



**Technology Benchmark Limited v Ouko (Civil Appeal E330 of 2022)
[2023] KEHC 17281 (KLR) (Commercial and Tax) (12 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E330 OF 2022**

DAS MAJANJA, J

MAY 12, 2023

BETWEEN

TECHNOLOGY BENCHMARK LIMITED APPELLANT

AND

SAMUEL OLANG'O OUKO RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. D. S. Aswani, RM/Adjudicator delivered on 22nd April 2022 at the Small Claims Court, Milimani in SCCC No. E943 of 2021)

JUDGMENT

1. This is an appeal from a judgment of the Small Claims Court finding the Respondent fully liable for an accident that took place on January 14, 2020 between its motor vehicle registration number KCL 711R and the Respondent Motor Cycle registration number KMDP 540E. Although the Appellant claimed Kshs 999,342 made up as follows: Kshs 613,292.00 as repair costs, Kshs 7,500.000 as assessment fees, Kshs 378,000.00 loss of user and car hire and Kshs 550.00 for the motor vehicle search, the court awarded it Kshs 8,050.00 being assessment fees and vehicle inquiry fees.
2. In its Memorandum of Appeal dated May 19, 2022, the Appellant contended that the Adjudicator erred in law and in fact in failing to award it Kshs 613,292.00 as repair costs despite proof of special damages. It stated that the Adjudicator failed to consider it evidence and all the circumstances of the case. In essence, the Appellant asks the court to review the evidence and reach a different conclusion from that of the Adjudicator. Under section 38(1) of the *Small Claims Court Act, 2016* an appeal to this court is limited to matters of law only. Accordingly, the court 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).



3. At the hearing of the case only the Appellant's director testified. In support of his claim, he produced a Repair Service Quote from CMC Group Limited showing the costs of parts, services and labour amounting to Kshs 613,292.00 inclusive of VAT. The motor vehicle assessor (CW 2) from Wheels Automobile Valuers and Assessors Limited produced the Motor Vehicle Assessor's Report. The Respondent did not call any witnesses.

4. After considering the evidence and submissions, the Adjudicator held as follows:

"Regarding repair costs incurred, although the claimant produced an assessment report and service quote, proof of payment for repairs was not produced. Although the claimant submits that the service quote was never challenged by the respondent, the fact that special damages must be proved cannot be emphasized enough. Suffice it to quote from the decision of the Court of Appeal in *Hahn v Singh* [1985] KLR 716..... the learned judges held as follows, "Special damages must not only be specifically claimed (pleaded) but also strictly proved for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves....."

The court has carefully perused and evaluated the evidence presented in support of the prayer for Kshs 999,342.00 by the Claimant. As is readily obvious, the documents presented in support of the Claimant's claim for repair costs are service quotes and not receipts as our case law requires. I thus find that the award of repair costs can only be for amounts proved to have been spent in the repair of the motor vehicle, and in this case nothing has been produced to warrant this award."

5. I agree with the Adjudicator. Even though the Appellant's evidence was uncontested, what was uncontested was the fact of assessor's report and repair quotes from CMC Motor Limited. No evidence was produced to prove payment. A quote remains quote unless something further is shown to prove payment. The Adjudicator rightly cited the case of *Swalleh C Kariuki and Another v Violet Owiso Okuyu* KTL HCCA No 12 of 2016 [2021] eKLR where the court held as follows:

"A natural corollary of this has been that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party. In this regard, our Courts have held that an invoice is not proof of payment and that only a receipt meets the test. (See *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] eKLR; *Zacharia Waweru Thumbi v Samuel Njoroge Thuku* [2006] eKLR; *Sanya Hassan v Soma Properties Ltd.*)"

6. Since this is an appeal on a matter of law only, the conclusion by the Adjudicator that the production of repairs quotes and the assessment report was insufficient proof of repair costs was a reasonable conclusion based on the evidence and the law. There is no reason to this court to intervene in those findings.

7. The appeal is dismissed. The Appellant shall pay costs of the appeal assessed at Kshs 30,000.00.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.



Ms Kerube instructed by Kiamba and Siboe for the Appellant.

No appearance for Mose, Mose and Mose for the Respondent.

