



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Maina v Munyarare (Civil Appeal 89 of 2023)  
[2024] KEHC 3441 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3441 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CIVIL APPEAL 89 OF 2023  
CM KARIUKI, J  
APRIL 11, 2024**

**BETWEEN**

**SAMUEL MUCHAI MAINA ..... APPELLANT**

**AND**

**JOHN KAMWAGA MUNYARARE ..... RESPONDENT**

*(Being an Appeal from the Judgement and Orders of Hon. Lesantos Larabi, Resident Magistrate dated 27th March 2023 and delivered in Nyahururu Chief Magistrates' Court Civil Suit No. E179 of 2022)*

**JUDGMENT**

1. The appeal herein arose from the judgement delivered by Hon. Lesantos Larabi, Resident Magistrate dated 27<sup>th</sup> March 2023 and delivered in Nyahururu Chief Magistrates' Court Civil Suit No. E179 of 2022 whereby the dispute was resolved in favour of the plaintiff, the respondent herein, awarding him Kshs. 100,000/- in general damages and Kshs. 348,000/- in special damages.
2. Being aggrieved by the said judgement, the Appellant herein filed a memorandum of appeal dated 5<sup>th</sup> May 2023 outlining 10 grounds of appeal as follows: -
  - i. That the learned trial magistrate erred in law and fact by adequately consider that it is the Appellant who sold the motor vehicle KBA 207F in dispute to the respondent.
  - ii. That the learned trial magistrate erred in law and fact in failing to consider that the Appellant was paid the full amount as consideration or purchase piece value amounting to Kenyan shillings three hundred and forty-eight thousand shillings (Kshs 348,000) by the respondent.
  - iii. That the learned trial magistrate failed to appreciate that the case before him was to establish whether the Appellant was a *bonafide* purchaser for value.



- iv. That the learned trial magistrate as per the judgement delivered on 27<sup>th</sup> march 2023 surrounded the issue of non-payment of purchase price by the Appellant to the respondent which was not the case and was not in the prayer sought by the respondent.
  - v. That the learned trial magistrate in his judgement did not appreciate who was the plaintiff and who was the Defendant as the judgement seem appear to be in total confusion.
  - vi. That the learned trial magistrate erred in law and fact by failing to appreciate that the Appellant told to the respondent the suit motor vehicle KBA207F after conducting an independent search and a log book was surrendered in the name of the Appellant.
  - vii. That the learned trial magistrate erred in law and fact in failing to appreciate that the Appellant was a bonafide buyer for the value and innocently sold the motor vehicle KBA207F to the respondent.
  - viii. That the respondent after buying the motor vehicle KBA207F transferred the said motor vehicle in his name and continued using the motor vehicle for more than two years.
  - ix. That the learned trial magistrate erred in law and fact in failing to consider that the national transport and safety authority (NTSA) is the one responsible for registration of motor vehicle and not the Appellant.
  - x. That the learned trial magistrate erred in law and fact by failing to consider that the respondent did not produce any tape lifting report from the Director of Criminal Investigation verifying the chassis number and the engine number of the motor vehicle KBA207F do not match.
3. Reasons wherefore the Appellant prays that: -
- i. The appeal be allowed and the judgement/decree of the honourable court in its entirety delivered on or about 27<sup>th</sup> March 2023 be reversed, reviewed and/or set aside.
  - ii. This honourable court be pleased to revisit the judgement and come up with an appropriate and independent determination/finding in respect thereof.
  - iii. Any other remedy be granted that this honourable court may grant and deem fit in the circumstances of this case.
4. Appellant's Written Submissions
5. The Appellant submitted that during the hearing of the main trial, he adduced evidence stating that he bought the said motor vehicle upon conducting a search and being given a logbook and all other document relating to the registered owner of the motor vehicle. That the said motor vehicle was transferred into his name and used the motor vehicle for more than 2 years.
6. He stated that the respondent testified that the motor vehicle was transferred to him and even as of date he is the registered owner of the said motor vehicle. That the respondent was even able to pay for his insurance and used rye motor vehicle for more than 2 years and that all agreements of the motor vehicle sale and buying were done before an advocate and all due diligence was conducted.
7. The Appellant averred that if there were any issues of motor vehicle tampering of chassis number is a thing he could not have been able to ascertain and was therefore an innocent buyer and seller for value. That NTSA was responsible for registration of the motor vehicle and not the Appellant. Further, there was in evidence tabled in court indicating the investigations conducted by the DCI indicating



verification of the chassis number or tape lifting. In conclusion, the Appellant prayed for the trial court's judgement to be dismissed and that the respondent pay the costs of this appeal.

8. Respondent's Submissions was not on record as at the time of drafting this judgement thus deemed unfilled.
9. Analysis and Determination
10. I have considered the grounds of appeal, submissions, the impugned judgment and the trial court's record. This being a first appeal, it is by way of a retrial and this court, as the first appellate court, has a duty to re-evaluate, re-analyze and re-consider the evidence afresh and draw its own conclusions on it. The court should however bear in mind that it did not see the witnesses as they testified and give due allowance for that. (see *Selle v Associated Motor Boat Co Ltd & Others* [1968] EA 123).
11. Further, in *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, the Court of Appeal held that:-

This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.

12. Having thoroughly perused the trial court record, I agree with the trial magistrate's finding that the Respondent indeed sold motor vehicle KBA207F to the Appellant for a sum of Kshs. 348,000/- as evidenced by PW-EH-2 and EXH-3. Accordingly, the transfer was done and effected in the Appellant's name and a copy of the registration certificate was issued in his name i.e. PW-EXH-5. For this reason, it is clear that there was breach of contract on the Appellant's onus.
13. The trial magistrate having found the case in favour of the Respondent, awarded him Kshs. 100,000/- as general damages for suffered pain and inconveniences and Kshs. 348,000/- as special damages. It is trite that the assessment of damages is a question of the conferred discretion of the trial court, hence an appellate court should not interfere with any award unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those reasons made wholly erroneous estimate of the damage suffered.
14. That being said, the principal remedy under common law for breach of contract is an award of damages, with the purpose of damages being to compensate the injured party for the loss suffered as a result of the breach, rather than (except for very limited circumstances) to punish the breaching party. Further, the Court of Appeal has on numerous occasions held that allowing a claim for general damages in addition to quantified damages under a breach of contract would amount to duplication. In addition, where there has been a breach of contract but the innocent party has not sustained any actual damage therefrom, or fails to prove that he has, only nominal damages would be recoverable by the innocent party. (See *National Industrial Credit Bank Limited v Aquinas Francis Wasike & Another* [2015] eKLR).
15. The law is that general damages are not awardable for breach of contract or breach of contractual obligations. A contract for performance of specific duties or obligations, if breached, would lead to compensation for the specific loss suffered as a result of the breach, but not general damages. (See *Kenya Tourist Development Corporation v Sundowner Lodge Limited* [2018] eKLR)



16. Consequently, I find that the trial magistrate erred in awarding the Respondent Kshs. 100,000 as general damages. The court therefore makes the orders;
- i. The award on general damages ksh 100,000 is set aside in its entirety.
  - ii. The award for special damages of Kshs. 348,000/- is upheld.
  - iii. The costs of this appeal are awarded to the Appellant.

**DATED AND DELIVERED AT NYANDARUA THIS 11th DAY OF APRIL 2024**

.....

**CHARLES KARIUKI**

**JUDGE**

