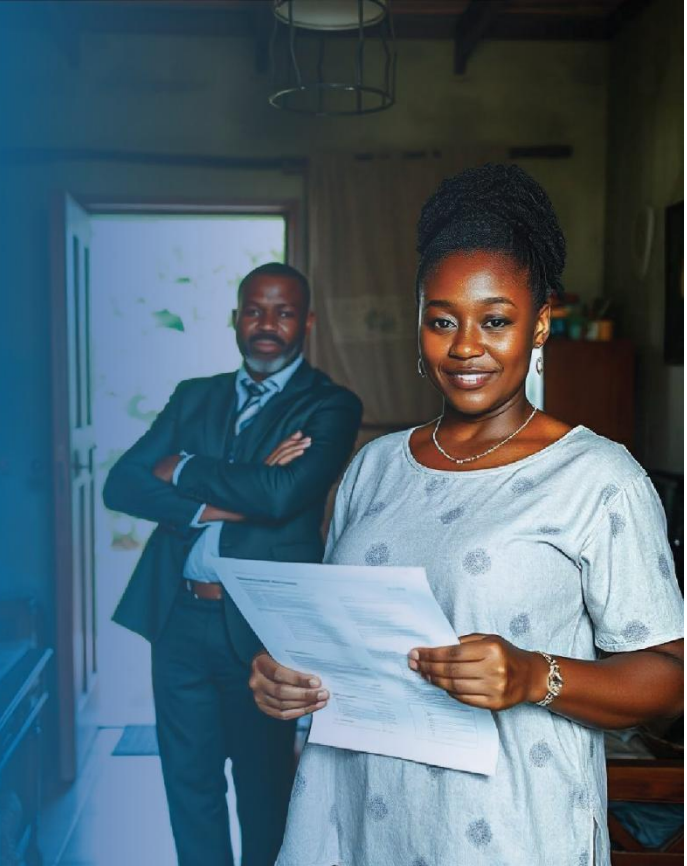


Claims for refund of rental deposit are subject of the Small Claims Court's jurisdiction

7th February 2025



Introduction

On 23rd January 2025, the High court at Milimani, Nairobi delivered a judgment in the case of **Michelle Muhanda -versus- LP Holdings Limited (Civil Appeal E 256 of 2023)**. The court held that the small claims court ("the SCC") has jurisdiction to determine claims by tenants against their landlords, on refund of rental deposit. According to the court these claims fall squarely within the ambit of Section 12(1)(b) of the Small Claims Act ("the SCC Act"), as they amount to "contracts to money held and received."

At the Small Claims Court

The appellant brought a claim against her landlord, the respondent for amongst others, the principal sum of Kshs. 230,000/- punitive and exemplary damages under the Consumer Protection Act and damages under contract. The claim arose from a tenancy relationship which subsisted in February 2015 until October 2022 when the appellant vacated the premises. It was the appellant's case that prior to vacating the premises she invited the

respondent for a joint inspection of the property which was in good condition, but the Respondent never availed themselves. When the appellant demanded her deposit the respondent replied via letter with a Bill of Quantities for "proposed dilapidation" amounting to Kshs 271,857.60, being the purported repair costs. It was the Appellant's case that these costs were exorbitant and unsupported.

The respondent filed a response and a counterclaim claiming rental arrears from the appellant. They also raised a Preliminary Objection on grounds amongst others that; the claim relates to rental deposit by tenant and is outside the jurisdiction of the court as contemplated under section 12 of the SCC Act.

The appellant argued that the claim did not relate to collection of rent arrears as there was no subsisting landlord-tenant relationship between the parties. The appellant further submitted that the suit relates to a refund of rent/security deposit which falls squarely within the ambit of section 12(1)(b) of the SCC

Act as the same is “a contract for money held and received”

In its ruling, the trial court relied on the case of **Christofferson -vs- Kavneet Kaur Sehmi t/the Random Shop (Civil Appeal E036 of 2022) KEHC 14035 (KLR)** in making a finding that a claim for rent and rent arrears is outside the jurisdiction of the small claims court and ought not to be entertained.

At the High court

Aggrieved by the ruling, the appellant appealed the decision to the High court. The High Court found in favour of the Appellant and aptly stated as follows:

- a) *“The Appellant’s claim was for breach of contract relating to the rent deposit paid by the Appellant to the Respondent. In my view, the Appellant’s claim falls squarely within the provisions of section 12 (1) (b) of the Act, being a contract for money held and received. It is, therefore, the finding of this Court that the trial court has requisite jurisdiction.”*

- b) In coming to its decision, the trial court addressed itself to rent and rent arrears which was the claim by the respondent, however the appellants claim related to breach of contract relating to rent deposit.

Conclusion

The import of the decision by the High court is as follows: -

- (a) Disputes relating to refund of rent deposit fall under the jurisdiction of the SCC as they relate to contracts for money held or received which is covered by Section 12(1)(b) of the SCC Act. Any such claim binds the claimant to waive and forfeit recovery of all sums in excess of Kshs. 1 million.

Claims for rent and rental arrears do not fall under the jurisdiction of the small claims court. One cannot therefore file a claim for rent or rental arrears in the SCC.

By:

Lydia Soi – Advocate

Cyril Kubai

Partner- (Dispute Resolution)

7th February 2025