



**Abdulkadir v Singh & another (Civil Appeal 202 & E125 of 2023
(Consolidated)) [2024] KEHC 10337 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 10337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 202 & E125 OF 2023 (CONSOLIDATED)**

F WANGARI, J

APRIL 18, 2024

BETWEEN

SHEROO ABDULMAJID ABDULKADIR APPELLANT

AND

RAVINDER SINGH 1ST RESPONDENT

UK LORRIES LIMITED 2ND RESPONDENT

*(Appeal from the Judgment and Decree of the Honourable S. N Gatambia
delivered on 27/7/2023 in Mombasa SCCOM No. E023 of 2023.)*

JUDGMENT

1. This is an Appeal from the Judgment and Decree of the Honourable S. N Gatambia delivered on 27/7/2023 in Mombasa SCCOM No. E023 of 2023.
2. The Appellant is substantially on the grounds that the learned Trial Court erred in law and fact:
 - a. By assuming jurisdiction to hear and determine the suit outside the 60 days statutory period under Section 34 of the *Small Claims Court Act*.
 - b. By holding that the Claimant had locus standi.
 - c. By dismissing the 1st Respondent's Defence
 - d. By awarding special damages
3. The Appellant as such prayed for reliefs that the Judgement be set aside and replaced with an Order dismissing the Claim with costs.



Pleadings

4. In the Statement of Claim dated 12th January 2023, it was pleaded that on 31st August 2022, the Claimant was driving his Motor vehicle Registration No. KCU 138T at Chandarana Supermarket parking lot in Nyali when the 1st Respondent reversed the 2nd Respondent's Motor vehicle Registration No. KBX 399E so negligently that it crashed and extensively damages the Claimant's said motor vehicle.
5. The Claimant is the 1st Respondent herein. He prayed for Judgement for Kshs. 166,710 being special damages for the cost of repairs to the motor vehicle. The Appellant as 1st Respondent in the Trial Court entered appearance. He also filed Third Party Notice dated 22nd February 2023.
6. The Third-Party Notice sought to enjoin Kenya Orient Insurance. The Third Party Notice was subsequently abandoned. The 2nd Respondent never entered appearance.

Evidence

7. During trial, the 1st Respondent as Claimant relied on his witness statement and bundle of documents filed on 19th January 2023.
8. He produced the documents in Court as his evidence.
9. On cross examination, it was his case that he was not the registered owner of the damaged motor vehicle but it was registered in the name of his father. Further that the names on the receipt was their family name.
10. On the part of the Appellant, she testified that and relied on her witness statement. She stated that she was reversing at the impugned parking lot when she heard a bang. She blamed the Claimant for the accident.
11. The Trial Court considered the case and rendered its Judgement on 27th July 2023. The court awarded Kshs. 166,710/- with costs and interest.
12. Aggrieved, the Appellant who was the Claimant lodged this Appeal.

Submissions

13. The Appellant reiterated the grounds in the Memorandum of Appeal. It was submitted that the trial court erred in failing to find that the court had no Jurisdiction by virtue of Section 34 of the [Small Claims Court Act](#). On this it was submitted that the case ought to have been determined within 60 days of filing and the court ought to have downed its tools at the expiry of the 60 days as any action after the 60 days was void.
14. It was also submitted that the 1st Respondent herein lacked locus standi to sue.
15. It was submitted that the 1st Respondent sued in representative capacity but disguised as his own case contrary to Order 4 Rule 4 of the Civil Procedure Rules. It was as such submitted that the 1st Respondent had no sufficient interest in the claim and reliance placed on the case of *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Other* (2014) eKLR. On this, it was submitted that locus standi was a jurisdiction question and the court erred in not upholding it.
16. It was further submitted that the 1st Respondent did not prove special damages as required by law.



17. Reliance was placed on Sections 107 and 109 of the *Evidence Act*. This court was urged to allow the Appeal.
18. On the part of the Respondent, it was submitted that the Trial Court was correct in its determination. The court was urged to dismiss the Appeal.

Analysis

19. I have considered the appeal as well as submissions and authorities filed in court. The issues are as follows;
 - a. Whether the Trial court erred in determining the suit outside 60 days period after filing
 - b. Whether the 1st Respondent had locus standi
 - c. Whether the Trial Court erred on liability
 - d. Whether special damages were proved as required by law.
20. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.
21. In the case of *Mbogo and Another vs. Shah* [1968] EA 93 where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
22. The Court is to bear in mind that it had neither seen nor heard the witnesses. It is the trial court that has observed the demeanour and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them.
23. The Trial Court and this court will construct documents in a similar manner as there are no witnesses required to know the content of a document. Therefore, where the findings of the trial Court are consistent with the evidence generally, this Court should not interfere with the same.
24. On the first issue, I note that Section 34 of the *Small Claims Court Act* provided as follows:

Expeditious disposal of cases

 - (1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.
 - (2) Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.
 - (3) The Court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.



