



**Terep Automotive Limited t/a Terep Auto Garage v Small Claims Court,
Milimani, Nairobi; Waboyo (Interested Party) (Petition E614 of 2024)
[2025] KEHC 7955 (KLR) (Constitutional and Human Rights) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7955 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E614 OF 2024

AB MWAMUYE, J

MAY 22, 2025

**IN THE MATTER OF: ARTICLES 22, 23, 40 AND
50 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SCCC NO. E2999 OF 2024
LABAN WABOYO VS TEREP AUTO GARAGE**

BETWEEN

TEREP AUTOMOTIVE LIMITED T/A TEREP AUTO GARAGE ... PETITIONER

AND

THE SMALL CLAIMS COURT, MILIMANI, NAIROBI RESPONDENT

AND

LABAN WABOYO INTERESTED PARTY

JUDGMENT

1. This petition is brought by Terep Automotive Ltd t/a Terep Auto Garage (the “Petitioner”) against the Small Claims Court (Milimani) and Laban Waboyo (the “Interested Party”) under Articles 22, 23, 40 and 50 of *the Constitution*. It challenges the judgment in SCCC No. E299 of 2024 (Waboyo v Terep Auto) rendered by the Milimani Small Claims Court on 27th September 2024. The Petitioner alleges that the Small Claims Court erred in law and fact by finding it negligent in repairing the Interested Party’s vehicle engine, by placing the burden of proof improperly, and by rejecting the Petitioner’s expert evidence while accepting that of the Interested Party. The Petitioner further contends that its counterclaim for Kshs. 46,800 was dismissed without justification, in violation of its rights under



Article 40. It seeks orders setting aside the Small Claims Court’s decision, a rehearing before a different adjudicator, declarations of violation of Articles 40 and 50, and costs.

2. On the record, neither the Small Claims Court (as Respondent) nor the Interested Party filed any reply or appeared when the petition was heard. The petition accordingly proceeded unopposed, and is determined on the Petition and the Petitioner’s submissions.

Background

3. On 2nd February 2024 the Interested Party (Mr. Waboyo) brought his motor vehicle Registration Number KBT 518X to the Petitioner’s garage for repair of excessive smoke emission. The Petitioner’s mechanics advised that the engine’s piston rings needed replacement. A quotation of Kshs.185,200 was prepared; the Interested Party paid Kshs.50,000 deposit and later Kshs.90,000 towards that sum, leaving a balance of Kshs.46,800 due on 8th April 2024. The vehicle was repaired and handed back on 1st March 2024. Two days later it again broke down (lost power, overheated). The vehicle was returned to the Petitioner for further attention. After use of about a month, the engine “knocked” on 7th April 2024.
4. The Interested Party then had other mechanics examine the engine, who found that the piston rings had been incorrectly installed. He sued the Petitioner as Claimant in Small Claims Court (SCCC E299/2024), claiming Kshs.180,000 for damage caused by the alleged faulty repair plus interest and costs. The Petitioner (the respondent in that case) admitted ownership and the repair work but denied negligence and counterclaimed the unpaid Kshs.46,800 balance for the repair service.
5. At the Small Claims hearing on 22 Aug & 14 Sept 2024, the Interested Party gave evidence himself and called one witness (a qualified mechanic, Kevin Chomba, as CW2). CW2 testified that the engine failure was due to improper installation of piston rings, a fact he learned when he later repaired the engine. The Petitioner called two witnesses: its Director (Peter Mwangi, RW1) and an expert witness (Charles Wachira, RW2). RW2 was a marine mechanical engineer with no direct experience on road vehicle engines. He admitted he had never worked on that type of engine and had no first-hand knowledge of its parts. In written submissions and witness statements, the Petitioner argued that engine failure could have been caused by other intervening factors during the 53 days the vehicle was with the Interested Party, and that its own expert’s evidence was wrongly dismissed because it focused on marine engines.
6. The Small Claims Court delivered judgment on 27th September 2024. It found the following key points: the Interested Party proved he had the vehicle repaired and it still failed; CW2’s testimony was credible that improper piston installation caused the failure; this established a clear causal link between the Petitioner’s workmanship and the engine damage. By presenting that evidence, the evidential burden shifted to the Petitioner to prove the failure was due to some other cause. The Petitioner maintained it had exercised due care, but failed to call its own mechanics to counter the claim. The Court noted that the Petitioner’s expert (RW2) was a marine engineer whose testimony was “less persuasive” because he admitted he had never worked on this engine. In the circumstances the Court concluded that the Interested Party had satisfied the balance of probabilities that the Petitioner’s work was negligent. The Court assessed the damages proved and awarded the Interested Party Kshs.135,000 (the proven cost of a replacement engine) plus interest and costs.
7. Regarding the Petitioner’s counterclaim (for Kshs.46,800 balance of repair cost), the Small Claims Court found that because the Petitioner’s workmanship had failed, it had lost its right to claim the remaining payment. The unpaid balance was therefore extinguished by its breach of contract. The counterclaim was dismissed with no order as to costs.



