereto are not provided for under section 12 of the SCC Act.
19. Thus based on the provisions of section 12 of the small claims Act and the above decision in Lisa Kristine’s case( supra), which I find persuasive, it is my finding that the small claims court did not have jurisdiction to entertain this claim.



20. In view of this finding I do not consider it necessary to address the other issues raised in this Appeal.
21. In conclusion, the Appeal succeeds. I hereby proceed to make orders as follows:
- a). The judgment of the trial court is hereby set aside.
  - b). The claimant's claim in Kakamega SCC No. E071 of 2022 is hereby struck off with no orders as to costs
  - c). The costs of this Appeal is hereby awarded to the Appellant

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**S. CHIRCHIR**

**JUDGE.**