- (4) When considering whether to allow an adjournment on the grounds of exceptional and unforeseen circumstances referred to in subsection (3), the court may in particular take into consideration where appropriate any of the following exceptional and unforeseen circumstances—
- (a) the absence of the parties concerned or their advocate or other participants to the proceedings required to appear in court for justified personal reasons which may include sickness, death, accident or other calamities;
 - (b) an application by a party for the Adjudicator to withdraw from hearing the matter;
 - (c) a request by parties to settle the matter out of court;
 - (d) an appeal filed in the matter where orders of stay of proceedings have been granted;
 - (e) an application by a party to summon new witnesses to court, collect new evidence, new inspection or evaluation or supplementary investigation on the subject matter of the case; and
 - (f) any other exceptional and unforeseen circumstances which in the opinion of the court justifies or warrants an adjournment
25. The impugned Section of the Small Claims Act requires the matters filed to be determined within a maximum period of 60 days.
26. I do not agree that the court ceased to have jurisdiction on the matter after the expiry of 60 days required under statute. I am fortified by the reasoning of Magare J in *Biosystems Consultants v Nyali Links Arcade (Civil Appeal E185 of 2023)* [2023] KEHC 21068 (KLR) (31 July 2023) (Ruling) as follows:
- The legislative intent of section 34 of the *Small Claims Court Act* was not to impose unnecessary bottlenecks. Even tax statutes had timelines for paying or declaring taxes. It was never that non-payment made those taxes void. There should be consequences. In the *Income Tax Act*, the non-compliance with deadlines did not vitiate the taxes. It attracted known penalties. What were the consequences under section 34 of the small claims court?
- ... A purposive interpretation should be given to statutes so as to reveal the intention of the statute. The purpose of the *Small Claims Court Act* was to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result was that balancing the two may result at times to overshooting the 60 days. The 60 days did not have penal consequences for good reason. They were aspirational. That was part of having access to justice over amounts that needed not be in the normal system. Allowing the application would open floodgates that would eventually defeat the purpose of the Act.
27. Therefore, I do not find merit in the appeal on jurisdiction.
28. On locus standi, the evidence produced in the trial court indicated that it is the 1st Respondent who was in control of the motor vehicle at the time of the accident. I also have no doubt that the motor vehicle though registered in the name of one Ajit Singh Mahal, it is the 1st Respondent who was driving it at the time of the accident. without any evidence that the 1st Respondent did not have instructions and authority of one Ajit Singh Mahal who is described as his father. Like the trial court, I am unable to agree with the Appellant that the 1st Respondent had no sufficient interest in the motor vehicle.



29. In *Law Society of Kenya ...Vs... Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, the Court held that;-

“Locus Standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of *Alfred Njau and Others Vs City Council of Nairobi* (1982) KAR 229, the Court also held that;-

“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”

30. Likewise, it was not the case of the 1st Respondent in the trial court that he was suing as representative of his father and I find such assertions in this case to be extraneous. I also note that the 1st Respondent’s Statement of Claim and Witness Statement clearly stated that he was driving the Motor vehicle at the time of the accident and did not allude to himself as the owner of the motor vehicle.

31. I am consequently unable to find the 1st Respondent to have no sufficient interest in the motor vehicle that was his father’s property and which he was driving at the time of the accident.

32. On liability, the 1st Respondent’s case was categorical and clear that it is the Appellant who reversed the car without due care and so was negligent.

33. I understand the issue of liability is based on prove on a balance of probabilities. In *David Bagine v Martin Bundi* [1997] eKLR, the Court of Appeal cited the judgment by Lord Goddard CJ. in *Bonham Carter v Hyde Park Hotel Limited* (1948) 64 TLR 177, where he that:

[The] Plaintiffs 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.

in *Attorney General of Jamaica v Clerke (Tanya) (nee Tyrell)*, Cooke, J.A. delivering the judgment of the court stated that special damages must be strictly proved; the court should be very wary to relax this principle; that what amounts to strict proof is to be determined by the court in the particular circumstance of the case and the court may consider the concept of reasonableness.

34. This court appreciates that the circumstances of this case were in a parking lot and the Appellant ought to have exercised due care before reversing the car. On a balance of probabilities, I am unable to disagree with the finding of the trial court on liability.

35. Similarly, in *Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

36. Therefore, it follows that the initial burden of proof lies on the Claimant, but the same may shift to the Respondent, depending on the circumstances of the case.



37. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in William Kabogo Gitau –vs- George Thuo & 2 Others [2010] 1 KLE 526 stated that:

“In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

38. I do not find rebuttal from the Appellant that would have dislodged the evidence tendered by the 1st Respondent to support liability.

39. On the issue on proof of special damages, indeed the award of Kshs. 166,710/- constituted the pleaded cost of motor vehicle repair and so were special damages.

40. With special damages, the rule is strict and somewhat mathematical. The court has to discern pleaded damages and proceed to find their proof. It is not based on estimates. The Court of Appeal in Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177 where it was stated that:

“The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

41. Special damages are thus very specific and constitute liquidated claim which must be pleaded and proved. This court’s task thus entails whether the trial court failed to award special damages that were pleaded and proved.

42. I have perused the pleadings and evidence produced by the 1st Respondent in this case. I note that the Motor Vehicle Assessment Report dated 11th October 2022 estimated the repair costs at Kshs. 163,908/=. There was also produced dated 14th October 2022 for Kshs. 160,660/- and receipt for Kshs. 5,500/- being amount paid for the assessment report. Kshs. 550/- was also paid for the motor vehicle copy of records. I have no doubt that the pleaded special damages of Kshs. 166,710 was pleaded and proved.

43. Therefore, I find no merit in the Appeal. Costs awarded to the 1st Respondent.

Determination

44. In the circumstances, I make the following Orders:

- i. The Appeal is dismissed.
- ii. The 1st Respondent shall have the cost of this Appeal.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 18TH DAY OF APRIL, 2024.

.....

F. WANGARI

JUDGE



In the presence of:

Jengo Advocate for the Appellant

Monari Advocate for the Respondent.

Barile, Court Assistant

