



**Gichohi alias Gichohi Moses Gichuki v Githinji (Civil Appeal  
113 of 2024) [2025] KEHC 7631 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7631 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 113 OF 2024  
FN MUCHEMI, J  
MAY 29, 2025**

**BETWEEN**

**MOSES GICHUKI GICHOHI ALIAS GICHOHI MOSES GICHUKI APPELLANT**

**AND**

**ANTONY MAINA GITHINJI ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The application dated 5<sup>th</sup> March 2025 seeks for orders that this court do refer the matter to the Honourable Chief Justice for empanelment of an uneven bench of judges to hear and determine this matter as it raises substantial questions of law.
2. The application was not opposed by the respondent.

**Applicant's Case**

3. The applicant argues that there exists conflicting decisions from the High Court on whether or not the Small Claims Court has jurisdiction over cases of personal injury claims. As things stand, there is no settled position whether the court has the said jurisdiction to hear and determine personal injury claims. These decisions include *Ogwari vs Hersi* [2023] KEHC 20111 (KLR); *Irungu vs Karanja* [2024] KEHC 8162 (KLR) and *Jepkgei vs Koech* [2024] KEHC 15364 (KLR).
4. In view of the uncertainty, it is imperative that this court as the final court reviews its previous decisions on the issue of jurisdiction on claims of personal injuries in regard to the Small Claims Court.
5. The main issue for determination is whether the matter raises substantial issues of law to have the application placed before the Chief Justice to constitute a bench of three judges.



6. Under Article 165(3) and (4) of the Constitution, for a matter to be referred to the Chief Justice for assignment of a three judge bench, the High Court must certify that the matter raises a substantial question of law in the following instances:-

It involves a question as to whether a right or fundamental freedom in the bill of rights has been denied, violated, infringed or threatened; or

It involves a question respecting the interpretation of the Constitution including:-

- i. The question whether any law is inconsistent with or in contravention of the Constitution;
  - ii. The question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution;
  - iii. Any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional hardship between the levels of government; and
  - iv. A question relating to conflict of laws under Article 191.
7. The phrase ‘substantial question of law’ is not defined in the Constitution but courts have given meaning to the same in various judicial precedents. In the case of Harrison Kinyanjui vs Attorney General & another (2012) eKLR the court opined as follows:-

Therefore, giving meaning to “substantial question” must take into account the provisions of the Constitution as a whole and need to dispense justice without delay particularly given a specific fact situation. In other words, each case must be considered on its merits by the judge certifying the matter. It must also be remembered that each High Court Judge has authority under Article 165 of the Constitution, to determine any matter that is within the jurisdiction of the High Court. Further and notwithstanding the provisions of Article 165(4), the decision of a three Judge bench is of equal force to that of a single judge exercising the same jurisdiction. A single judge deciding a matter is not obliged to follow a decision of the court delivered by three judges.

8. Similarly in Philomena Mbete Mwilu vs Director of Public Prosecutions & 4 Others (2018) eKLR the court observed as follows:-

....a question of law would be a substantial question of law if it directly or indirectly affects the rights of parties; there is some doubt or difference of opinion on the issues raised and that the issue is capable of generating different interpretations. If however the question has been well settled by the highest court or the general principles to be applied in determining the question before court have been well settled, the mere application of those principles to a new set of facts presented in a case before the court would not on their own constitute a substantial question of law. There must be the possibility of the matter attracting different interpretations or opinion in its interpretation or application of the principles espoused in the matter to make it a substantial question of law. All this notwithstanding, it is up to the individual judge to decide whether the matter raises a substantial question of law for purposes of reference.

9. In the instant case, applicant has brought the application under Article 48 and 165(4) of the Constitution. Presumably, the constitutional question or the constitutional right that has been denied, violated or infringed would be the access to justice pursuant to Article 48. Given that the High Court is the final court to determine appeals from a Small Claims Court and there being an issue where there are conflicting decisions as to whether the Small Claims Court has jurisdiction to hear and determine



personal injury claims, it is my considered view that the issue raised is weighty and raises a substantial question of law.

10. However, it is within this court's knowledge that the Honourable Chief Justice and President of the Supreme Court Hon. Martha Koome on 3<sup>rd</sup> June 2024, appointed a three (3) judge bench led by Hon. Justice Eric Ogola as presiding judge to decide on the similar matters addressed by this application. The matter in question was Eldoret Constitutional Petition E008 of 2024 *James Muriithi Gathaiya vs Attorney General & 2 Others*. The petition was consolidated with appeals Nos. HCCA E087 of 203, E091 of 2024, HCA No E086 of 2024, E084 of 2024, E083 of 2024 and E082 of 2024 under the lead file HCCA No.E008 of 2024. The hearing of the said consolidated cases is ongoing and hopefully judgment will be delivered in the near future.
11. As such, it is my view that there is no need of appointing another bench since the matter has already been addressed by the Honourable Chief Justice. It is, therefore, imperative that this appeal be stayed for a period of sixty (60) days pending judgment of the three-judge bench in Eldoret HCCA No. E008 of 2024.
12. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT T'HIKA THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**F. MUCHEMI**

**JUDGE**

