



REPUBLIC OF KENYA



KENYA LAW
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**Kabati v Kinyua & another (Civil Appeal 267 of 2023)
[2025] KEHC 7039 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 267 OF 2023**

**H NAMISI, J
MAY 23, 2025**

BETWEEN

CATHERINE WANJIRA KABATI APPELLANT

AND

JOHN KARIUKI KINYUA 1ST RESPONDENT

ELIUD THUO 2ND RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. O. J
Muthoni, Adjudicator delivered in Thika SCCC No. E628 of 2022)*

JUDGMENT

1. This appeal arises from a claim filed in the Small Claims Court by the Appellant against the Respondents seeking the following orders:
 - i. Judgement against the Respondents for the sum of Kshs 490,000 being the difference between the pre-accident and the salvage value;
 - ii. Loss of user of Kshs 2,000/- per day until the date of full settlement;
 - iii. Costs of the claim (to be assessed by the Court)
 - iv. Interest on (a) and (b) above
2. The claim arose from a road traffic accident that occurred on 30 April 2022 involving the Appellant's motor vehicle registration number KCT 829G and the 1st Respondent's motor vehicle registration number KCT 438G. The accident occurred Muthatha Catholic Banana-Ruaka Road. As a result of the accident, the Appellant's motor vehicle was declared a write off.
3. The hearing proceeded by way of submissions pursuant to section 30 of the *Small Claims Court Act*.



4. Parties filed their respective submissions and the judgement was rendered was follows:
 - i. Liability - 100%
 - ii. Special Damages - Kshs 490,00/=
 - iii. Costs
 - iv. Interest on (ii) and (iii) above at court rates, from the date of this judgement until payment in full
5. Aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
 - i. That the learned Magistrate erred in law and in fact in failing to amend the prayer for loss of user in the Appellant's claim;
 - ii. That the learned Magistrate erred in law and in fact in failing to appreciate the submissions of the Appellant or the prayer for loss of user;
 - iii. That the learned Magistrate erred in law and in fact in dismissing the Appellant's prayers and loss of user.
6. The Respondent did not participate in these proceedings, despite evidence of service. The Appellant filed submissions in respect of the appeal.

Analysis and Determination

7. 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.
8. In the case of *Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd [2020] eKLR*, the Court of Appeal addressed the duty of a court considering points of law.

“ This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga (2016) eKLR*).”
9. Similarly in the case of *Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment)*, the Court of Appeal stated:

“ This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga [2016] eKLR*, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo [2010] eKLR* in which it was held that: “In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they



should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

10. The duty of this Court in this instance is similar to that stated herein above, which is essentially 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 and submissions by the Appellant. The only point of law for determination herein is whether the trial court failed to appreciate the principles in awarding damages with respect to loss of user.
12. In her Witness Statement, the Appellant merely mentioned her claim for Kshs 2,000/- for loss of user. She produced several documents in support of her claim, including an Income Statement Report dated 26 April 2022 showing a net daily income of Kshs 2,000/=.
13. In its judgement, the trial Court observed that although the Appellant had produced an income statement in support of her claim for loss of user, she had not stated how the motor vehicle was being used to bring the said income. The trial Court opined that the tabulated document seemed to have been fabricated to fit the claim and its veracity raised a lot of doubts.
14. In *David Bagine vs Martin Bundi*, C.A No. 283 of 1996, the Court of Appeal, referred to the judgment by Lord Goddard CJ in *Bonhan Carter v Hyde Park Hotel Limited* [1948] 64 TLR 177), and observed that:

“It is trite law that the Plaintiff must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.”

15. I have keenly read through the Amended Statement of Claim and Witness Statements. There is no mention whatsoever of the purpose for which the Appellant was using the motor vehicle. Without a doubt, a party must substantiate their claim. It is not enough for the Appellant to merely mention a claim for Kshs 2,000/- and produce statements indicating the supposed claim, without even explaining how the claim arises. I see no error of law in the trial Court’s finding.
16. The upshot of the foregoing is that the Appeal fails. The same is dismissed with no orders as to costs.

DATED AND DELIVERED AT THIKA THIS 23 DAY OF MAY 2025.

HELENE R. NAMISI

JUDGE



Delivered on virtual platform in the presence of:

Ojienda for the Appellant

.N/A..... for the Respondents

Libertine Achieng Court Assistant

