



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Gitobu v M'Rimberia (Civil Appeal E059 of 2024)
[2025] KEHC 408 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E059 OF 2024
EM MURIITHI, J
JANUARY 23, 2025**

BETWEEN

CATHERINE KAGWIRIA GITOBU APPELLANT

AND

RICHARD KIRUJA M'RIMBERIA RESPONDENT

*(Being an appeal from the Judgment of Hon. Habrovinah Nyamweya
(RM) delivered on 28/3/2024 at Meru SCCC No. E377 of 2023)*

JUDGMENT

Introduction

1. By an undated statement of claim filed on 14/12/2023, the Respondent herein, the Claimant in the trial court, sued the Appellant herein, the Respondent in the trial court, seeking the sum of Ksh. 201,500 and costs of the claim. He pleaded that on 5/9/2023 at 1010 hours along Meru-Nanyuki Road, he was driving his motor vehicle registration No. KCB 161 R when he was involved in a collision with motor vehicle registration No. KCR 965 B which was being driven recklessly and dangerously by the Appellant or her agent. He incurred costs amounting to Ksh. 201,500 for repairing the said motor vehicle.
2. The Appellant, in her response dated 15/1/2024 denied the claim in its entirety and prayed for its dismissal.
3. Upon full hearing of the claim, the trial court rendered thus:

“The claimant pleaded for special damages for repairs at Kshs 201,500 for repairs. Upon perusal of the records, the court has identified the amount for repairs to be at Kshs. 201,500/ = which this court shall allow. Consequently, judgment is entered as follows:



Liability is entered at 100% as against the respondent.

Special damages at Kshs. 201,500/=.

Costs and interest at court rate from the date of judgment until payment in full.”

4. The Appeal

5. On appeal, the Appellant filed her memorandum of appeal dated 25/4/2024 raising 5 grounds as follows:

1. The Honorable Trial Adjudicator erred in law in delivering two contradicting Judgments in the same claim on the two different dates when she had no jurisdiction to do so.
2. The Honorable Trial Adjudicator erred in law in purporting to sit in appeal of her own Judgment delivered on 9th February, 2024 by unilaterally proceedings to deliver another totally different Judgment on 28th March, 2024 in the same claim and which has prejudiced the appellant.
3. The Honorable Trial Adjudicator erred in law in denying the appellant a hearing and thereby proceeding to grant contradictory and self-defeating Orders and Judgment on the same date, in the same matter and over the same subject matter.
4. The Honorable Trial Adjudicator erred in law in delivering an illegal Judgment outside the mandatory timelines stipulated under the small claims Act and in total contravention of the law.
5. The Honorable Trial Adjudicator erred in law by clothing herself with a jurisdiction that by law she did not have, by delivering a Judgment that is not provided by law and that was/is totally against the weight of evidence.”

Duty of the Court

6. This being the first appellate court, it has duty to reevaluate the evidence and come up with its own independent finding bearing in mind that unlike the trial Court it did not have the benefit of taking evidence firsthand and observing the demeanor of the witnesses. The principles governing the first appellate court were set out *Selle & Another v Associated Motor Boat Co. Ltd & Others* (1968) EA 123 where the Court stated as follows:

“...An appeal to this court from the trial court is by way of retrial and the principles upon which the court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

Submissions

7. The Appellant urges that the trial court lacked jurisdiction to deliver two judgments in the same claim, and beseeches this to set them aside. She urges that she was not accorded a hearing before the second judgment was delivered, and prays for her appeal to be allowed.
8. The Respondent faults the Appellant for misconstruing the reasoning of the judgment dated 28/3/2024, because it was a rectification and/or a review of an error made in the judgment of 9/2/2024, and not an appeal. He urges that delivery of a judgment outside the mandatory timelines does not



invalidate it, and cites *Crown Beverages Limited v MFI Document Solutions Limited (Civil Appeal E833 of 2021)* [2023]KEHC 58 (KLR) and Nyagwoka Ogora alias *Kennedy Kemoni Bwogora v Francis Osoro Maiko Civil Appeal No 271 of 2000* (UR). He also relies on *Kituo Cha Sheria v Gil Adiz Advertising Company Ltd (Civil Appeal E251 of 2023)* [2023] KEHC 25743, where the court (Kizito Magare J) held that the delivery of a judgment by the Small Claims Court outside the statutory 60 days time limit can only invalidate the proceedings and judgment where the delay was inordinate and hence prejudicial to the parties. He urges that the Appellant has paid part of the decretal sum thus acknowledging the jurisdiction of the trial court to grant orders, and prays for the dismissal of the appeal with costs.

