



Giwas Construction Company Limited v Centre for Sustainable Resource Development & another (Civil Appeal E022 of 2023) [2025] KEHC 12553 (KLR) (3 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E022 OF 2023
RC RUTTO, J
SEPTEMBER 3, 2025**

BETWEEN

GIWAS CONSTRUCTION COMPANY LIMITED APPELLANT

AND

**CENTRE FOR SUSTAINABLE RESOURCE DEVELOPMENT 1ST
RESPONDENT**

RAPHAEL MWORIA 2ND RESPONDENT

*(Being an appeal from the Judgment of Honourable Senior Resident Magistrate
O.J Muthoni in Thika SCCC No. E007 of 2023, delivered on 28th September 2023)*

JUDGMENT

1. This is an appeal challenging both liability and quantum as determined by the trial court. The 1st Respondent the registered owner of Motor Vehicle Registration Number KBM 620Z filed a claim against the Appellant and the 2nd Respondent seeking special damages arising from a road traffic accident that occurred on 11th January 2020 along Northern Bypass Road Kahawa West area.
2. In the Statement of Claim, the Appellant was sued as the registered, beneficial and/or insured owner of Motor vehicle Registration Number KTCB 828K while the 2nd Respondent herein was sued as the Driver, servant, employee and or authorized agent of the Appellant herein.
3. It was alleged that the Appellant's motor vehicle No. KTCB 828K was negligently and carelessly driven that it rammed into motor vehicle KBM 620Z and causing damage to it.
4. Both the Appellant herein and the 2nd Respondent filed their defence, denying liability. The matter proceeded to a full hearing, after which the trial court entered judgment in favour of the 1st Respondent in the following terms:



- a. Liability 100% against the appellant and the 2nd respondent
 - b. Special damages Kshs.241, 428/=
 - c. Costs and
 - d. Interest on (b) and (c) above at court rates from the date of the judgment until payment in full.
5. Aggrieved by the Judgment the Appellants filed this appeal, raising several grounds including; that the Honourable adjudicator erred in law and in fact in holding that the Appellant was 100% liable contrary to the weight of evidence; by holding that 1st Respondent had proven special damages of Kshs.241, 428 against the Appellant herein; by failing to make a determination on the relationship between the Appellant and the 2nd Respondent in determining the issue of liability; by failing to make a determination as to who was vicariously liable for the actions of the driver of Tractor Registration Number KTCB 828K in between the Appellant and the 2nd Respondent; by dismissing the appellant's defence against the claim and in particular for failing to make a determination as to who had control over the Tractor Registration Number KTCB 828K at the time of the accident and by failing to make a ruling on the appellant's defence that the 2nd Respondent was in control of Motor Vehicle Registration Number KTCB 828K.
6. The appeal was canvassed by way of written submissions. The Appellant's submissions are dated 18th October 2024, while the 1st Respondent's submissions are dated 4th November 2024. Notably that the 2nd Respondent did not participate in the appeal, proceedings and there has never been any attendance or representation on its behalf. As at the time of writing this judgment, no submissions have been filed by the 1st Respondent.

Appellants' submissions

7. The Appellant commenced its submissions by outlining a brief background of the case before the Small Claims Court. Although six grounds of appeal were raised, the Appellant focus primarily on the issue of liability, specifically, whether it should have been held liable for the actions of the 2nd Respondent. Citing Section 107 of the *Evidence Act*, the Appellant urged that the burden of proof lay with the 1st Respondent to establish liability, which, in its view, was not discharged on a balance of probabilities as required by law.
8. The Appellant submitted that the 1st Respondent called a police officer who testified as CW1. During his testimony, CW1 stated that the driver, Jackson Gitonga, had informed him that the owner of the vehicle was Raphael Mworira, the 2nd Respondent and accordingly provided details as to who owned the motor vehicle at the time of the accident. The Appellant further submitted that the 2nd Respondent testified that he had sourced the tractor for farming purposes and had visited the police station to check whether the tractor would ever work on his farm again. The Appellant also submitted that its director testified that he had hired the motor vehicle to the 2nd Respondent, and this evidence was not controverted. Additionally, the Appellant argued that the driver of the motor vehicle at the time of the accident, Jackson Gitonga, was not its employee and therefore, the Appellant had no control or management over him.
9. The Appellant contended that the trial court failed to adequately address the disputed issue of ownership of the motor vehicle and erroneously attributed liability to all defendants without clearly identifying which party was found liable. To support its position, the appellant relied on several authorities including; Nancy Ayiamba Ngaira v Abdi Ali [2010] eKLR, Tabotha Nduhi Kinyua v



Francis Mutua Mhuri & Another [2014] eKLR (CA No. 180 of 2009), and Joseph Cosmas Khayigila v Gigi & Company Limited & Another (CA No. 119 of 1986).

10. The appellant submitted that no vicarious liability could be imputed to it for the actions of the driver or the employer. It further argued that the 1st Respondent failed to tender evidence showing that the motor vehicle was being operated for the benefit of the Appellant or for any mutual benefit between the parties.
11. The Appellant maintained that had the trial court properly appraised itself of the facts and considered the twin issues of ownership of the vehicle and vicarious liability, it would have reached a different conclusion regarding liability.
12. In conclusion, the Appellant submitted that the Honourable Adjudicator misapplied the law to the facts presented, and that the judgment should be set aside. The appellant urged the Court to allow the appeal and award it costs.

