



**Mukabi v Xtreme Connections & another (Civil Appeal E212 of 2024)
[2025] KEHC 12669 (KLR) (9 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E212 OF 2024
FN MUCHEMI, J
SEPTEMBER 9, 2025**

BETWEEN

JOHN KIRAGU MUKABI APPELLANT

AND

XTREME CONNECTIONS 1ST RESPONDENT

CO-OP BANK FLEET AFRICA LEASING LIMITED 2ND RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon.
Lemayan Robert Rotich (RM/Adjudicator) delivered on 19th June
2024 in Thika Small Claims Court SCCC No. E1479 of 2023)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Thika Resident Magistrate/Adjudicator in SCCC No. E1479 of 2023 in a claim arising from a motor vehicle accident whereby the court found the respondents 100% liable. The court awarded the appellant damages for material loss and special damages at Kshs. 483,050/- and costs of Kshs. 50,000/-.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 5 grounds of appeal summarized as follows:-
 - a. The learned adjudicator erred in law and in fact in holding that the appellant had a strict duty to find a buyer willing to purchase the salvage value at the amount indicated at the assessment report and thereby ignoring the actual and proved value that the salvage was sold at.
 - b. The learned trial adjudicator erred in law and in fact by applying the wrong principles in awarding interest from the date of judgment despite the claim being a material damage claim.



- c. The learned trial adjudicator erred in law and in fact by assessing the costs on a global scale contrary to the provisions of the Advocates Remuneration Order.
 - d. The learned trial adjudicator erred in law and in fact by ignoring the issues raised by the appellant during the trial, his submissions and authorities cited thereon.
3. Directions were issued that parties put in written submissions and the record shows that the appellant complied by filing submissions on 30th May 2025. The respondents on the other hand did not file their submissions by the time of writing this judgment.

The Appellant's Submissions

4. The appellant submits that his motor vehicle registration number KAT 492A was assessed and declared a total loss yet he was paid Kshs. 50,000/- for salvage. The appellant further submits that according to the assessor, the suit motor vehicle had a pre-accident value of Kshs. 380,000/- as contained in the assessment report. The appellant argues that the learned adjudicator erred in holding that the assessor was his agent but an expert witness pursuant to Section 48 of the [Evidence Act](#).
5. The appellant further argues that the learned adjudicator erred by placing an obligation on him to find a buyer of the salvage value stated in the report yet the respondents did not challenge him on that issue. The respondents admitted the assessment report and the receipt of Kshs. 50,000/- and they did not challenge the same on cross examination. To support his contentions, the appellant relies on the case of Joseph Ndungu Kagiri vs Republic [2016] eKLR. Thus the appellant submits that the learned adjudicator entered into the arena of conflict as compared to being an impartial arbiter.
6. Relying on the cases of Supermarine Handling Services Ltd vs Kenya Revenue Authority [2010] eKLR; Prem Lata vs Peter Musa Mbiyu [1965] EA 592; Pan African Insurance Company (U) Ltd vs International Air Transport Assoc. (HCT-oo-CC-CS-0667 of 2023) and Orix Oil (Kenya) Limited vs Paul Kabeu & 2 Others [2014] KEHC 5086 (KLR), the appellant submits that the claim being a liquidated amount which he was deprived through the wrongful acts of the respondents, an award of interest ought to run from the date of filing the suit until payment in full at the court rates of 12% per annum.
7. The appellant refers to the case of Peter Njuguna Njoroge vs Julius Naranklak Ologolomot [2010] KEHC 2991 (KLR) and submits that costs ought to be awarded subject to the provisions of the Advocates Remuneration Amendment Order 2014 and not a global scale.

Issues for determination

8. The main issues for determination are:-
 - a. Whether the appeal is properly before the court.
 - b. If not, whether interests on special damages ought to have been awarded from the judgment date or date of filing the suit.
 - c. Whether costs ought to be subjected to the Advocates Remuneration Order.

The Law

9. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the [Small Claims Court Act](#), set out the duty of



the second appellate court in the case of Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:-

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 that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

10. In distinguishing between matters of law and fact the Court of Appeal stated in Kenya Breweries Ltd vs Godfrey Odoyo [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. 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.