8. The Petitioner, aggrieved by this outcome, now contends that the Small Claims adjudication violated its constitutional rights under Article 50 and Article 40. It argues specifically that (a) it incorrectly placed burdens of proof and drew inferences adverse to it without evidence, (b) it was denied a fair hearing when its expert evidence was unduly discounted while the Interested Party's evidence was accepted, and (c) the extinguishing of its counterclaim was an arbitrary deprivation of its property.

Issues for Determination

- a. Whether the Small Claims Court's conduct of the hearing and evaluation of evidence violated the Petitioner's right to a fair hearing under Article 50 of *the Constitution*.
- b. Whether the dismissal of the Petitioner's counterclaim and its resulting loss of Kshs.46,800 amounted to an arbitrary deprivation of property in breach of Article 40 of *the Constitution*.

Analysis

a. Fair Hearing (Article 50)

9. Article 50(1)(b) of *the Constitution* guarantees that "every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court...". It is settled that the essence of a fair hearing is the opportunity for each party to present its case and be heard, and for the decision-maker to consider all relevant evidence before reaching a judgment. In *Onyango Oloo v. AG* (1986), the East African Court of Appeal held (quoting Justice Bhagwati from India) that one must always keep in mind "the principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, ... and that they should not be precluded from participating in proceedings". Similarly, this Court has recognized that Article 50 read with Article 27 guarantees that each party in civil litigation has a reasonable opportunity of presenting its case on equal footing with the opponent.
10. Here, the Petitioner was afforded formal hearing of its case. It led evidence, cross-examined the Interested Party and his witness, and made submissions. There is no allegation that the Petitioner was prevented from attending or speaking, or that it was not aware of the proceedings. The record shows the Petitioner fully participated in the trial. It is not disputed that the Petitioner's attorney filed pleadings, the Petitioner testified, and its expert gave evidence. Accordingly, the basic "audi alteram partem" rule was satisfied.
11. On the burden of proof, the *Evidence Act*, Section 107(1), the party asserting a legal right bears the burden of proving the facts on which that right depends. Section 108 further provides that the burden lies on "the person who would fail if no evidence at all were given on either side". In negligence cases in civil suits, it is thus for the claimant here the Interested Party) to prove the defendant's fault on the balance of probabilities. The Small Claims Court correctly stated this rule (citing s.107) in its judgment. In this case, the Claimant (Interested Party) alleged negligence by the Petitioner's mechanics; therefore the legal burden to prove negligence lay on him. The Claimant put forward corroborated evidence – the testimony of his mechanic (CW2) – that the piston rings had been improperly installed. Once that evidence was received, the evidential burden shifted to the Petitioner to show the failure was caused by some other factor. Indeed, Section 112 of the *Evidence Act* explicitly contemplates that where a fact is especially within one party's knowledge, the burden of proving or disproving it rests on that party. Here, the exact cause of engine failure was arguably more within the Claimant's own knowledge. The Small Claims Court sensibly applied these rules: it found the Claimant had discharged his burden and then asked the Petitioner to rebut the causal link. The Petitioner offered no countervailing evidence from its mechanics.



