



**Ochieng v Njoroge (Civil Appeal E646 of 2022)
[2024] KEHC 13930 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13930 (KLR)

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

CIVIL APPEAL E646 OF 2022

BM MUSYOKI, J

NOVEMBER 8, 2024

BETWEEN

ODHIAMBO FREDRICK OCHIENG APPELLANT

AND

SAMSON GAKUNYI NJOROGE RESPONDENT

(Being an appeal from judgment and decree of Honourable J.W. Munene (RM) in the Small Claims Court at Milimani case number E1173 of 2022 dated 22-07-2022)

JUDGMENT

1. The appellant was the claimant in Milimani small claims court civil suit number E1173 of 2022 where he had sued the respondent and one Antony Miring'u Kung'u for compensation for damages arising from an accident which occurred on 19-05-2019 involving motor vehicle registration number KCB 578G which belonged to him and KAP 882V which was said to have been registered to 2nd respondent in the claim and beneficially owned by the respondent in this appeal. It was claimed that as a result of the said accident for which the respondent was blamed, the appellant's motor vehicle was damaged which caused him Kshs 359,112.00 for repairs and related expenses.
2. The matter was on 27-06-2022 ordered to proceed under Section 30 of the *Small Claims Court Act* which gives the court discretion with consent of the parties to proceed to dispose cases by way of filed documents without calling witnesses. The honourable adjudicator in judgement delivered on 22-07-2022 found that the appellant had not proved special damages as pleaded. Of the Kshs 359,112.00 pleaded, the adjudicator found in rather a short judgment that the appellant had only proved Kshs 70,450.00 and proceeded to award the said amount. The appellant was aggrieved by that finding and consequently filed this appeal where he has pleaded five grounds of appeal as follows;
 1. The Learned Honourable Magistrate erred in law in awarding a sum in respect of damages which was inordinately low in the circumstances occasioning a miscarriage of justice.



2. The Learned Honourable Magistrate grossly misdirected herself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented and filed by the claimant.
 3. The Honourable Magistrate further erred in law and in fact by failing to consider the evidence filed in the claimant's list and bundle of documents dated 18th May 2022 and the claimant's further list and bundle of documents dated 24th June 2022.
 4. The Learned Honourable Magistrate court also ignored our submissions where we relied upon the case of Nkuene Dairy Farmers Co-operative Society & Another vs Ngacha Ndeiya (2010) eKLR where the Court of Appeal held that an assessment report was sufficient proof of repairs costs in a material damage claim and that such special damages need not be shown to have been incurred. The assessment report was filed in the claimant's list and bundle of documents dated 24th June 2022.
 5. The Honourable Learned Magistrate erred in law and fact in failing to consider conventional awards in cases of similar nature.
3. The appeal emanates from a decision of the small claims court and as such my jurisdiction in the matter is limited. Section 38(1) of the *Small Claims Court Act* limits appeal from that court to this court to matters of law only. The first port of call in this judgment is therefore whether the issues raised by the appellant are matters of law or of facts. If I were to find that the issues raised by the appeal are on matters of facts, I will down my tools as then, I will not have jurisdiction to entertain the appeal by virtue of the aforesaid Section.
 4. In grounds 3 and 5, the appellant pleads that the honourable adjudicator erred in matters of facts. Those grounds can therefore not be considered in this appeal. The 1st ground is couched in a manner to suggest that the case before the adjudicator was for general damages which are usually damages at large. It is clear to me that the ground is not relevant to these proceedings.
 5. In as much as the appellant has made attempts to veil his grievances as matters purely of law in grounds 2 and 4, I gather from the submissions that his complaint is majorly on whether or not he proved the pleaded damages. His complaint is basically that the adjudicator was wrong in finding that he had not proved that he suffered damages as pleaded. The appellant had pleaded that he had suffered damages in repairing his motor vehicle and other related costs to the tune of the pleaded sum. The court did not fault the appellant on manner in which he had pleaded the special damages. It is my position that proof of damages depends on the weight of evidence adduced by the parties which is an issue of fact. In deciding on whether or not there was enough evidence to prove the damages as pleaded, the trial court was dealing with issues of facts. In that regard I do not think that there is a matter of law which I need to go into to that extent. In *Amunga vs Muisu* (2024) KEHC 2504 (KLR), the Honourable Justice C Meoli cited Black's Law Dictionary on difference between matters of law and fact thus;

