



REPUBLIC OF KENYA



**Mungai v Directline Assurance Co Ltd (Civil Appeal E172 of 2024)
[2025] KEHC 4088 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E172 OF 2024
FN MUCHEMI, J
MARCH 27, 2025**

BETWEEN

SIMON NJANE MUNGAI APPELLANT

AND

DIRECTLINE ASSURANCE CO LTD RESPONDENT

*(Being an Appeal from the Ruling of Hon. M. W. Kamau (Adjudicator/RM)
delivered on 11th July 2024 in Thika Small Claims Court Claim No. E200 of 2024)*

JUDGMENT

Brief facts

1. This appeal arises from the ruling of Thika Adjudicator/Resident Magistrate in SCCC No. E200 of 2024 arising from declaratory suits seeking to compel the respondent to settle the decree against the claimants in SCCC No. E697 of 2023 and SCCC No. E988 of 2023 whereby the court held that it had no jurisdiction to hear a declaratory suit.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 3 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law and in fact in finding that the Small Claims Court lacks jurisdiction to hear and determine declaratory suits contrary to the provisions of Section 12(1) & (2) of the *Small Claims Court Act* 2016 as read with Section 10(2) of the *Insurance (Motor Vehicles Third Party Risks) Act* Cap 405.
 - b. The learned trial magistrate erred in law and in relying on the decision in *Kenya Orient Insurance Limited vs Otieno (Civil Appeal 166 of 2023)* [2024] KEHC 7637 (KLR) (25 June 2024)(Judgment) in striking out the suit without granting the appellant an opportunity to present his case contrary to the rules of natural justice.



- Directions were issued that the appeal be canvassed by way of written submissions and from the record only the appellant complied by filing his submissions on 6th September 2024.

The Appellant's Submissions

- The appellant relies on the case of Lillian S vs Caltex Oil (Kenya) Ltd [1989] KLR 1; Samuel Kamau Macharia vs Kenya Commercial Bank & Others 2012] eKLR and Speaker of the National assembly vs James Njenga Karume [1992] eKLR and Section 12(1) & (2) of the *Small Claims Court Act* and submits that the Small Claims court has jurisdiction to determine the matter as it delivered a judgment in line with Section 12(1)(d) of the Act and a decree issued. Thus it is upon the same court to enforce the decree issued. The subject matter of the appeal is a declaratory suit brought under the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act* seeking to have the respondent, an insurance company settle a lawful decree emanating from Thika SCCC No. E689 of 2024. The appellant submits that the decree was for an award of damages of Kshs. 166,356/- and thus it is the duty of the insurance company to satisfy or settle decrees against their insured pursuant to Section 10(1) & (2) of the *Insurance Act*.
- The appellant submits that it is undisputed that a decree and Certificate of Costs was issued in respect to the primary suit but the respondent failed to settle the decretal sum necessitating the filing of the declaratory suit, the subject of the instant appeal. The appellant further submits that from the statement of claim, he sought for judgment in the sum of Kshs. 166,356/- emanating from Thika SCCC No. E698 of 2023. The appellant submits that his claim arose from a road traffic accident whereby he had sustained personal injuries emanating from a road traffic accident wherein he was seeking for compensation for the injuries sustained. The appellant argues that Section 12(1)(d) of the Small Claims Act grants the court jurisdiction to hear and determine such claims and therefore it goes without saying that the small claims court has jurisdiction to enforce their own decrees pursuant to Section 29, 30 and 34(1) of the *Civil Procedure Act* and Rule 25(1) of the Small Claims Court Rules.
- The appellant argues that the court in *Kenya Orient Insurance Limited vs Otieno (Civil Appeal 166 of 2023)* [2024] KEHC 7637 (KLR) (25 June 2024) (Judgment) is bent on construing a statutory provision of the law. A court cannot rewrite a section of the law. To support his contentions, the appellant relies on the cases of Law Society of Kenya vs Kenya Revenue Authority & Another (2017) eKLR and Alcoholic Beverages Association of Kenya vs Kenya Film & Classification Board & 2 Others (2017) eKLR.
- The appellant further argues that the decision in *Kenya Orient Insurance Limited vs Otieno (Civil Appeal 166 of 2023)* [2024] KEHC 7637 (KLR) (25 June 2024) (Judgment) is not binding on the instant court as the same was delivered by a court of concurrent jurisdiction by the High Court. To support his contentions, the appellant relies on the case of Irungu vs Karanja (Civil Appeal E037 of 2024) [2024] KEHC 8162 (KLR) (4 July 2024) (Judgment).
- The appellant submits that the trial court struck out the suit without granting him an opportunity to present his case contrary to the rules of natural justice. The appellant argues that the trial court ought to have delivered its ruling in respect of his application to strike out the respondent's response to claim and give directions on how to proceed depending on the terms of the ruling. Furthermore, the respondent never raised a preliminary objection in the trial court on a point of law that the claimant's case ought to have been dismissed in light with the decision in *Kenya Orient Insurance Limited vs Otieno (Civil Appeal 166 of 2023)* [2024] KEHC 7637 (KLR) (25 June 2024) (Judgment) which is an indication that the court jumped the gun and prematurely delivered its judgment locking out the appellant without being heard and against the rules of natural justice.



