



**Mwangi v Mwebia (Civil Appeal E293 of 2023)
[2024] KEHC 14265 (KLR) (Civ) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14265 (KLR)

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

CIVIL

CIVIL APPEAL E293 OF 2023

RC RUTTO, J

NOVEMBER 15, 2024

BETWEEN

MARGARET WANGARI MWANGI APPELLANT

AND

DUNCAN M MWEBIA RESPONDENT

(Being an Appeal from the Judgment of the Small Claims Court of Kenya at Nairobi delivered by the Hon. V.M Mochache, on the 14th March, 2023 in Nairobi SCC NO E3638 OF 2022)

JUDGMENT

1. This appeal arises from a judgment and decree entered in Nairobi SCC NO. E3638 OF 2022. In the said suit, the Respondent herein sued the Appellant for material loss and damage arising from an accident that occurred on 24th November, 2020.
2. The genesis of this dispute as stated in the statement of claim was that the Respondent sought for compensation for damages of his motor vehicle registration number KCH 124W which collided with the Appellant's motor vehicle KCB 482R. The collision resulted in extensive damage to the Respondent's motor vehicle totalling to Kshs 567,320.
3. The Appellant filed her amended response to the Statement of Claim dated 4th January, 2023 where she admitted ownership of the motor vehicle and denied the claim in toto. Upon hearing the matter, the trial Magistrate delivered judgment on 14th March, 2023 where the Appellant was held 100% liable for the accident. The trial court also awarded the Respondent herein special damages of Kshs. 557,320/= as well as costs of the suit.
4. The Appellant being aggrieved with the entire judgment, lodged this appeal on 14th April, 2023 setting out the following grounds, that:



- a. The learned magistrate erred in fact and in law by failing to sufficiently consider the fact that the Respondent's documents adduced in evidence were questionable since they had unexplained difference in dates.
 - b. The learned magistrate erred in fact and law in failing to sufficiently consider the material issues of fact and of law raised by the Appellant in her Amended Response to the Statement of Claim together with her Amended Witness Statement.
 - c. The learned magistrate erred in law and in fact in finding that the Appellant was 100% liable to the occurrence of the said accident yet the evidence on record clearly showed that the Appellant's Motor Vehicle Registration Number KCB 482R did not hit the Respondent's motor vehicle.
 - d. That the learned trial magistrate erred in law and in fact by failing to sufficiently discern that the evidence contained in the OB extract filed in the case and the one adduced in the hearing of the case were not in tandem.
5. The appeal was canvassed by way of written submissions. The Appellant prayed that the appeal be allowed with costs and the judgment in SCCC No. E3638 of 2022 delivered on 14th March, 2023 be set aside.

Appellant's Submissions

6. The Appellant's Submissions dated 17th July, 2024 gave the background of the case and identified one issue for determination namely; whether the appeal was merited?
7. The Appellant urged that the adjudicator made an unintentional error in relying on authorities that did not consider the provisions of Sections 30 and 32(1) of the *Small Claims Court Act*. It was his submission that these sections permit parties to proceed by way of documents filed in the Small Claims Court. That the adjudicator never assessed the Appellant's documentation and yet it was generally acceptable to proceed by way of documents unless the documents are challenged by the opposing party which was not the case in the present suit. He further submitted that the trial court never assessed the Appellant's documentation and yet it was notified of the Appellant request to rely on documents presented before court.
8. The Appellant's counsel also submitted that the police abstract produced by the Respondent did not indicate who was to blame for the accident but indicated that the motor vehicles involved in the alleged accident were KCH 124W and KCB 482R and that no one was responsible for the purported accident. He further submitted that the Respondent never reported the accident, but one Peter Rugethe, and that it involved multiple vehicles.
9. The Appellant relied on the case of Peter Kanithi Kimunya V Aden Guyo Haro [2014] eKLR to submit that the police abstract only confirmed that the accident was reported. He also relied on Sections 109 and 112 of the *Evidence Act* and submitted that the Respondent never tabled any independent witness to inform the court how the accident occurred. Reference was made to the Court of Appeal cases in Ann Wambui Ndiritu V Joseph Kiprono Ropkoi & Another [2005] 1EA 334 and Palace Investment Ltd V Geoffrey Kariuki Mwenda & Another [2015] eKLR to urge that the Respondent's position shifted and he never presented proof of the other claimed owners/drivers of the other motor vehicles.
10. It was also submitted that there was no indication that the police visited the scene of accident or any case filed against the Appellant to warrant blame on her. He further submitted that despite the accident having occurred on 24th November, 2020, the Respondent's motor vehicle was allegedly towed to the



police station on 7th December, 2020 and then to Top Quality Garage. He added that there was no explanation as to why the Respondent's vehicle was taken to the station after a significant period of time.

11. In conclusion, the Appellant urged the court to allow the appeal with costs.

Respondent's submissions

12. The Respondent filed submissions dated 19th July, 2024. It was his submission that this was a claim under the doctrine of subrogation and relied on the case of Kenya Power & Lighting Company Limited v Julius Wambale & another [2019] eKLR which sets out the parameters within which the principles of subrogation is to be applied.
13. It was his submission that, from the photographic evidence adduced by the Respondent, it was evident that the driver was driving at a high speed and failed to avoid ramming into the Respondent's motor vehicle. Further that the investigating officer produced a police abstract and blamed the driver of motor vehicle registration number KCB 482R. for causing the accident.
14. The Respondent made reference to sections 107 and 109 of the *Evidence Act* and submitted that it is a cardinal principle of the law that "he who alleges must prove". To support this, reference was made to the case of Mega Industries Limited v Jane Jerotich [2020] eKLR, where the learned Judge in reaching the decision cited the case of Wellington Ng'ang'a Muthiora v Akamba Public Road Services and Another CA Kisumu 2010 eKLR. He also urged the court to find that during the hearing, the Appellant did not bother to call any witness to even testify on the issues of fraud raised on appeal as such the allegations of fraud against the Respondent are and remain mere allegations with no proof.
15. In conclusion, the Respondent urged the court to dismiss the appeal with costs.