9. The court, however, considers that the appeal herein is solely anchored on the trial's court rendition of supposedly two contradictory and self-defeating judgments, and, therefore, the court proceed with the analysis and determination without reproducing the evidence as tendered during trial.

Analysis and Determination

10. An issue with the jurisdiction of the Small Claims Court to hear and determine personal injury matters in view of the judgment in *Ogwari v Hersi (Civil Appeal 223 of 2022)* [2023] KEHC 20111 (KLR) (3 July 2023) (Judgment) has been raised by the Appellant.

11. Section 12 of the *Small Claims Court Act* provides that:

“(1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—(a) a contract for sale and supply of goods or services;(b) a contract relating to money held and received;(c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property; (d) compensation for personal injuries; and (e) set-off and counterclaim under any contract.”

12. The Respondent's claim was purely for compensation of the expenses incurred to repair his motor vehicle, which had been damaged by negligence on the part of the Appellant, and not damages per se for personal injuries he suffered as a result of the accident.

13. The claim thus fell squarely within the jurisdictional purview of the small claims court and the trial court was thus clothed with the requisite jurisdiction to hear and determine it.

14. The trial court by its judgment of 14/2/2024 rendered thus:

“The claimant pleaded for special damages for repairs at Kshs 201,500 for repairs. Upon perusal of the records, the court has identified the amount for repairs to be at Kshs, 101,500/ =, which this court will allow.”

15. The Respondent produced an accident assessment receipt from Regent Automobile Valuers and Assessors Ltd dated 7/9/2023 for Ksh. 6,000 and another one from Shuttle Auto Garage dated 29/9/2023 for Ksh. 195,500 bringing the aggregate costs for repairs to Ksh. 210,500. The sum of Ksh. 101,500, inadvertently captured by the trial court in its earlier judgment of 14/2/2024 was erroneous, which the court duly rectified vide its subsequent judgment of 28/3/2024.



16. That correction of the slip was within the permitted degree under section 99 of the *Civil Procedure Act*, which provides as follows:

“Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

17. The court finds that the trial court did not render two conflicting judgments in the same claim, as the arithmetical errors in the former were duly rectified in the latter.

18. The Court of Appeal in *Nyagwoka Ogora alias Kennedy Kemoni Bwogora v Francis Osoro Maiko* (Supra) cited by the Respondent, expressed its displeasure in the invalidation of proceedings and subsequent judgment for the reason of non-compliance with statutory timelines for delivery of judgment, in a compelling argument set out as follows:

“The real question is what is the consequence of non-compliance therewith? No doubt the rule is an important one in the expeditious dispensation of justice. And it is made to be obeyed. However, if non-compliance with the rule were to have the effect contended for by the appellant, we think the overall result would be more injustice than justice to the parties. A lot of time and resources spent in litigation would come to naught if judgments delivered after the expiry of 42 days were to be voided or declared void *IPSO facto*. The rule cannot and in our view could not have been intended to deprive a trial Judge of his jurisdiction to write and pronounce judgment in a case he has heard. In our considered view, while non-compliance with the rule and particularly persistent non compliance or inordinate delay in compliance should call for censure of the judicial officers concerned from those in charge of judicial administration, it should not be a ground for vitiating a duly delivered judgment.”

19. The justice of the case warrants this course, otherwise it would cause injustice to the parties, considering the time and resources spent in litigation; and also deny the trial forum a chance to exercise jurisdiction by a judgment on a matter it has heard in full.

Orders

20. Accordingly, for the reasons set out above, this court finds the appeal is without merit and it is dismissed.

21. There shall be no order as to costs.

Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF JANUARY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Ndubi Ondubi Advocate for Applicant.

Mr. Akinyi Advocate for Respondent.

