



Inyanje v Mburu (Civil Appeal 233 of 2023) [2025] KEHC 6548 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 233 OF 2023**

H NAMISI, J

MAY 23, 2025

BETWEEN

HILLARY MANGARE INYANJE APPELLANT

AND

SIMON GACHAU MBURU RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. V. A. Ogutu,
Adjudicator delivered in Thika SCCC No. E216 of 2023 on 16 May 2023)*

JUDGMENT

1. This appeal arises from a claim filed in the Small Claims Court by the Appellant against the Respondent seeking judgement in the sum of KShs 400,000/= as well as costs.
2. The claim arose from a road traffic accident that occurred on 23 January 2022 involving motor vehicle registration number KBR 387N in which the Appellant was a lawful passenger, and the Respondent's motor vehicle registration number KCJ 697H. The Appellant pleaded that "the Respondent and/or his driver, servant, employee and/or agent so negligently and/or recklessly drove/managed and/or controlled motor vehicle KCJ 697H in a manner that the same collided with motor vehicle registration KBR 387N and in the process caused the claimant grievous bodily harm."
3. The same statement was repeated in the Witness Statement without further elaboration or explanation of the negligence on the part of the Respondent.
4. The Respondent entered appearance and filed a Response to the Claim, denying any liability.
5. The matter proceeded by way of written submissions, pursuant to section 30 of the Small Claims Act.
6. In its judgement, the trial court identified two issues for determination, namely, Liability and quantum of damages. On the issue of liability, the trial court noted that the Appellant did not plead the particulars of negligence in the Statement of Claim, nor did the Appellant give evidence in the Witness Statement as to how the Respondent was negligent. The trial Court further noted that whereas the



Appellant produced the Police Abstract which indicated that the Respondent's motor vehicle was to blame, no reason was given as to why the said motor vehicle was blamed for the accident. Consequently, the claim was dismissed with costs.

7. Dissatisfied with the judgement, the Appellant lodged this appeal on the following grounds:
 - i. That the learned Adjudicator erred both in law and in fact in dismissing the Statement of Claim dated 10 March 2023 by failing to fully analyse and evaluate the evidence as the record thus reaching the wrong decision;
 - ii. That the findings of the Learned Adjudicator abdicated her statutory duty in failing to address the substantial issues raised regarding pleadings by the parties thus causing a miscarriage of justice and reaching a wrong verdict;
 - iii. That the learned Adjudicator erred in law and in fact in failing to find that there is serious error apparent on the face of the record which error goes to the substratum of the said claim thus causing a miscarriage of justice;
 - iv. That the learned Adjudicator erred in law and in holding that the Claimant had not clearly pleaded the particular of negligence when there was proof of the same;
 - v. That the learned Adjudicator erred in law and in fact in finding in favor of the Respondent when the Police Abstract herein clearly had serious errors warranting a review of the judgement earlier entered;
 - vi. That the findings of the learned Adjudicator was manifestly unfair and prejudicial to the Appellant.
8. The appeal was canvassed by way of written submissions.

Analysis and Determination

9. Section 38 of the *Small Claims Court Act* provides as follows:
 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
 2. An appeal from any decision or order referred to in sub section (1) shall be final.
10. The duty of this Court in this instance is limited to points of law. In the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.”



11. Turning to the appeal herein, I have read and considered the Record of Appeal, Supplementary Record of Appeal and submissions by the respective parties. The only point of law for determination herein is whether the Appellant proved his case on a balance of probability.
12. The Appellant pleaded negligence on the part of the Respondent, thus resulted in the accident. Other than a Police Abstract, the Appellant did not provide any reasonable evidence that the Respondent was negligent. The Appellant's bare statements cannot by themselves be said to be proof of such negligence.
13. Further, and rather interestingly, the Appellant himself, in his grounds of appeal, challenges the only document or evidence that he produced that alludes to the Respondent as being liable. The Appellant's 5th ground of appeal is "that the Learned Adjudicator erred in law and fact in finding in favor of the Respondent, when the Police Abstract herein clearly had serious errors warranting a review of the judgement earlier entered."
14. Without proof of negligence, and since the injuries sustained by the Appellant are denied, the Appellant has not discharged the burden of proof. Without a doubt, his claim must fail.
15. The upshot of the foregoing is that the Appeal fails. The same is dismissed with costs to the Respondent, assessed at Kshs 40,000/=.

DATED AND DELIVERED AT THIKA THIS 23 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

.Ms. Warungura for the Appellant

Ms. Njeri h/b Kyugu..... for the Respondent

Libertine Achieng Court Assistant

