



REPUBLIC OF KENYA



**Leshami v Mwarabu (Civil Appeal R017 of 2024)
[2024] KEHC 9537 (KLR) (1 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL R017 OF 2024
GMA DULU, J
JULY 1, 2024**

BETWEEN

LEONARD TABU LESHAMI APPELLANT

AND

NGALUMA MWARABU RESPONDENT

(From the judgment in Claim No. E010 of 2023 delivered on 8th February 2024 by Hon. S. M. Musili (RM) at Taveta Small Claims Court)

JUDGMENT

1. This appeal arises from the judgment in the Small Claims Court sitting at Taveta Law Courts, wherein the Resident Magistrate/Adjudicator on 8th February 2024 found that the appellant, who was complainant in the trial court, did not prove his case on the balance of probabilities and dismissed the claim with no order as to costs.
2. Dissatisfied with the above decision of the Small Claims Court, the appellant who was the claimant in the trial court has come to this court on appeal through counsel M/s Mwazighe & Company Advocates on the following grounds:-
 1. The learned Magistrate erred in law and facts in totally ignoring and/or failing to take into account the oral and documentary evidence by the appellant.
 2. The learned Magistrate erred in law and fact by failing to appreciate that ownership of the motor vehicle Registration No KCQ 386S was never disputed during the hearing and at no given time did any person claim ownership of the car apart from the claimant was in actual possession of the car at the time it was damaged by the respondent.
 3. The learned Magistrate erred in law and facts by overlooking the receipt by Chester Wamuthoni Autospares Ltd, which clearly shows the parts of the motor vehicle which was



replaced including labour charges for the work which corroborated with the testimony of the appellant.

4. The learned Magistrate erred in law and facts by failing to appreciate that the appellant reported damages of the motor vehicle by the respondent at Taveta Police station and the latter was arrested on a charge of malicious damage to property contrary to Section 339(1) of the [Penal Code](#) and the case is ongoing.
 5. That the learned Magistrate erred in law and facts by failing to appreciate that at the appellant's home there was enough light to illuminate the whole area where the motor vehicle was parked owing to security lights which guaranteed clear vision of the respondent damaging the motor vehicle which fact was never disputed.
 6. The Magistrate erred in law and fact by failing to find that the appellant had proved his case on the balance of probability and deserved to be granted the orders sought in the claim.
 7. The learned Magistrate erred in law and facts and misdirected himself by acting on wrong and unsound principles and provisions of the law.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mwazighe & Company Advocates for the appellant. The respondent did not file submissions.
 4. This is a Small Claims Court matter, and only two witnesses testified at the trial, the appellant and the respondent.
 5. I note that from the pleadings and record of proceedings, a criminal case was agreed pending in court on the same complaint of malicious damage to property relating to motor vehicle KCQ 386S, and the respondent herein is the accused person therein.
 6. The standard of proof in criminal cases is however different from the standard of proof in civil cases. While the standard of proof in civil cases is on the balance of probabilities, in criminal cases, the standard of proof is much higher and is beyond any reasonable doubt.
 7. Indeed, the evidence on record herein is only between two witnesses, the appellant on the one hand, and the respondent on the other hand, as no additional witnesses testified for either of them.
 8. There was no dispute raised on the ownership or special ownership of the motor vehicle, nor the damage, nor the costs of repair. What was in dispute according to the record, was whether the respondent a neighbour of the appellant was seen damaging the motor vehicle at night, and whether he already was in police custody when the incident allegedly occurred.
 9. The appellant relied on a copy of a charge sheet from Taveta Police Station which indicates the time of the alleged incident to be 0010a.m, and the estimated value of the damaged windscreen to be Kshs 25,000/=, to show that the respondent was not in custody at the time of the alleged incident.
 10. The respondent on the other hand, stated in evidence that at the time of the alleged incident, he was already in police custody, for an undisclosed reason.
 11. In my view, weighing the evidence of the appellant and the respondent's evidence on record, I come to the conclusion that on the balance of probabilities, the appellant proved his claim against the respondent.
 12. The first reason is that it is not disputed that the appellant and the respondent were neighbours who must have known each other. Secondly, there was evidence about existence of adequate security lights



at the scene, which was not challenged by the respondent. Thirdly, the respondent was, in my view not saying the truth when he stated in evidence that he was in custody at the time of the alleged incident, yet it was the report made to the police on this very incident, which landed him in custody and subjected him to criminal charges, and not anything else.

13. With regard to the ownership of the motor vehicle, the fact that the registration of the motor vehicle was in the name of Nippon Imports Ltd, could not in my view, be a bar to his claim, as the appellant was clearly a special owner having custody and control of the said motor vehicle at the time of the alleged incident, which was not also disputed by the respondent.
14. Lastly, the amount of costs or damages claimed for replacement of a broken windscreen and labour charges in my view, with the present value of such items in Kenya is not unreasonable.
15. I thus find that the trial Magistrate erred in dismissing the appellants claim.
16. I allow the appeal and set aside the Small Claims Court judgment, and instead enter judgment for the appellant for the amount claimed. I award costs of appeal and the trial court proceedings to the appellant.

DATED, SIGNED AND DELIVERED THIS 1ST DAY OF JULY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Mwandoto for the appellant

No appearance for respondent

