



**Gituma v Okeda & another (Civil Appeal E452 of 2023)
[2025] KEHC 11740 (KLR) (Civ) (4 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11740 (KLR)

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

CIVIL

CIVIL APPEAL E452 OF 2023

WM MUSYOKA, J

AUGUST 4, 2025

BETWEEN

ERNEST MUGAMBI GITUMA APPELLANT

AND

HABIL OKEDA 1ST RESPONDENT

JOYCE NABWIRE OKEDA 2ND RESPONDENT

*(Appeal from judgement and decree of Hon. JW Munene, Senior Resident Magistrate
and Adjudicator, of 18th May 2023, in Nairobi SCCC No. E1200 of 2023)*

JUDGMENT

1. The case, at the Small Claims Court, had been initiated by the appellant against the respondents. It arose out of road traffic accident, on 28th September 2022, along Outer Ring Road, Nairobi, involving the appellant and a motor vehicle registration mark and number KCJ 241L, owned and controlled by the respondents. The appellant was pursuing compensation for the injuries that he sustained, and the costs attendant to treatment.
2. The respondents resisted the claim. They accused the appellant of solely causing the accident by his own negligence, or by substantially contributing to it. They also counter-claimed, for the loss and damage to their motor vehicle KCJ 241L, because of that accident.
3. The proceedings were conducted based on section 30 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya, by documents only, based on directions that were given on 17th May 2023. Judgement was delivered on 18th May 2023, in against the appellant. Liability was assessed at 100% and specials at Kshs. 62,500.00, in favour of the respondents.



4. The appellant was aggrieved; hence he filed the instant appeal. It is averred that there was a wrong finding on liability, there was inadequate analysis of the evidence presented, the court was wrong in concluding that the appellant had not given evidence on the circumstances of the accident, and that the suit should not have been dismissed and the counter-claim allowed.
5. Directions were given on 6th November 2024, for canvassing of the appeal by way of written submissions. I have seen, on record, written submissions, by both sides, which I have read and noted the arguments advanced.
6. The appeal challenges the handling of the material at the trial court. There are arguments about the evaluation of the evidence being inadequate, and wrong conclusions being drawn. To enable me deal adequately and sufficiently with the grounds of appeal it is imperative that I have the trial record, to enable me to understand what exactly happened then, and how the trial court handled the material that was before it. The appellate system is one of the ways in which the High Court exercises its supervisory jurisdiction, vested by Article 165(6) of *the Constitution*, over subordinate courts, of which the Small Claims Court is one, under Article 169(1)(d) of *the Constitution*. To effectively execute that mandate, a true record of what the subordinate court was handling must be placed before the High Court.
7. Was that done? The original trial court records were not availed. What I see is a record of appeal, dated 21st July 2023. Unfortunately, that record of appeal is not complete. It only exhibits 1 page, out of 3, of the typed proceedings; and 2 pages, out of 3 of the judgement. The most critical documents, for appeal purposes, are the pleadings, which are the foundation for the whole litigation; the proceedings, for they exhibit how the matter was handled; and a full text of the judgement, giving rise to the decree, for it displays the thought process that led up to the decree. Without these, there can be no appellate justice. There would be no foundation for the appellate court to determine the matter on its merits.
8. The appeal is largely built or framed around the decision of the court on liability. The analysis of the evidence, on liability, appears to have had started at page 1 of the judgement, spilling out to page 2. However, page 1 is missing. I cannot tell what the trial court discussed there on liability, to link it with what appears at page 2.
9. Due to the incompleteness of the record of appeal, I am unable to determine the appeal on merits.
10. The other thing is that the matter herein was filed on 13th March 2023, and the final determination was rendered on 18th May 2023. Under section 34(1) of the *Small Claims Court Act*, the Small Claims Court exercises jurisdiction within 60 days of the filing of the claim. Upon expiry of that period, jurisdiction is lost, and any determination would be rendered null and void. Section 34(1) is a substantive provision in the Act of Parliament. It is mandatory. It is one of those provisions that Article 159(2)(d) of *the Constitution* does not overrule.
11. As the claim was filed on 13th March 2023, the 60 days lapsed on or about 13th May 2023. Jurisdiction for the trial court expired on that date. There was no jurisdiction to deliver a valid judgment on 18th May 2023. Consequently, the said judgement is a nullity, and the appeal herein is, accordingly, rendered incompetent.
12. In view of the above, the appeal herein is hereby dismissed. The respondents are not entitled to costs, for they have in their hands a null and invalid judgment.

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.

Ms. Carlyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Messrs. Kibaya & Kamau Associates, Advocates for the appellant.

Messrs. G&G Advocates LLP, Advocates for the respondents.

