



REPUBLIC OF KENYA



**Antop v Honda Motorcycle Kenya Limited (Civil Appeal E334 of 2024)
[2025] KEHC 11721 (KLR) (Civ) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11721 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E334 OF 2024**

WM MUSYOKA, J

AUGUST 4, 2025

BETWEEN

NOOR ANTOP ANTOP APPELLANT

AND

HONDA MOTORCYCLE KENYA LIMITED RESPONDENT

*(Appeal from judgement and decree by Hon. W. Muinde, Resident Magistrate
and Adjudicator, of 4th March 2024, in Nairobi SCCC No. E058 of 2024)*

RULING

1. The suit, at the primary court was by the appellant, against the respondent. The claim was for compensation, for injuries sustained in a motor traffic accident, involving the appellant and a vehicle owned by the respondent. The respondent resisted the claim, where it denied everything pleaded, but averred in the alternative, that the accident was contributed to by negligence on the part of the appellant.
2. The said suit was not tried, for, on 4th March 2024, it was dismissed by the trial court, on the basis that the court had no jurisdiction, in view of the decision in *Ogwari vs. Hersi* [2023] KEHC 20111 (KLR) (Magare, J).
3. The appellant was aggrieved, hence the instant appeal, on grounds that the trial erred in finding that it had no jurisdiction to determine claims arising from personal injury, contrary to section 12(1)(d) of the *Small Claims Court Act*, Cap 10A, Laws of Kenya; erred in relying on the obiter in *Ogwari vs. Hersi* [2023] KEHC 20111 (KLR) (Magare, J); and failed to exercise discretion judiciously.



4. It is not clear, from the record, whether directions, on disposal of the appeal, by written submissions, were given, but I see, on the file, written submissions by the appellant, which I have read and noted the arguments made.
5. As I was preparing to write judgement on the appeal, I have stumbled on [*Gichobi alias Gichobi Moses Gichuki vs. Githinji*](#) [2025] KEHC 7631 (KLR) (Muchemi, J), where I have learnt that the Chief Justice has appointed a bench of 3 High Court Judges, led by Ogola J, Principal Judge of the High Court, to address the issue of the jurisdiction of the Small Claims Court to handle claims on personal injury.
6. That has been necessitated by the conflicting positions taken by Judges of the High Court on the issue, in such decisions as [*Ogwari vs. Hersi*](#) [2023] KEHC 20111 (KLR) (Magare, J), [*Irungu vs. Karanja*](#) [2024] KEHC 3162 (KLR) (Muchemi, J) and [*Jepkigei vs. Koech*](#) [2024] KEHC 15364 (KLR). I also chipped in, in [*Elrons Limited vs. Basil*](#) [2024] KEHC 6614 (KLR)(Musyoka, J). The position is not settled.
7. I will follow the position taken in [*Gichobi alias Gichobi Moses Gichuki vs. Githinji*](#) [2025] KEHC 7631 (KLR) (Muchemi, J), and hold determination of this appeal in abeyance, to await determination of the jurisdiction question, by the bench of 3 in Eldoret HCCA No. E008 of 2024. Consequently, this file shall be returned to the relevant registry. It is so ordered.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 4TH DAY OF AUGUST 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Njagi, instructed by Mugendi Karigi & Company, Advocates for the appellant.

Messrs. Wangai Nyuthe & Company, Advocates for the respondent.