9. The appellant relies on the cases of *The Management Committee of Makondo Primary School & Another vs Uganda National Examination Board*, HC Civil Misc. Application No. 18 of 2010; *Judicial Service Commission vs Gladys Boss Shollei & Another* [2014] eKLR and *Republic vs National Land Commission & 2 Others ex parte Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West)* [2018] eKLR and submits that a decision given without the principles of natural justice is void and a fair hearing must be meaningful for it to meet the constitutional threshold which was not the case herein. The appellant argues that the trial court's action did not meet the tenets of a fair administrative action as it did not afford him a chance to be heard yet his rights and interests stood to be adversely affected.

Issue for determination

10. The main issue for determination is whether the Small Claims Court has jurisdiction to entertain a declaratory suit.

The Law

11. Section 38(1) of the *Small Claims Court Act* provides:-

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.

12. An appeal premised on Section 38(1) of the *Small Claims Court Act* is likened to a second appeal as provided in the *Civil Procedure Act*.

13. The Court of Appeal set out the duty of the second appellate court in the case of *Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited* [2020] eKLR as follows:-

I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

14. In distinguishing between matters of law and fact the Court of Appeal stated in *Kenya Breweries Ltd vs Godfrey Odoyo* [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.



Whether the Small Claims Court has the jurisdiction to entertain a declaratory suit.

15. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989] KLR 1 where the court held:-

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.

16. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR that:-

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.

17. The jurisdiction of the Small Claims Court is set out in Section 12 of the *Small Claims Court Act* and it provides:-

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. A 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 moveable property;
 - d. Compensation for personal injuries; and
 - e. Set off and counterclaim under any contract
2. Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law.

18. Section 17 of the Act provides that the Small Claims exercises its own procedure having regard to principles of natural justice. It provides:-

Procedure of Small Claims Court subject to this Act and Rules, the court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the court shall have regard to the principles of natural justice.

19. On perusal of the Statement of Claim in Thika SCCC No. E200 of 2024, the appellant sought judgment for the sum of Kshs. 166,356/- emanating from Thika SCCC No. E698 of 2023 Simon Njane Mungai vs Charles Mwangi & Another. The respondent herein was the insurer of motor vehicle registration number KAY 021Q vide an insurance policy no. 00356720. The respondent’s insured motor vehicle was involved in an accident with the appellant herein on 4th November 2022 and the appellant instituted a suit for compensation for personal injuries he sustained and obtained judgment in the sum of Kshs. 166,356/- on 18th January 2024. The appellant then filed the declaratory suit under the provisions of the *Insurance (Motor Vehicles Third Party Risks) Act*, seeking to have the respondent, an insurance company settle the decree in Thika SCCC No. E698 of 2023 for a sum of Kshs. 166,356/-.



The nature of a declaratory suit is that it seeks to compel a judgment debtor's insurer to settle the decree passed against the insured.

20. The appellant is the claimant in one of the series of three suits which were consolidated being SCCC Nos. E200, E201 and E202, all of 2024. He submitted that he was condemned unheard on the issue of want jurisdiction. I have perused the proceedings of the adjudicator/magistrate as well as her ruling. It is noted that the consolidated claims were heard by way of filing submissions following the filing of the replying affidavits by the respondent Directline Assurance Co. Ltd. The issue of jurisdiction arose after the magistrate had retreated to prepare the ruling. In her ruling, she states that she came across the decision of the High Court No. E166 of 2023 KLR (2024) Kenya Orient Insurance Limited Vs Otieno where it was held on 25th June 2024 that a Small Claims Court had no jurisdiction to hear and determine declaratory suits relevant to the matter before the court. The Learned Magistrate dropped her tools declaring that the court had no jurisdiction to hear and determine the suits. The claim was accordingly dismissed.
21. It is trite law that once a court finds that it does not possess jurisdiction to hear and determine a matter, it should immediately so declare. The situation here was that the court was set to prepare its final ruling in the said suits but found that I was wanting in way of jurisdiction. This scenario cannot be equated with hearing of a preliminary objection where the opposite party will be called upon to present its arguments on the legal issue during the hearing. As such, the applicant could not have been called to make submissions as to jurisdiction. Furthermore, Section 12 of the *Small Claims Court Act* is very clear that the said court lacked jurisdiction. In my considered view, the learned adjudicator was right to deal with the matter in the manner that she did.
22. In the circumstances, I find that the magistrate did not err either in law or fact in declaring that the Court lacked jurisdiction to entertain the declaratory suit. The court acted within the law in dismissing the claim.

Conclusion

23. In view of the foregoing, I find that the appeal lacks merit and is hereby dismissed with costs.
24. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