Analysis and Determination

16. The duty of this court as the appellate court is squarely regulated under Section 38 of the *Small Claims Court Act* which restricts the jurisdiction of the High Court on appeals from the Small Claims Court to matters of law only. It provides that:

38.

- (1) 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.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final."

17. In the case of Peter Gichuki King'ara Vs Iebc & 2 Others, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA), the Court of Appeal stated as follows: -

"The court held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law."

18. I have considered the grounds of appeal as they appear in the Memorandum of Appeal dated 14th April, 2023. On the face of it, the appeal is premised on the grounds that the Learned Magistrate erred in



“law and in fact”, however, most of them calls upon this court to make a reassessment on the issues of fact. The appellant’s grounds of appeal do not point out the issues of law being appealed against except ground (3) on liability to which this court shall limit itself to.

19. In the case of *Khambi and Another vs. Mahithi and Another* [1968] EA 70, it was held that:-

“It is well settled that where a trial Judge has apportioned liability according to the fault of the parties his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.”
20. This court notes that the adjudicator apportioned liability based on the evidence presented before it. According to her, the evidence adduced clearly showed that the appellant was to wholly blame for the accident. She found that from the police abstract dated 2nd March, 2016, produced by the police officer, it confirmed that the Appellant’s motor vehicle was blamed for the accident. She further held that the Appellant did not avail any witness or evidence to controvert the Respondent’s claim.
21. I have perused the court records and it is not in dispute that PW1 No. 926679 PC Eutycus Mutahi attached to Kasarani traffic department, produced the accident report and testified that the police abstract blamed the driver of motor vehicle KCB 482R for the accident.
22. The Appellant herein alleges that the trial court did not take into account the provisions of section 30 of the *Small Claims Court Act* which provides for proceedings by documents only. The Appellant also faults the adjudicator for failing to take into account the provisions of sections 32(1) of the Small Claims Act which according to him should have been read together with the section 30 to allow his request to rely on the documents presented before court.
23. Section 30 of the Small Claims Act provides that “subject to the agreement of all parties to the proceedings, the court may determine any claim and give any such orders as it considers fit and just on the basis of documents and written submissions, statement or other submissions presented to the court”
24. This court notes that the application of this provision is subject to all parties to the proceeding first agreeing to have their matter determined by way of documentation. Thereafter the court has the discretion to either accept or reject any such agreement by the parties. In this instance and from the record of appeal, no such agreement was arrived at by the parties and no such agreement was admitted by the court.
25. Further, section 32 of the Small claims Act provides for the exclusion of strict adherence to the strict rules of evidence by the court. Accordingly, pursuant to this section, the court may admit as evidence any oral or written testimony, record, or other materials thus acting to complement the provisions of section 30 of the Act.
26. A reading of the above sections of the Act shows that the Small Claims Court are courts that follow simple procedures in determination of the disputes before it. They are aimed at helping parties expedite the determination of their respective dispute. But this does not take away from the parties their obligations to present proof on a balance of probability to enable the court make a just finding.
27. It is noteworthy that in this instance, the proceedings of 15th February 2023 show that after the close of the claimant’s case, the Appellant herein proceeded to inform the court that he will rely on the response and closed his case. Thus, the trial court while being guided by the case of *Motex Knitwear*



Limited v Gopitex Knitwear Mills limited Nairobi (Milimani) HCCC No 834 of 2002, among others, held that the Appellant defence remained mere allegations since he did not call any evidence to try and controvert the Respondent case.

28. This court notes that despite filing a witness statement by Margaret Wangari Mwangi dated 4th January 2023, the Appellant choose to only rely on the response. Further, there was neither an agreement by parties or admission by the court that the matter proceeds by way of documents.
 29. As stated, earlier section 30 of the Small Claims Act does not take away the legal burden on a litigant to prove its case on a balance of probability. The law as stated above allows a litigant to determine and choose how best to present its case. This could be by way of documents, affidavits or oral evidence, this prerogative rests on the litigant. However, it should be noted that the option chosen by the litigant has its legal ramifications and processes. In this instant, the Appellant did not invite any witness, he only chose to rely on his response and closed his case. It is on this basis that the adjudicator held that the Respondent's defence remained mere allegations.
 30. Consequently, in the absence of the agreement by parties and admission by the court, this court finds no fault in the holding of the adjudicator in the Small Claims Court. When given a chance to present his case, the Appellant did not produce any documents. He did not make any oral submissions, akin to what he is making before this appellate court. He simply stated that he relies on his response. I agree with the Small Claims Court that this response did not sufficiently rebut the Claimant's case. The appellant did not seize the opportunity granted to him to cast aspersions on the documents presented by the Respondent at the trial level. He cannot now purport to do so at this appellate level. Thus, I proceed to uphold the finding on liability by the trial court.
 31. This court finds that the other grounds in Appellant's memorandum of appeal were on contested issues by the lower court's inferences and decisions on facts rather than exclusively on points of law. The Appellant is disputing the trial court's decision on contents of the documents it relied upon in reaching her judgment. It is this court's view that the same were factual and discretionary issues that were dependent on material evidence.
 32. The upshot of the foregoing is that the appeal lacks merit and is dismissed with costs.
- It is so ordered.

RHODA RUTTO

JUDGE

Delivered, Dated and Signed this 15th day of November 2024.

For Appellants:

For Respondent:

Court Assistant: =

