



**Mbolonzi v Niyalkarna Aluminium Works Limited (Civil Appeal
E990 of 2022) [2024] KEHC 8179 (KLR) (Civ) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8179 (KLR)

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

CIVIL

CIVIL APPEAL E990 OF 2022

DAS MAJANJA, J

JULY 5, 2024

BETWEEN

WILSON KIOKO MBOLONZI APPELLANT

AND

NIYALKARNA ALUMINIUM WORKS LIMITED RESPONDENT

*(Being an appeal from the judgment and decree of Hon. V.M. Mochache RM/Adjudicator dated
11th November 2022 at the Small Claims Court at Milimani, Nairobi SCC No.E1847 of 2022)*

JUDGMENT

Introduction and Background

1. Before the Subordinate Court, the Respondent filed a claim against the Appellant and another seeking judgment for Kshs. 383,686.00 together with costs and interest, being repair, tracing, re-inspection and assessment fees for its motor vehicle. The Respondent claimed that it was damaged as a result of an accident that occurred on 15.01.2021 along Mombasa road involving the parties' respective motor vehicles. The Respondent blamed the Appellant's motor vehicle for causing the accident as it accused it of being driven negligently that it collided with and rammed into the Respondent's motor vehicle causing the damage.
2. In his response, the Appellant admitted the accident but denied any negligence on the part of his authorized driver. He averred that it was the Respondent's authorized driver who was negligent as he drove the Respondent's motor vehicle carelessly thus causing the accident. He blamed the Respondent's driver of not keeping the required distance when upon applying brakes, the Respondent's driver hit/rammed into the Appellant's motor vehicle which in turn hit another motor vehicle in front of it. He denied that the accident was reported at Industrial Area police station a claimed and contended that the sketch map it had presented as evidence was not drawn to scale and by the



police officer who visited the accident scene and the same was not admissible. The Appellant averred that the police officer who came to the scene of the accident informed the Respondent's driver that he was on the wrong and advised each driver to repair their own motor vehicle. For these reasons, the Appellant prayed that the claim against him be dismissed with costs and interest thereon.

3. At the hearing, the Respondent called as its witnesses; Joseph Wachira (CW 1), a police officer performing traffic duties at Industrial Area police station, its director and driver of the Respondent's motor vehicle, Manji Vasani (CW 2) and Eric Okonji, a recovery assistant at Mayfair Insurance (CW 3). On its part, the Appellant called the driver of his motor vehicle, Simon Wambua (RW 1).
4. After considering the pleadings, oral testimony and submissions, the Subordinate court rendered a judgment on 11.11.2022. The Adjudicator identified two issues for determination; who was to blame for the accident? Whether special damages had been properly pleaded and strictly proved. She held the Appellant was held fully liable for causing the said accident. On the special damages claimed, the Adjudicator found that a receipt and payment vouchers were produced proved the Kshs. 383,686.00 claimed.
5. The Appellant appeals against the judgment on the basis of his memorandum of appeal dated 30.11.2022. 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.

Analysis and Determination

6. The Appellant's appeal challenges the Subordinate Court's appreciation of both legal and factual findings. However, it should not be lost that the court's jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the *Small Claims Court Act* (Chapter 10A of the Laws of Kenya) 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*).
7. The issue for determination before the Subordinate Court was whether the Appellant was liable for the accident and the resultant damage. On liability, both parties blamed each other for the accident. CW 1 stated that the Appellant's driver failed to keep distance and hit a motor vehicle KCF E from behind and in the process changed lanes and hit the Respondent's motor vehicle on the edge. He blamed the Appellant's motor vehicle for the accident. CW 2 stated that he was following the KCF motor vehicle and the Appellant's motor vehicle was in the middle lane when a motor bike fell on the middle lane and the Appellant's motor vehicle changed lanes to the right lane where CW 2 was and CW 2 hit the Appellant's motor vehicle from behind. He stated that the Respondent's motor vehicle was damaged on the right front corner and that he hit the Appellant on the left side. He stated that after the accident the police came immediately and he reported the matter to the police station. He blamed the Appellant's motor vehicle for the accident.
8. On his part, RW 1 stated that he was driving behind the KCF motor vehicle and that when the motor bike fell, the KCF motor vehicle braked, he also braked and that the Respondent's motor vehicle hit him from behind and he also hit the KCF motor vehicle from behind. He asserted that they were all driving on the same lane and that he did not change lanes as claimed by CW 1 and CW 2. He also confirmed that police visited the scene and that they went to the police station. He denied that police



took photos or drew a sketch map. He further stated that the parties agreed to repair the motor vehicles by themselves but admitted that he had no proof of this.

9. In finding that the Appellant was liable, the learned Adjudicator stated that the damages to the respective motor vehicles was consistent with the evidence of CW 1 and CW 2 and that RW 1 had contradicted his own witness statement that he changed lanes. Going through the record, I note that it was not disputed that the Respondent's motor vehicle sustained damages that were largely on its front right-hand side. This gives an impression of the Respondent's motor vehicle hitting/being hit by a motor vehicle/object that was on its right side rather than its front. CW 2 stated that this was because the Appellant's motor vehicle suddenly switched lanes after hitting the motor vehicle in front of it. This was corroborated by the sketch map he drew in the motor vehicle's claim form. Whereas RW 1 denied this, from his witness statement he expressly stated that the accident occurred when he was "driving on the left hand side of the road leaving the right hand side of the lane.." which was clearly indicative that he was changing lanes. He attempted to run away from this statement by stating that it was erroneously recorded but I find this contention to be an afterthought and a material contradiction that could not be ignored by the Adjudicator.
10. From the totality of record, I find there was sufficient evidence for the Adjudicator to find the Appellant's motor vehicle 100% liable for the accident. The Subordinate Court therefore came to a determination that was reflective of the evidence on record and there is no reason for this court to interfere. On the issue of damages, I hold that there was sufficient evidence to support the Adjudicator's conclusion that the Respondent was entitled to Kshs. 383,686.00 claimed.

Disposition

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

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JULY 2024.

D. S. MAJANJA

JUDGE

