



**Kam Transporters Savings & Credit Co-Operative Society Limited & another v Wandate
(Civil Appeal E995 of 2022) [2025] KEHC 8681 (KLR) (Civ) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E995 OF 2022
WM MUSYOKA, J
JUNE 20, 2025**

BETWEEN

**KAM TRANSPORTERS SAVINGS & CREDIT CO-OPERATIVE SOCIETY
LIMITED 1ST APPELLANT**

STEPHEN MUSYOKI MUTUA 2ND APPELLANT

AND

WINNIE WANJIKU WANDATE RESPONDENT

(Appeal from judgement and decree of Hon. Selina N. Muchungi, Senior Resident Magistrate, SRM, delivered on 18th November, in Milimani CMCCC No. E2714 of 2020)

JUDGMENT

1. The suit, at the primary court, was by the respondent, against the appellants. It was in respect of a motor traffic accident that allegedly happened on 10th August 2018 along Kangundo-Nairobi Road, at Malaa, involving two vehicles, registration marks and numbers KCC 958P and KCE 909R. The respondent was a passenger in KCC 958P. She sued the owners of KCE 909R, the respondents herein, accusing them of negligently handling the vehicle KCE 909R, leading to that accident, where she sustained injury. She sought general damages for pain, suffering and loss of amenities, and special damages.
2. The appellants filed a joint defence, denying the allegations made in the plaint. They pleaded, in the alternative, that the respondent substantially contributed to the accident by her own negligence.
3. I cannot tell whether a trial was conducted in the matter, and whether a decision was rendered in the suit, as I have not come across the notes of the trial court, a transcript of the proceedings, the judgement and the decree, in the record of appeal that was filed herein.



4. In the memorandum of appeal, dated 2nd December 2022, it does appear that a judgement was delivered on 18th November 2022, where liability was assessed at 100% against the appellants, and compensation was awarded, on both general and special damages, plus costs and interests. It is from that alleged judgement that this appeal arises. The grounds are that the judgement was contrary to the law and facts availed to the trial court, and the award of general damages, of Kshs. 200,000.00, was too high.
5. Directions were given, on 8th May 2024, for canvassing of the appeal by way of written submissions.
6. The only written submissions in the record before me were filed by the respondent. She submits on three areas: competence of the suit, liability and general damages. On competence of the suit, she points out that two records of appeal were filed, but both lack the typed proceedings, a copy of the judgement and the decree of the trial court. It is pointed out that the records of appeal contain only pleadings, documents, letters and submissions. It is argued that the record of appeal is incomplete, and the court cannot discuss on the issues until those documents, hence the said appeal should be dismissed. She cites Jayant Kumar Vrajlal Shah & Another vs. Midco Holdings Limited & Another [2003] eKLR, to argue that the appellants have not explained why they have not sought indulgence of the court, the appeal ought to be struck out. On liability and general damages, the respondent largely supports the findings and holdings of the trial court.
7. This appeal should stand or fall on the technical matter of the completeness of the record of appeal. Order 42 rule 15(4) of the Civil Procedure Rules sets out the material that ought to be placed before the appellate court. That material includes the documents left out in the record of appeal herein, that is to say the notes of the trial court, the transcript of the proceedings, a copy of the judgment and a copy of the decree.
8. There is a proviso to Order 42 Rule 13(4). It is proviso (ii) which is relevant for purposes of this judgement. It states that the appellate judge may dispense with production of some of the material listed in that provision. That would mean the omission of some of the items need not be fatal. However, it is indicated that some items, in Order 42 Rule 13(4)(a)(b)(f), are mandatory, and cannot be dispensed with. These are the memorandum of appeal, the pleadings and the judgment or order or decree appealed against.
9. Some of the items omitted from the record of appeal herein are in the list of those that cannot be dispensed with, that is to say the judgement and the decree appealed against.
10. The appeal is against the judgement and decree made in that judgement. These two are the foundation of the appeal, and without them there would be no appeal. Why? First, because it must be demonstrated that there is a judgement and decree to provide basis for the appeal. Without evidence of existence of a judgment or decree that can be appealed against, there would be no basis for an appeal, as the appeal should be against that judgement and decree. Second, the grounds of appeal are distilled from the judgement, for the judgement should have or carry the findings and holdings of the court. Without a copy of the judgement, the appellate court would be unable to determine the issues placed before it for determination in the appeal.
11. As the foundational documents for an appeal have not been filed by the appellants, there is no proper appeal before me. I have nothing before me, which I can use to evaluate the merits of the appeal. Consequently, I shall proceed to strike out the purported appeal herein, with costs to the respondent.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 20TH DAY OF JUNE 2025.

WM MUSYOKA



JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Gulenywa, instructed by Kimondo Gachoka & Company, Advocates for the appellants.

Ms. Wachira, instructed by Waiganjo Wachira & Company, Advocates for the respondent.

