



Jubilee Allianz General Insurance Kenya Limited v Mwangi (Civil Appeal E829 of 2024) [2025] KEHC 11718 (KLR) (Civ) (4 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11718 (KLR)

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

CIVIL

CIVIL APPEAL E829 OF 2024

WM MUSYOKA, J

AUGUST 4, 2025

BETWEEN

JUBILEE ALLIANZ GENERAL INSURANCE KENYA LIMITED APPELLANT

AND

BENARD MUGO MWANGI RESPONDENT

(Appeal from judgement and decree, of Hon. Caroline K. Irevi, of 24th June 2024, in Nairobi SCCC No. E742 of 2024)

JUDGMENT

1. The claim, at the primary court, was at the instance of the respondent, against the appellant. It was a declaratory suit, for enforcement of a decree, that the respondent had obtained against the owner of a motor vehicle, which the appellant had insured.
2. The suit was, resisted by the appellant, who filed a response, denying everything alleged in the statement of claim, alleging that the decision was defective, founded on fraud and deceit, and the judgement and decree sought to be enforced were null and void.
3. The matter, at the trial court, proceeded by way of documents only, pursuant to section 30 of the [Small Claims Court Act](#), Cap 10A, Laws of Kenya. The trial court framed 2 issues, in its judgement of 24th June 2024, jurisdiction and whether appellant was entitled to satisfy the decree. It was ruled that there was jurisdiction, and the appellant was bound to satisfy the decree in question.
4. The appellant, being dissatisfied, filed the instant appeal, on grounds that its case on fraud had not been controverted; there was no jurisdiction under section 12 of the [Small Claims Court Act](#); the judgement sought to be enforced was incorrect, incredible and inaccurate; there was bias, and laws, and



- precedents were ignored or disregarded; and the proceedings departed from the established principles of the Common Law and the rules of natural justice.
5. Directions were given, on 3rd October 2024, for disposal of the appeal, by way of written submissions. I have seen, in the record before me, written submissions filed by both sides.
 6. The appellant has framed only one issue, whether the trial court crafted a jurisdiction for itself. It is submitted that jurisdiction, of the Small Claims Court, is not provided, in the *Small Claims Court Act*, for entertainment of a declaratory suit. Reliance is placed on *Kenya Orient Insurance Limited v Otieno* [2024] KEHC 7637 [KLR] [Aburili, J].
 7. In rejoinder, the respondent cites *Ngojine v Pioneer General Insurance* [2024] KEHC 8976 [2024] [Mwamuye, J] and *APA Insurance Limited v Njenga* [2024] KEHC 7002 [KLR][Magare, J] to submit that the Small Claims Court has jurisdiction over a declaratory suit relating to insurance services, by virtue of section 12[1][a] of the *Small Claims Court Act*. He further argues, based on *Kenya Power and Lighting Company Limited v Quentin Wambua Mutisya Ha Bondeni Wholesalers* [2018] eKLR [Odunga, J], that subordinate courts, in general have jurisdiction to entertain declaratory suits.
 8. *Corporate Insurance Company Limited v Elias Okinyi Ofire* [1999] 2 EA 61 [Gicheru, Kwach & Shah, JJA] settled the question, as to whether a subordinate court could entertain a declaratory suit, where it was clarified that a subordinate court could make declaratory orders, provided that the value of subject matter was within the jurisdiction of that court.
 9. Section 4[1] of the *Small Claims Court Act* defines the Small Claims Court as “a subordinate court, pursuant to Article 169[1] of the *Constitution*.” Section 12[3] limits the pecuniary jurisdiction of the Small Claims Court to Kshs. 1,000,000.00. Based on *Corporate Insurance Company Limited v Elias Okinyi Ofire* [1999] 2 EA 61 [Gicheru, Kwach & Shah, JJA], and sections 4 1] and 12[3] of the *Small Claims Court Act*, the Small Claims Court would have jurisdiction to handle the declaratory suit for Kshs. 732,950.00.
 10. The other question would be whether a declaratory suit, arising out of damages awarded out on a road traffic accident, would be available for determination by the Small Claims Court, by dint of section 12[1] [a] of the *Small Claims Court Act*.
 11. The appeal herein arises from a declaratory order, made with respect to a judgement that had been obtained in court, for compensation for pain and suffering arising from a road traffic accident. The judgement was obtained against a person whose vehicle was insured by the appellant. The declaratory suit was initiated for the purpose of enforcing the insurance contract between the appellant and the owner of the accident vehicle.
 12. My colleagues, in *Ngojine v Pioneer General Insurance* [2024] KEHC 8976 [2024][Mwamuye, J], *Jubilee Allianz General Insurance Kenya Limited v Butiya* [2025] KEHC 5170 [KLR] [Njagi, J] and *APA Insurance Limited v Njenga* [2024] KEHC 7002 [KLR][Magare, J] have held that a declaratory suit could be filed at the Small Claims Court, under the *Small Claims Court Act*, section 12, for such suit would relate to an insurance contract, to supply insurance services. That would fall within the jurisdiction to the Small Claims Court, under section 12[1][a] of the *Small Claims Court Act*. There was, therefore, jurisdiction to entertain the claim herein.
 13. What I have issue with is whether there was jurisdiction to determine the suit on 24th June 2024. Under section 34[1] of the *Small Claims Court Act*, a small claim filed, under the *Small Claims Court Act*, ought to be determined within 60 days of its filing. That would mean that, going by *Kartar Singh Dhupar & Company Limited v ARM Cement PLC [In Liquidation]* [2023] KEHC 2417 [Gichohi, J], a claim, determined outside the 60 days, would be a nullity. There are other decisions, to the contrary,



in *Crown Beverages Limited v MFI Documents Solutions Limited* [2023] KEHC 58 [KLR] [Majanja, J], *Biosystems Consultants v Nyalı Links Arcade* [2023] KEHC 21068 [Magare, J] and *Lumumba v Gift Gas Limited* [2023] KEHC 25998 [Majanja, J], but I believe that the correct position is that stated in *Kartar Singh Dhupar & Company Limited v ARM Cement PLC* [In Liquidation] [2023] KEHC 2417 [Gichohi, J].

14. It is not clear, from the material before me, as to when the claim was filed at the Small Claims Court. The statement of claim is dated 7th February 2024. The response is dated 7th March 2024. It was preceded by a notice of appointment of Advocates, dated 16th February 2024. It is not clear when the claim was filed, but the filing of the notice of appointment suggests that it had been filed by 16th February 2024. If one were to take 16th February 2024 as the effective date of filing, when 60 days are counted from that date, it would mean they expired on or about 15th April 2024.
15. Jurisdiction is granted by section 34[1] of the *Small Claims Court Act*, for small claims to be heard and determined within 60 days. The Adjudicator can only exercise jurisdiction within the 60 days. Anything done outside the 60 days would be without jurisdiction. The 60-day jurisdiction ended on 15th April 2024. Anything done beyond that date, inclusive of the judgement of 24th June 2024, was a nullity.
16. I see no merit in the appeal herein, and I hereby dismiss it. I shall not order costs, as the respondent had obtained a null judgement. This appeal file shall be closed.

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. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Diru, instructed by Kiarie Kariuki & Associates, Advocates for the appellant.

Mr. Odhiambo, instructed by Wanzau Odhiambo & Associate, Advocates for the respondent.