‘Matter of facts as: A matter involving a judicial inquiry into the truth of alleged facts and
Matter of law: A matter involving a judicial inquiry into the applicable law.’
 6. Having stated the above, I however find that there is a genuine complaint by the appellant on the way the honourable adjudicator applied her mind in the matter which using the above cited definition in Black's Law Dictionary, may necessitate inquiry on the applicable law in the manner the judgment was written. I single out grounds 3 and 4 though not clearly drafted which complain that the adjudicator did not consider the appellant's submissions, documents and the relevant laws. As a matter of law, a



judicial officer is under an obligation to consider the evidence and relevant laws applicable to the case before them. That to me is a matter of law which this court ought to look into.

7. From the judgment of the adjudicator, it is hard to tell whether or not she considered the evidence and the laws relevant to the case before her. After she made analysis of the evidence in respect to liability, the adjudicator found the respondent herein liable and dismissed the claim against his co-respondent. However, when it came to the issue of quantum, the adjudicator made three short sentences which I quote as follows;

‘Quantum

The claim has been brought under the doctrine of subrogation for a claim of Kshs 359,112. However, only Kshs 70,450.00 proved. Judgment is therefore entered against the 1st respondent in the sum of Kshs 70,450.00 plus costs and interest at court rates from the date of filing suit. ‘

8. As much as I appreciate that there is no prescribed minimum words or length of a decision of a judge or a judicial officer, it is prudent that the consumers of their judgment get to understand why they are winning or losing their cases. I hold the view that the adjudicator had the duty to analyse the evidence produced by the appellant in the case and decipher therefrom why the appellant’s bundles of documents could not meet the threshold of proof. I note that the appellant had produced two bundles of documents comprising over fifty pages. The adjudicator had a legal duty to make analysis of why these pages were not enough to prove the damages as pleaded. For the adjudicator to simply state that the damages were not proved without giving her reasons for such a finding in the face of the many documents, she fell short of her duty as fair, independent and impartial adjudicator of the dispute. Honourable Justice R.N. Nyakundi held in *Joseph Karisa Baya vs Cefis Giorgio & Another (2020) eKLR* that;

‘Similarly, it seems self-evident that the learned trial magistrate did not explain in her judgment by giving reasons for the decision. The duty to give reasons is a function enshrined under Article 10 of *the Constitution* on national values and principles of governance. Reasons for judgements/rulings both manifest transparency and accountability.’

9. Further in *South Nyanza Sugar Company Ltd vs Omwando Omwando (2011) eKLR* it was held that;

‘Ordinarily and in law, a judgment should deal with issues raised and should not be scanty. A judgment must comply with the mandatory provisions of Order 21 Rule 4 of the Civil Procedure Rules which provide that a judgment in a defended suit shall contain concise statement of the case, points for determination, the decision thereon and reasons for such decision. In the circumstances of this case, it cannot be said from the extract of the judgment I have set out above, the trial magistrate complied with this mandatory provision of the law. The trial magistrate by not setting out points for determination and reasons for his decision contrary to the aforesaid provisions of the law abdicated his judicial responsibility. As a judicial officer he was under a duty to state in writing the reasons which made him arrive at a particular decision on liability and the apportionment thereof. It could not have been done in a vacuum. Any judgment that does not contain the aforesaid essential ingredients is not a judgment and an appellate court will frown at such a judgment and indeed impugn it as I hereby do.’

10. I totally agree with the finding cited above and hold that the judgement by the adjudicator in this matter falls short of a valid judgment to the extent of quantum of damages. At this point I will not go into the



details of the documents produced in court or as to what the adjudicator should have said about the evidence before her as that will be delving into issues of fact over which I have no jurisdiction.

11. In the circumstances, I hold that this is a good case for retrial. It is noteworthy that the appellant has not appealed the adjustor's finding on liability. The retrial shall therefore be limited to the issue of quantum. I therefore allow this appeal and order as follows;

1. The finding of the adjudicator on liability is upheld and retained.
2. The matter is hereby remitted to the trial court for a fresh hearing limited to assessment of damages.
3. The re-trial shall be before an adjudicator other than Honourable J.W. Munene Resident Magistrate/Adjudicator.
4. There shall be no orders as to costs in this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF NOVEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgement delivered in presence of Mr. Kiiru for the appellant and in absence of the respondent.