Whether the appeal is properly before the court

11. Section 38 of the Act provides:-

A person aggrieved by the decision or an order of the court may appeal against that decision or order to the high Court on matters of law.

12. The Court of Appeal in *Mwangi vs Wambugu* [1984] KLR 453 commented of what amount to points of law as follows:-

A Court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding; and an appellate court is not bound to accept the trial Judge's finding of fact if it appears either that he has clearly failed on some material point to take account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.

13. Similarly in *Peter Gichuki King'ara vs Independent Electoral and Boundaries Commission & 2 Others* [2014] eKLR the court held that:-

Bearing in mind the above principles, the most contentious issues in this appeal is whether the grounds of appeal are matters of law or facts. Having established that we have jurisdiction to determine only issues of law as per the provisions of Section 85A of the *Elections Act*, to us the whole question of whether the trial Judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence with of course the usual caveat, that we did not see the witness demeanor is an issue of law.



14. The appellant is aggrieved that the learned adjudicator awarded interest from the date of judgment as opposed to the date of filing the suit. Section 26 of the *Civil Procedure Act* provides:-

Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

15. The authority and discretion of a court to award interest on costs is provided for in Section 27(1) & (2) of the *Civil Procedure Act* as follows:-

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

16. It is trite that the court has wide discretion to award and fix the rate of interest provided that the discretion is used judiciously. Given this discretion, an appellate court is therefore enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. *New Tyres Enterprises Ltd vs Kenya Alliance Insurance Company Limited*.
17. The instant claim is based on a liquidated amount and the applicant in his claim in the trial court sought for the judgment sum of Kshs. 564,050/- and interest on the said amount from the date of the cause of action. However, the appellant proved and was awarded Ksh.483,050/= on the said heads of damages.
18. The Court of Appeal in the case of *Prem Lata vs Peter Musa Mbiyu (1965) EA 592* stated:-
- In both these cases, the successful party was deprived of the use of goods or money by reason of the wrongful act on the part of the defendant, and in such a case it is clearly right that the party who has been deprived of the use of goods or money to which he is entitled should be compensated for such deprivation by the award of interest.
- However, the appellant had a duty to prove his loss on the balance of probabilities.
19. The cost of salvage was said to be Ksh.50,000 which was not disputed and neither was the pre-accident value disputed. The pre-accident value was Ksh.380,000/= less Ksh.50,000/=. The appellant produced the assessor's report in evidence and as such, ought to have been awarded Ksh.330,000/= as compensation. It was not in order for the court to rule that the appellant ought to have gotten a buyer for higher value of the salvage. It also follows that the court should not have denied the appellant full compensation for his loss which he had proved to the standards required. I hereby substitute the



figure of Ksh.280,000 awarded to the appellant with Ksh.330,000/= which was proved. I hereby award Ksh.330.000 for the material loss.

20. As for the loss of user of vehicle, the appellant produced unstamped receipts of Ksh.202,500/= which were rejected by the court as insufficient proof. The appellant was under a duty to plead and prove the loss of user with proper documents which he failed to do.
21. As for the interest on special damages, the general principle on special damages which are specific and quantifiable losses is that interest is awarded from the date of filing the suit. The purpose of this principle is to compensate on money already spent as opposed to general damages awarded at the date of judgment following assessment by the court ought to have awarded interest on the special damages from the date the appellant filed the suit.
22. The appellant having spent the funds on special damages ought to have been awarded interest from date of filing the suit. I hereby order that interest on special damages of Ksh,161,550 be paid with interest at court rates from the date of filing the suit.
23. On the issue of costs, Section 33 of the *Small Claims Court Act* provides:-
 1. The court may award costs to the successful party in any proceedings.
 2. In any other case parties shall bear their respective costs of the proceedings.
 3. Without prejudice to subsections (1) and (2), the Court may award to a successful party disbursements incurred on account of the proceedings.
24. Thus, the law is clear that the learned adjudicator may award costs to a successful party and has discretion to cap the costs. The Small Claims Court pursuant to Section 17 has control of its own procedure giving leeway to the court to either cap the costs to a certain figure or to assess them under the Advocates Remuneration Order. The court exercised its discretion in awarding costs and I find no error or irregularity in the said order.
25. I find this appeal partly successful and hereby order that each party meets their own costs of this appeal.
26. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 9TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

