

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 148 OF 2014

AINEAHS MASINDE WAOMBA..... APPELLANT

VERSUS

WEST KENYA SUGAR CO. LTD..... RESPONDENT

(Appeal from the Judgment and Decree in Kakamega CMCCC No. 506 of 2011 of 28th November 2014)

JUDGMENT

1. The appellant had sued at the primary court to recover a sum of Kshs. 471, 128.00, material loss or damage incurred and attendant costs arising from a motor accident involving his vehicle and another belonging to the respondent. He also claimed for loss of business for thirty (30) days, during which his vehicle was off the road. The claim was resisted by the respondent. In the end the trial court dismissed the claim for repair costs, but awarded those for loss of business and costs on assessment and towing.
2. The appellant was aggrieved by the trial court's determination of the suit before it, and lodged the appeal herein dated 9th December 2014. He listed one ground, that the trial court erred in finding that the costs for the repair of the vehicle were not proved.
3. The claim in the plaint was Kshs. 285, 128.00 being the cost of repairing the appellant's motor vehicle. At the trial the appellant put in evidence an assessment or estimation report where the cost of repairing the vehicle was estimated. He, however, did not produce any receipts as evidence of the actual cost incurred in repairing the motor vehicle. He merely stated that he had receipts to show that he bought spare parts for the vehicle, but he did not produce any.
4. The claim by the appellant was for specific damage. He pleaded the specific damage. He was obliged to prove it. He claimed that it cost him Kshs.285,128.00 to repair his vehicle and to put him back to the position where it was before the accident occurred, or, simply to put it back on the road. He was obliged to provide documentary evidence that that was the cost he incurred. He should have put in evidence the receipts that he alleged were issued to him upon purchase of the spare parts. The report he relied on was just an estimate of the cost of the repairs, it did not reflect what it actually cost him to repair the vehicle. The trial court cannot therefore be faulted for coming to the conclusion that it reached on that point.
5. I find that the appeal before me is not merited and I hereby dismiss the same with costs. Any party aggrieved by the orders made herein is at liberty to move the Court of Appeal appropriately, within twenty-eight (28) days.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 29TH DAY OF NOVEMBER, 2019

W. MUSYOKA

JUDGE