12. The Petitioner’s complaint (that it is impossible to prove a negative or prove the engine failure was not due to its work) misunderstands the law. Section 112 addresses precisely that problem: once negligence was credibly raised, the Petitioner had to come forward with proof of an intervening cause. It did not. The conclusion that the Petitioner failed to disprove negligence was entirely consistent with the *Evidence Act*. The Court thus correctly applied the burden of proof. There is no merit in the suggestion that Article 50 was breached by shifting this burden; rather, Article 50 was observed in allowing each side to present its proof.
13. The Petitioner’s principal grievance is that its expert witness (a marine engineer) was not “accepted”, whereas the Interested Party’s mechanic’s evidence was. It alleges this was unfair. But the role of an expert and the court’s treatment of expert opinion is governed by ordinary evidence law. As the Court of Appeal has held in civil Appeal 21 of 2017, an expert’s opinion is not binding on the court and carries only such weight as the court chooses. A court is entitled to reject an expert’s evidence if it finds cogent reasons to do so, and must give reasons if it discounts an expert opinion. The Small Claim here did precisely that.
14. The Petitioner’s expert admitted he had worked only on marine engines and had never even seen the particular vehicle’s engine. The court found, on reasonable grounds, that this limited experience made his testimony “less persuasive”. Nothing in Article 50 entitles a party to have its evidence accepted; it only requires the evidence to be heard. The Petitioner’s expert was heard, was cross-examined, and the court examined his qualifications and testimony. The decision to give it little weight – whether one agrees or not – is part of the adjudicator’s function and not a violation of fair hearing.

b. Right to Property (Article 40)

15. Article 40 guarantees that every person has a right to acquire and own property and that no person shall arbitrarily be deprived of property. It is clear from the jurisprudence that “property” in Article 40 is to be interpreted broadly, but the prohibition is against arbitrary deprivation, usually by State action or by law without compensation. The Petition raises Article 40 in the context of a private contractual dispute: the Petitioner’s counterclaim for Kshs.46,800 was dismissed by the Small Claims Court. The Petitioner argues this dismissal violated its property rights.
16. No legal principle suggests that losing a contractual claim in court is, by itself, a constitutional deprivation of property. In fact, where a person has engaged in a contract and receives no benefit due to a breach, the remedy lies in contract law, not constitutional law. The Small Claims Court did not confiscate some previously owned property of the Petitioner. Rather, it adjudicated a pending financial claim. The Court found that, due to the Petitioner’s failure to perform adequately, the contractual obligation to pay the remaining Kshs.46,800 fell away. That conclusion was reached by applying ordinary law of contracts and is not “arbitrary” in the Article 40 sense – it was done pursuant to judicial process.
17. The Petitioner’s right to claim Kshs.46,800 was never a vested entitlement independent of performance; it was contingent on completion of service. Article 40’s protection against arbitrary deprivation presumes a lawfully acquired interest. As the Supreme Court stated in *Rutongot Farm Ltd v Kenya Forest Service*, once a proprietary interest is lawfully acquired, “no person shall be arbitrarily deprived of property”. Here, the Petitioner had no incontrovertible “lawful interest” in the Kshs.46,800, because it had not fully earned it. The court’s dismissal of the counterclaim was a lawful consequence of the Petitioner’s breach.
18. If the Petitioner believed the counterclaim should have succeeded, its remedy was to appeal on the merits or sue for wrongful decision, not to invoke Article 40. There is no arbitrary action by the State



– rather, the State (through its court) enforced the contractual bargain. In short, the Petitioner was not forcibly dispossessed of property; it simply failed to prove its claim. Consequently, Article 40 does not furnish relief in these circumstances.

19. For the reasons above, the Petition has not established any breach of Articles 50 or 40 by the Respondent. The Small Claims Court proceedings, though resulting against the Petitioner, complied with the requirements of a fair hearing. There was no constitutional infirmity in the evaluation of evidence or the disposition of the counterclaim. The Petition is therefore without merit and is dismissed.

20. Each party shall bear its own costs

Orders accordingly.

DATED, SIGNED, AND DELIVERED ON THIS 22ND DAY OF MAY 2025.

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BAHATI MWAMUYE.

JUDGE.

