



**Jubilee Allianz General Insurance Kenya Limited v Wanjiru (Civil Appeal E615 of 2024) [2025] KEHC 11672 (KLR) (Civ) (4 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11672 (KLR)

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

**CIVIL**

**CIVIL APPEAL E615 OF 2024**

**WM MUSYOKA, J**

**AUGUST 4, 2025**

**BETWEEN**

**JUBILEE ALLIANZ GENERAL INSURANCE KENYA LIMITED .... APPELLANT**

**AND**

**KELVIN MWANIKI WANJIRU ..... RESPONDENT**

*(Appeal arising from judgement and decree of Hon. Nasimiyu JW, Resident Magistrate and Adjudicator, of 22nd April 2024, in Nairobi SCCC NO. E740 of 2024)*

**JUDGMENT**

1. The claim, at the primary court, was by the respondent against the appellant. It was a declaratory suit, where the respondent had obtained a judgement against the owner of a motor vehicle which had been insured by the appellant. The suit was defended. It was denied that the respondent was among those injured in the accident, the subject of the claim, and that the judgement had been obtained unjustifiably.
2. The matter proceeded by documents only. Judgement was delivered, on 22<sup>nd</sup> April 2024, allowing the claim.
3. The appellant was aggrieved, hence the instant appeal. The trial court is said not have had jurisdiction over the claim, as per section 12 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya; relevant laws, facts, precedents and written submissions were ignored; the discovery of the fraud perpetrated by the respondent was ignored; and rules of natural justice and principles of the Common Law were departed from.
4. It is not clear whether directions were ever given by a Judge, for the canvassing of the appeal, by written submissions. Nevertheless, both sides have filed written submissions.



5. The appellant argues on only 1 issue, whether the trial court crafted jurisdiction for itself, over declaratory suits, contrary to section 12 of the *Small Claims Court Act*. The *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited* [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA) and *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ) are cited. It is submitted that section 12 of the *Small Claims Court Act* does not provide for declaratory suits. *Kenya Orient Insurance Limited v Otieno* [2024] KEHC 7637 (KLR) (Aburili, J) is cited in support.
6. The respondent counters by submitting that section 12(1)(a) of the *Small Claims Court Act* covers the situation as it deals with "a contract of sale and supply of goods and services," and that insurance is a service. It is argued that the suit was on non-performance of contractual obligations relating to a contract for supply of insurance services. *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) are relied on. It is further submitted that a subordinate court has jurisdiction to hear and determine a declaratory suit, and *Kenya Power and Lighting Company Limited v Quentin Wambua Mutisya t/a Bondeni Wholesalers* [2018] eKLR (Odunga, J), is cited. It is concluded that the claim was properly filed.
7. So, it is the jurisdiction for the Small Claims Court to determine declaratory suits.
8. The High Court is conflicted on this, for there are 2 schools of thought on this. On one hand is the position, represented by *Kenya Orient Insurance Limited v Otieno* [2024] KEHC 7637 (KLR) (Aburili, J), that there is no jurisdiction, as the *Small Claims Court Act* has not expressly conferred jurisdiction on the Small Claims Court to handle declaratory suits. On the other, represented by *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), that a declaratory suit, with respect to a contract for provision of insurance services, is among the matters envisaged by section 12(1)(a) of the *Small Claims Court Act*.
9. Let me start with declaratory suits in general. According to *Corporate Insurance Company Limited v Elias Okinyi Ofire* [1999] 2 EA 61 (Gicheru, Kwach & Shah, JJA), a subordinate court has a jurisdiction to make a declaratory order, so long as the value of the subject matter is within the jurisdiction of that court.
10. The Small Claims Court is a subordinate court. It is described, under section 4(1) of the *Small Claims Court Act*, as "a subordinate court pursuant to Article 169(1) of the Constitution." Its pecuniary jurisdiction is delineated by section 12(3) of the *Small Claims Court Act*, where it is "limited to one million shillings." So, going by *Corporate Insurance Company Limited v Elias Okinyi Ofire* [1999] 2 EA 61 (Gicheru, Kwach & Shah, JJA), the Small Claims Court, being a subordinate court, has jurisdiction over a declaratory suit, where the value of the subject matter does not exceed Kshs. 1,000,000.00.
11. Would a declaratory suit relating to insurance business be included? Yes, it would. I would agree with *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). The dispute before the Small Claims Court was on failure to settle a judgement obtained against a person whose vehicle had been insured by the appellant. The suit was pegged on an insurance contract, for provision of insurance services. Section 12(1)(a) of the *Small Claims Court Act* gives the Small Claims Court jurisdiction to determine claims relating to a contract for supply of services. Insurance is a service.



12. Consequently, the appeal herein has no merit, and I dismiss it. The respondent shall have the costs. The appeal file to be closed. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 4<sup>TH</sup> 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 & Associates, Advocates for the respondent.

