



**Wanyonyi v Monarch Insurance Co Ltd; Otondo (Sued as the Administrator
the Estate of Kelvin Onywoki - Deceased) (Interested Party) (Civil Suit
E009 of 2023) [2025] KEHC 5343 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL SUIT E009 OF 2023
AC MRIMA, J
APRIL 30, 2025**

BETWEEN

FESTUS WANYONYI PLAINTIFF

AND

THE MONARCH INSURANCE CO LTD DEFENDANT

AND

**PATRICK AKENGA OTONDO (SUED AS THE ADMINISTRATOR THE
ESTATE OF KELVIN ONYWOKI - DECEASED) INTERESTED PARTY**

RULING

1. The application subject of this ruling is a Notice of Motion dated 3rd March 2024 which was filed by the Defendant herein, The Monarch Insurance Company Limited. It was supported by the Affidavit of Seth Khisa, Learned Counsel for the Defendant and it sought the following orders: -
 1. That this Honourable Court be pleased to order the transfer of this suit from itself to the subordinate court namely Kitale Magistrates Court for hearing and determination.
 2. That the costs of this Application be granted to the Applicant.
2. In the Affidavit and grounds in support of the application, the Applicant contended that, the case, as presented in the primary suit, Kitale Chief Magistrates Civil Case No. 378 of 2021, Patricia Akenga Otondo v Festus Wanyonyi was pegged on breach of insurance contract of a pecuniary value of Kshs. 3,943,543/-. As such, the declarations sought by Festus Wanyonyi, the Respondent herein, could be heard and determined by the Magistrates Court pursuant to Order 3 Rule 9 of the Civil Procedure.
3. The Applicant contended that to the extent this suit does not raise any constitutional question or substantial question of law and in view of its pecuniary value, it ought to have been instituted before



the Magistrates Court as opposed to this Court. It was its case that the institution of the suit before this Court offended the overriding objective and efficient use of available judicial and administrative resources since the Magistrates Court can competently and decisively hear and determine the suit. It then pleaded that if this Court were to preside over the matter, it would mean that Schedule 6 of the Advocates Remuneration Order is applied which shall unnecessarily increase the costs that may be awarded to either party, contrary to Article 48 of *the Constitution*.

4. The Applicant posited that the decision to lodge the instant suit before this Court was an act of forum shopping, an abuse of court process. It urged that the suit be transferred to the subordinate court
5. In its written submissions dated 22nd May 2024, the Applicant reiterated the basis of its application and cited the case of *Kithia Ngeana v Mwaniki Kisume (2018) eKLR* where the factors a Court considers on whether to transfer a suit are;

...motive and character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense the parties are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interests of justice and possibilities of undue hardship.
6. The Applicant further submitted that Section 5 of the Magistrates Court Act equips the lower Court with jurisdiction to hear and determine the case in view of the decretal sum. Moreover, it was its case that by dint of Section 3(1)(c) of the *Judicature Act*, the lower Court has jurisdiction to hear and determine dilatator suits. To that end, the decision in *Jediel Murithi Njeru v Kenya Wildlife Service (2020) eKLR* and was relied on where the Court quoted the Court of Appeal decision in *Civil Appeal No. 12 of 1998, Corporate Insurance Co. Ltd. v Elias Okinyi Ofire (1999) 2 EA 61*.
7. On the foregoing, the Applicant emphasized that the Respondent's assertion that the High Court had concurrent jurisdiction was misconceived.
8. In conclusion, it urged that it had proved and satisfied the principal matters required for the transfer of suits to the Magistrates Court.
9. Festus Wanyonyi challenged the application through written submissions dated 25th June 2024. From the outset, it was his case that he was forced to institute the suit because the Applicant abandoned its obligation under contract and resulted in him being committed to civil jail. He further submitted that this Court has jurisdiction to hear and determine the suit since he sought to enforce an insurance policy as per the *Insurance Act* (hereinafter 'The Act'). It was its case that section 2 of Act defines 'court' to mean the High Court.
10. The Respondent, while relying on the Supreme Court case of *Samuel Kamau Macharia & Another v Commercial Bank of Limited & Another*, pointed out that the jurisdiction of this court is original and unlimited. In further was its case as was observed in the case of *Jasbir Singh Rai v Tarlochan Singh Rai Estate & 4 Others [2013] eKLR* that there is no remedy that the High Court is unable to grant under *the Constitution*. The Respondent was emphatic that under Article 165(3) (6) and (7) of *the Constitution* this Court may issue orders or give any direction it considers appropriate to ensure fair administration of justice.
11. The Respondent also relied on the Court of Appeal decision in the case of *Kenya wildlife service v Joseph Musyoki Kalonzo [2017] eKLR* where it was observed: -

... In our view, even from a literal interpretation, this provision does not oust the jurisdiction of the High Court to hear any matters raised under the Act. If the Act meant to remove these matters from the realm of the High Court or to other courts, then it would have expressly stated so.



