



**Karuti v County Government of Meru (Civil Appeal E054 of 2021)
[2022] KEHC 12792 (KLR) (31 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E054 OF 2021
EM MURIITHI, J
AUGUST 31, 2022**

BETWEEN

NAHASHON KARUTI APPELLANT

AND

COUNTY GOVERNMENT OF MERU RESPONDENT

JUDGMENT

1. The appellant instituted a suit against respondent herein, in the lower court *vide* plaint dated October 15, 2018 seeking for general and aggravated damages for: Trespass to the plaintiff's Motor vehicle registration number KAQ xxxx and unlawful detention of the same causing the plaintiff the inconvenience of travel and expense.
2. The respondent filed his statement of defence dated 2/11/2018 and the averments in the plaint were all denied and the plaintiff put to strict proof.
3. Judgement was delivered on March 18, 2021 and the appellant matter was dismissed for the plaintiff had failed to prove his case on a balance of probability.
4. The appellant being dissatisfied with the lower court's decision preferred this appeal and on April 6, 2021 filed a Memorandum of Appeal which set out eight (8) grounds of appeal.
5. Directions were given that the appeal shall be canvassed by way of written submissions. Accordingly, the parties complied and filed their respective submissions through their advocates.
6. The appellant submitted that the trial magistrate erred in law and in fact in basing her holding and judgement and in dismissing the appellant case and that the spot or area in question was not a designated parking space for which the respondent could charge parking fees.



Issue for Determination

7. The issue which arose for determination is whether the appellant is entitled for the relief sought. This being a first appeal and this court has a duty to re-examine and re-evaluate the evidence on record and arrive at its own conclusion. It should also bear in mind that it did not see nor hear the witnesses and give an allowance for that. See *Selle & another v Associated Motor Boat Co. Ltd & others* (1968) E.A 123 *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR.

Determination

8. The claim before the trial court was that on 3.10.2018, the defendant by itself/ and or agents improperly and unlawfully detained the plaintiff's motor vehicle registration number KAQ xxxx for three hours by clamping it. The plaintiff further averred that on October 12, 2018 the defendant by itself/ and or agents improperly and unlawfully detained the plaintiff's motor vehicle registration number KAQ xxxx
9. The respondent denied the averred allegation and put the appellant to strict proof. In response the respondent averred that the appellant had failed to pay and or display any parking ticket hence clamping of his motor vehicle. Further the respondent is entitled to levy parking fees and collection through the Meru County Government Finance Act, a purview enforced on all public road users with motor vehicle parking within the designated areas.
10. In Section 5 Part 2 of the Fourth Schedule to the *Constitution*, it provides that the function of the county government to include:- County Transport, including county roads, street lighting, traffic and parking, public road transport and ferries and harbours, excluding the regulation of international and national shipping and thereto.
11. The respondents contend that Section 9 of the Meru County Government Finance Act provides that:

“There is established the Parking Fees Charge applicable to vehicles parked in designated parking areas within County Central Business District, street and bus park and the owners of the vehicle parked in the designated areas are liable to fees and charges for assessment year 2013-2014”.
12. The appellant contends that he had stopped his car briefly at the spot outside the building known as MACCU (COFFEE) building within Meru town on the two occasions. That the respondent through its servant or agents found the car at the said spot and in the absence of the appellant who had briefly entered a shop to pick some shop items clamped the car. Further that on 12/10/2018 the appellant found the respondent servants just about to leave the spot after clamping his vehicle and requested them to unclamp however they ignored his pleas and left the scene.
13. He further avers that on the two occasions he was forced by the circumstances to pay the fees and the penalties demanded by the respondent through the demand sticker or notice left on the windscreen of his vehicle. That it took 3 hours on the first occasion and 5 hours on the second occasion for the respondent to unclamp his vehicle which led him to institute the lower court suit.
14. Article 22(1) of the *Constitution* 2010 provides;

“22(1) every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, it is threatened”



15. In the Privy Council case from Trinidad and Tobago, *Alleyne Forte v Attorney General & Another* [1997] 4LRC 338, the question was to be struck between the interests of a car owner, and the police authorities who, in the name of the public interest had towed it away from its parking; and the judicial committee held (Lord Nicholls, at P.342):-

“A person whose car is removed may, if he wishes, challenge the lawfulness of the police action in court proceedings, and recover the charge paid and obtain damages for unauthorized interference with his car. Having regard to the comparatively modest amounts involved and the fact that the payments are not fines for criminal offences, the balance which has been struck in dealing with the intractable problem of car parking in public places cannot be regarded as unfair, despite the absence of a simpler, cheaper alternative remedy where under the police must prove the lawfulness of their actions.

The principle drawn from that case is that the legal process should be marked by a fair balance between the general interest of the community and the individual and the individual”.

16. In the present case, the petitioner has contended that the respondent clamped his vehicle while disregarding the area he had parked his vehicle and his pleas on the second occasion to unclamp his vehicle.
17. The respondent on their part do not dispute that they clamped the appellant’s vehicle when he failed to pay the parking fees levy. In support of their claim the respondent called James Kimathi (DW1) whose statement filed on 10/11/2018 was adopted by the court as his evidence. His evidence was that on 12/10/2018 the appellant vehicle was clamped for failing to display and pay for the parking ticket.
18. This contention by the respondent in my humble view, have not been controverted by the appellant. It was his evidence that the spot at which he had parked his vehicle was not marked as parking spot and he was therefore not entitled to pay parking fees.
19. The respondent on their part averred that the area at which the plaintiff parked his vehicle was within Meru Central Business and therefore by its own right designated parking area. The trial through its judicial notice highlighted that the area in question MACCU Building was indeed in Meru Central Business District.
20. It is therefore, the court’s finding that the appellant’s motor vehicle clamping was for justifiable cause. The appellant clearly controverted a law which he knew existed and tried to cover up his actions.

Orders

21. Accordingly, for the reasons set out above, this appeal fails and, therefore, the appellant is not entitled to the reliefs sought.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF AUGUST 2022.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S. J. G. Gitonga & CO. Advocates for the Appellant.



Office of the County Attorney Meru County for the Respondent.

