



**Muriithi v Kiura (Civil Appeal E046 of 2024)
[2024] KEHC 14129 (KLR) (13 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E046 OF 2024
LM NJUGUNA, J
NOVEMBER 13, 2024**

BETWEEN

PATRICK MUNENE MURIITHI APPELLANT

AND

DOREEN MURUGI KIURA RESPONDENT

*(Appeal arising from the decision of Hon. Mercy Nkirote Kinyua
in Embu SCCC No. E014 of 2024 delivered on 07th May 2024)*

JUDGMENT

1. The appellant has filed a memorandum of appeal dated 20th May 2024 seeking the following orders:
 - a. That the appeal be allowed;
 - b. That the ruling of the learned Magistrate dismissing the claim for Kshs.604,400/= be set aside and the same be awarded to the appellant; and
 - c. That the costs of the appeal be borne by the respondent.
2. The appeal is premised on the grounds that:
 - a. The learned trial magistrate misapprehended and/or misconceived the tenor, effect and consequences of the evidence tendered in court on behalf of the appellant and thereby arrived at an erroneous and illegal decision;
 - b. The learned trial magistrate erred in law and fact in failing to properly analyze, evaluate and consider the totality of the evidence adduced by the appellant. Consequently, the trial court arrived at a biased conclusion contrary to the evidence on record;



- c. The learned trial magistrate erred in law and fact by disregarding the appellant's duly filed submissions and the binding authorities made on behalf of the appellant without any proper reasons to do so; and
 - d. The learned trial magistrate erred in law and fact by exercising her discretion capriciously and not judiciously.
3. Through a statement of claim, the claimant sought judgment against the respondent for the sum of Kshs.954,400/-. The claimant alleged that his motor vehicle was illegally attached by Giant Auctioneers as a result of a debt owed to Timothy Muita Muriithi by the respondent. That as a result of the attachment, the claimant incurred Kshs.954,400/- being the debt amount and other incidentals plus legal fees which was awarded to him in Milimani SCCCOMM E5968/2023. That the respondent illegally instructed advocates who entered a consent which was not honoured, causing his car to be attached. That the respondent has since refused to pay the amount which he proceeded to claim.
 4. In her statement of defense, the respondent denied the averments made in the statement of claim and stated that the decretal amount in Milimani SCCCOMM E5968/2023 was Kshs.235,800/- to be paid by herself and the claimant. That since she did not have the money, the claimant paid for her on the understanding that she would refund him half of the payment. That they were both represented by the same advocate and at no time did she procure an advocate for him. That the amount claimed by the claimant is not substantiated.
 5. The claim was canvassed by way of documentary evidence and written submissions according to section 30 of the *Small Claims Court Act*. After considering the evidence, the Adjudicator noted that the respondent admitted to owing the claimant Kshs.350,000/= and she determined the balance being Kshs.604,400/-. She also took note of the findings in Milimani SCCCOMM E5968/2023 and found that the claimant's evidence did not guide the court and they triggered more questions than answers. She relied on the case of Kirugi v. Kabiya (1987) KLR 347 and entered judgment in favour of the claimant for Kshs.350,000/=.
 6. The court directed the parties in this appeal to file their written submissions but only the appellant complied.
 7. It was his submission that the Adjudicator disregarded his evidence adduced showing the taxi fare expenses incurred as a result of his car being attached by auctioneers. That he also produced proof of settlement of the auctioneer's fees and decretal amount in Milimani SCCCOMM E5968/2023. That since the respondent procured advocates on his behalf, he incurred legal fees of Kshs.150,000/=.
 8. He relied on the cases of Evans Nyakwana v Cleophas Bwana Ongaro (2015) eKLR, Charterhouse Bank Limited (Under Statutory Management) v Frank N. Kamau (2016) eKLR, Stephen Wasike Wakhu & Another V Security Express Limited (2006) eKLR and Raila Odinga & another v Independent Electoral and Boundaries Commission & others [2017] KESC 31 (KLR). He argued that even though the adjudicator stated that she had considered the evidence filed, it is clear that she failed to consider it in its totality thus erred in her judgment. He urged the court to reexamine the evidence and allow the appeal.
 9. The issue for determination is whether the appeal has merit.



10. The role of this appellate court is to reevaluate the evidence adduce before the trial court and reach a determination. This was the sentiment of the court in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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 allowance in this respect...”

11. The appellant had claimed Kshs.604,400/- but his claim did not succeed. The claim therein makes reference to another claim filed in Milimani SCCCOMM E5968/2023 through which the parties herein were jointly sued by Timothy Muita Muriithi who obtained a decree for the sum of Kshs.240,300/-. He initiated execution for the amount which was supposed to be paid by the appellant and the respondent herein and the execution led to attachment of the appellant motor vehicle by Giant Auctioneers. This is the basis for the appellant’s claim that he incurred extra costs when he did not have his motor vehicle and that he incurred legal fees in the Milimani claim.

12. From a perusal of Milimani SCCCOMM E5968/2023, I do take note that the firm of AKM Advocates filed a joint defense to statement of claim on behalf of both respondents in that matter. The appellant has since disputed that position saying that the respondent herein procured an advocate on his behalf without his knowledge. In that matter, the statement of claim was filed on 11th August 2023 and the response was filed on 22nd August 2022 and the record reflects that the appellant hired the firm of Mugendi Karigi & Co. Advocates on 21st February 2024 through a notice of change of advocates.

13. The documents produced by the appellant herein shows that he paid the firm of Mugendi Karigi & Co. Advocates legal fees of Kshs.150,000/= for the Milimani case sometime in January 2024 and he produced a payment receipt. The firm of Mugendi Karigi & Co. Advocates represented the appellant in the proceedings following adjudication of the small claim after his motor vehicle had been attached. Therefore, on a balance of probabilities and considering the evidence on record, it is my view that the appellant did indeed incur legal fees.

14. The appellant produced a document titled invoice/cash receipt from Zuri Executive Car Hire in support of his claim for Kshs.450,000/- being the cost for car hire for 15 days. From examination of the document, it is not possible to tell whether the amount was actually paid or not because it is not signed, neither is there any acknowledgement of receipt of the funds, for instance, in the form of a stamp. In my view, this does not pass as a proper receipt of funds paid to the car hire company. It is my view that the Adjudicator only erred with regard to the legal fees incurred by the appellant.

15. Therefore, the appeal partially succeeds with orders thus:

- a. The trial court’s finding entering judgment in favour of the appellant for the sum of Kshs.350,000/= is hereby upheld;
- b. The respondent is hereby ordered to pay the appellant Kshs.150,000/= being legal fees incurred in Milimani SCCCOMM E5968/2023; and
- c. The appellant is hereby awarded 50% of the costs of this appeal.

16. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF NOVEMBER, 2024.



L. NJUGUNA

JUDGE

.....for the Appellant

.....for the Respondent

