



**Kabeu v Inchape Kenya Limited (Civil Appeal E543 of 2022)
[2024] KEHC 4592 (KLR) (Civ) (16 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E543 OF 2022

DAS MAJANJA, J

APRIL 16, 2024

BETWEEN

JOHN MBUGUA KABEU APPELLANT

AND

INCHAPE KENYA LIMITED RESPONDENT

(Being an appeal from the judgment and decree of Hon. B. J. Ofisi SRM/Adjudicator dated 8th July 2022 at the Small Claims Court at Milimani, Nairobi SCC No. E779 of 2022)

JUDGMENT

1. Before the Subordinate Court, the Respondent filed a claim against the Appellant seeking judgment of Kshs. 912,369.00 together with costs of interest being repair costs for his motor vehicle. The Respondent claimed that his motor vehicle was damaged as a result of an accident that occurred on 04.04.2019 along Lang'ata road near Lang'ata barracks involving the parties' respective motor vehicles. The Respondent blamed the Appellant for causing the accident. He averred that his insurance repaired and paid all the repair charges as well as tracing fees amounting to the said Kshs. 912,369.00 and was thus filing the claim under the doctrine of subjugation.
2. In its response, the Appellant generally denied the aforementioned averments by the Respondent and put him to strict proof. He also blamed the Respondent for causing the accident.
3. When the matter came up for hearing, the parties agreed to proceed by way of documentary evidence and the documents filed were adopted in evidence and the subordinate court then directed the parties to file written submissions. In the judgment rendered on 08.07.2022, the trial court found that the Appellant had been blamed for the accident as per the police abstract dated 05.04.2019 and thus held that the Respondent had proved negligence on the Appellant and held it 100% liable for the accident. Based on the assessment report dated 16.04.2019, an inspection report dated 25.06.2019, the claim



form, payment vouchers, satisfaction note, police abstract, copy of records, demand letter, assessment and re assessment reports, the trial court held that the Respondent had proved the pleaded special damages of Kshs. 912,369.00 and entered judgment for the same plus interest and costs.

4. The Appellant is dissatisfied with this judgment. He appeals to this court on the basis of his memorandum of appeal dated 21.07.2022. The appeal has been canvassed by way written submissions which I have considered and where necessary, I will make relevant references to in my analysis and determination below.
5. The Appellant's appeal mainly challenges the subordinate court's appreciation of the evidence and factual dispositive findings. However, this court's jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the *Small Claims Court Act*, 2016 ("SCCA") which provides that '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.' A court limited to matters of law is not permitted to substitute the Subordinate Court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).
6. The issue for determination before the Subordinate Court was whether the Appellant was liable for the accident and the resultant damages and costs. The Appellant is largely aggrieved by the Subordinate Court's finding on liability. This determination was a matter of fact based on the evidence available. As stated, the parties consented and the Subordinate Court adopted their position that the matter proceed by way of documents and submissions. This was in line with section 30 of the SCCA which permits the court to determine a matter based on the documents and submissions. The parties having recorded a consent as to how to proceed with the case, the effect was that the documents by the respective parties were produced without objection and it was incumbent upon the court to consider them and make its findings based on the documents on record (see *Patel v Mose & another* [2022] KEHC 11109 (KLR) (29 July 2022) (Judgment)).
7. The Appellant cannot now be heard to state that the Subordinate Court relied on a document that it disputed when it was produced by consent. In finding the Appellant 100% liable for the accident, the Subordinate Court relied on the police abstract dated 05.04.2019 which indicates on its face that "the driver of m/v KBP XXXXE to blame". The probative value of a police abstract is dependent on the information contained in it and a court may only rely on it as evidence of negligence if it captures the details of the accident including the results of investigations on who was blamed for the accident (see *Florence Mutheu Musembi & Geoffrey Mutunga Kimiti v Francis Kareng'e* [2021] eKLR).
8. In its statement of claim, the Respondent accused the Appellant of negligence and carelessness in the manner in which he controlled the motor vehicle. The Respondent's witness stated that it was the Appellant who hit the front-end of his motor vehicle as the Appellant suddenly reversed after hitting another car moments earlier. He stated that the Appellant appeared fatigued and could have been sleeping while driving. That after the accident, policemen came, took statements from the drivers involved and then he was issued with the police abstract the next day. In his statement, the Appellant, while denying liability, stated that if at all he hit the vehicle in front of him, then it was not him that hit the Respondent. However, he did not address the Respondent's averment that the Appellant, after hitting the vehicle in front of him, began reversing suddenly and thus hit the front-end of the Respondent's motor vehicle. This left the Respondent's contention unchallenged.
9. Therefore, going by the Respondent's statement and corroborated by the police abstract, I cannot fault the trial magistrate for concluding that the Appellant's motor vehicle was to be blamed for the accident.



It is also not accurate for the Appellant to contend that the learned magistrate made a finding of liability without justification or reasons when he clearly relied on the totality of the evidence produced which included the police abstract.

10. The Appellant's appeal lacks merit. It is dismissed with costs assessed at Kshs. 20,000.00.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF APRIL 2024.

D. S. MAJANJA

JUDGE

Mr Ochieng instructed by Ochieng Teddy Company Advocates for the Appellant.

Ms Kalama instructed by Lilian Njuguna and Company LLP Advocates for the Respondent.