12. The Respondent further referred this Court to the court of Appeal decision in Civil Appeal No. 223 of 2017, *Attorney General v Bala KECA 117 (KLR)* where the conditions for issuing declaratory reliefs were discussed and stated that their case had satisfied the criteria that made the High Court competent to hear and determine the case.
13. In the end, it urged that the application be dismissed with costs since it is an abuse of process aimed at delaying finalization of the case.
14. Having considered the application, the submissions and the decisions referred to therein, there is only one issue for determination and it is whether the application is merited.
15. The objective of a declaratory suit, like the one in this suit, is to compel a judgment debtor's insurer to settle the decree passed against the insured in a primary suit. In this context, therefore, the Respondent instituted the instant suit against The Monarch Insurance Company in a bid to have it settle the decree passed against it in the primary suit. The obligation upon an insurer to settle a decretal sum is, to say the least, domiciled in Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act*.
16. The jurisdiction of the Magistrates Court is provided for in Section 7 of the Magistrates Court Act in the following terms;

7. Civil jurisdiction of a Magistrate's Court:

A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed: -

- a. twenty million shillings, where the court is presided over by a chief magistrate;
 - b. fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - c. ten million shillings, where the court is presided over by a principal magistrate;
 - d. seven million shillings, where the court is presided over by a senior resident magistrate;
or
 - e. five million shillings, where the court is presided over by a resident magistrate.
17. It is common ground that the primary suit yielded a decretal sum of Kshs. 3,934,543/- against the Respondent and in favour of an injured party, then the Plaintiff in the suit. According to Section 7(e) of the Magistrates Court Act, that sum falls within the pecuniary jurisdiction of the Resident Magistrates Court.
 18. The emerging question, therefore is, whether a subordinate Court can issue a declaratory relief pursuant to the foregoing jurisdiction. In resolving this issue, the Court of Appeal decision in Civil Appeal No. 12 of 98, *Corporate Insurance Company Ltd v Elias Okinyi Ofire* [1999] eKLR comes to the fore where the Learned Judges spoke to the issue and stated as follows: -

.... The learned judge failed to consider the effect of the second proviso to section 5 of the Act. We have already dealt with the same and no further elaboration is necessary.

The appeal must be allowed on the first ground in the memorandum of appeal but as there is a certain amount of uncertainty in the profession as to whether or not a declaratory suit, such as was filed in the Senior Principal Magistrate's Court, could be filed in the magistrate's court we find it necessary to deal with the point. Mrs. Nyaundi for the appellant argued that it was a matter of notoriety that such cases can only be filed in the High Court. She quoted no authorities to support her proposition. It is true



that there is such a general belief as urged by Mrs. Nyaundi. But that is not correct. Section 3(1)(c) of the *Judicature Act*, Cap. 8 Laws of Kenya, gives the High Court and all subordinate courts power to exercise jurisdiction in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August, 1897.

19. The Learned Judges went ahead and looked at the definitions of a Court and a Suit alongside the provisions of Order II Rule 7 of the Civil Procedure Rules as follows: -

“Court” as defined in the *Civil Procedure Act* means the High Court or a subordinate court, acting in the exercise of its civil jurisdiction.

“Suit” as defined in the *Civil Procedure Act* means all civil proceedings commenced in any manner prescribed.

Order II rule 7 of the Civil Procedure Rules reads:

No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make a binding declaration of right whether any consequential relief is or could be claimed or not.”

20. In the end, the Court of Appeal rendered itself as follows: -

... As “Court” includes a subordinate court it has jurisdiction to make a declaratory order such as was sought by the respondent, provided the value of the subject-matter is within the jurisdiction of that court.

21. From an appreciation of both the Magistrates Court Act and the interpretation thereof by the Court of Appeal in the foregoing decision, there is no doubt that a subordinate Court has the requisite jurisdiction to deal with a declaratory suit. The only caution it must be cognizant of is that of its pecuniary jurisdiction.

22. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.

23. Having so rendered, this Court finds merit in the Notice of Motion dated 3rd March 2024 and hereby issues the following final orders:

- a. This suit is hereby transferred to the Kitale Chief Magistrates Court for hearing and determination.
- b. Costs of the application shall be in cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Murimi, Learned Counsel for the Plaintiff



Amina, Court Assistant.