1st Respondent's Submissions

13. The 1st Respondent commenced its submissions with a brief introduction and background of the case as presented before the trial court. In support of its position, it relied on the case of *Selle & Another v Associated Motor Boat Co. Ltd* [1986] eKLR to assert that the mandate of this Court, sitting on a first appeal, is reappraise the evidence and draw its own inferences of fact.
14. The 1st Respondent then addressed the issue of whether the Appellant was liable for the accident. It submitted that both the Appellant and the 2nd Respondent testified, with each party shifting blame to the other. Neither was willing to accept responsibility for control of the subject motor vehicle. The 1st Respondent contended that it exercised due diligence and established that the Appellant was the registered owner of the motor vehicle, a fact confirmed by the Appellant, while the 2nd Respondent was the beneficial owner. On that basis, the 1st Respondent submitted that it had discharged its duty of proving the claim on a balance of probabilities.
15. It was further submitted that the evidence on record clearly demonstrates that both the Appellant and the 2nd Respondent were liable for causing the accident. Accordingly, the 1st respondent urged the court to uphold the trial court's finding. In support of this position, it cited the case of *Kenya Bus Services Limited v Humphrey* where the Court of Appeal referred to *Kansa v Solanki* [1969] EA 318, to emphasize that the vehicle was registered in the Appellant's name. the 1st respondent argued that although the Appellant claimed that the vehicle was leased or hired, no supporting documentation, such as a lease agreement or other documentary proof, was tendered to establish that the 2nd Respondent was solely liable. Additionally, the 1st Respondent pointed out that neither the Appellant nor the 2nd Respondent called the driver of motor vehicle KTCB 828K to testify. As such, the 1st Respondent submitted that there is no basis upon which the trial court's finding of vicarious liability can be faulted.
16. The 1st Respondent further, submitted that Motor Vehicle Registration Number KTCB 828K was en route to the 2nd Respondent's location from the Appellant's premises in Meru County when the accident occurred along the Northern Bypass, Kahawa West area. It argued that since the vehicle had not yet reached the 2nd Respondent's location and neither the driver nor the alleged lease agreement was produced in court, the assertion that the Appellant was not in control of the accident motor vehicle remains unsubstantiated. Relying on the case of *Boniface Waiti & Another v Michael Kariuki Kamau* [2007] eKLR, the 1st respondent submitted that both the Appellant and the 2nd Respondent failed to



properly defend the case and appeared to mislead the court by failing to produce the driver who was the only person who could clarify the circumstances surrounding the accident.

17. In conclusion, the 1st Respondent prayed that the court dismiss the appeal with costs.

Analysis and Determination

18. To begin with, the court notes that both the Appellant and the 2nd Respondent in their respective submissions, urge this court to exercise its appellate mandate by re-looking at the evidence, re-evaluating the same and arriving at its own assessment. While such an approach is appropriate in ordinary appeals, it does not apply to appeals arising from the Small Claims Court.

19. Appeals from the Small Claims Court, are governed by Section 38 of the *Small Claims Court Act* which strictly limits the jurisdiction of this Court to matters of law only. It provides that:

38. (1) A person aggrieved by the decision or an order Appeals of the Court may appeal against that decision or order to the High Court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.”

What constitutes, points of law, has been settled see the case of Otieno, Ragot & Company Advocates v. National Bank of Kenya Limited [2020] eKLR.

20. Guided by the above statutory provision and judicial precedent, this court is duty bound to consider the grounds of appeal as they appear in the Memorandum of Appeal dated 25th October 2023, the Record of Appeal and the submissions of parties and discern the primary question of law that calls for determination.

21. Upon review, the Court notes that the Memorandum of Appeal sets out six grounds, all of which are based on issues of fact and law. It is trite that in appeals of this nature, good practice demands that the grounds be concise and focused on clear questions of law.

22. Litigants are expected to draft their pleadings with precision and avoid repetitive or vague grounds that compel the court to speculate on the actual issues for determination. The Appellant ought to have distinctly identified the specific issues of law arising from the impugned decision.

23. The appellant despite listing six grounds of appeal he only addressed one issue for determination to wit; whether the Appellant should have been held liable for the actions of the 2nd Respondent. The issue of special damages though pleaded, was not addressed and is deemed to have been abandoned.

24. The Appellant’s grievance against the impugned decision primarily revolves around the alleged failure by the trial court to properly evaluate the evidence, particularly the admission by the 2nd Respondent that he was in control of the accident motor vehicle, Registration Number KCTB, and that it was the 2nd Respondent’s driver who caused the accident.

25. However, the appellant’s contention invites this court to re-evaluate the factual findings of the trial court, and to find that the 2nd Respondent was solely liable for the accident. This is impermissible under section 38 of the *Small Claims Court Act*. The question of who was in control of the vehicle and who caused the accident is a factual matter. This court’s jurisdiction is confined to questions of law, and the appellant has failed to frame any such legal issue.

26. Accordingly, and for the reasons stated above, this court makes the following orders: -

- i. The appeal is dismissed and the judgment and decree of the Honourable O.J Muthoni made on 28th September 2023 in Thika SCC No. E007 of 2023 is upheld.



ii. Each party to bear their own costs of the appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of

.....for Appellant

.....for 1st Respondent

.....for 2nd Respondent

Selina Court Assistant

