**Mwanza v Trident Insurance Company Limited (Civil Appeal 191 of 2023)**
**[2025] KEHC 14309 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 14309 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**CIVIL APPEAL 191 OF 2023**

**NIO ADAGI, J**

**SEPTEMBER 30, 2025**

**BETWEEN**

**MUTUKU MWANZA ..... APPELLANT**

**AND**

**TRIDENT INSURANCE COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

## Introduction

1. The Appellant filed a claim in the Small Claims Court at Machakos seeking reimbursement of Kshs.269,680/- in repair costs and towing charges incurred in the repair of his motor vehicle registration number KBL 066K following an accident that had occurred on 24/4/2020. At the material time of the accident, the Appellant had taken out a comprehensive insurance cover with the respondent hence the claim for indemnity.

2. In its judgement of 27/7/2023, the trial court awarded the Appellant a sum of Kshs.97,500/and directed that each party bears its own costs.

3. Aggrieved by this decision, the appellant filed the memorandum of appeal dated 14/8/2023 in which he has raised a total of 5 grounds of appeal that challenge the entire judgment.

4. The appeal was canvassed by way of written submissions. The record shows only the Appellant filed his undated submissions. Neither did the Respondent participate in the appeal nor file submissions.

5. This being a first appeal, I am reminded of the primary role as a first appellate court namely, to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty

was stated in Selle & another v Associated Motor Boat Co. Ltd.& others and in Peters v Sunday Post Limited (1968) EA 123, (1958) EA page 424

6. In the case of Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022), the court held that:-

> " A first appellate court has jurisdiction to reverse or affirm the findings of the trial court. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it".

7. A first appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard on both questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. While considering the scope of Section 78 of *Civil Procedure Act*, a court of first appeal can appreciate the entire evidence and come to a different conclusion.

**Brief facts of the case**

8. The brief facts of the case are that the Respondent was the insurer to the Appellant's motor vehicle registration no. KBL 066K. On 24/04/2020 under comprehensive policy cover, the claimant's motor vehicle was involved in an accident along Machakos- Kitui road whereby it sustained damages whose repairs costs the Appellant claimed were Kshs.269,680/=. That the Respondent despite notice and demand failed and /or neglected to compensate the Appellant as it is bound to under the comprehensive policy cover.

9. The Appellant therefore prayed for judgement in the sum of Kshs.269,680/= plus costs.

10. The Respondent denied the claim and stated that it authorized repairs to the Appellant's motor vehicle and the same were assessed at Kshs.97,500/= contrary to the Appellant's allegation of Kshs.269,000/=

11. From the facts of the case, it is not in dispute that the Appellant had a comprehensive insurance cover with the Respondent. It is also not in dispute that the Appellant's motor vehicle was involved in an accident and the Respondent was obligated to repair the said motor vehicle.

12. The Appellant's case was that after reporting the accident to the Respondent, the Respondent said that it could not send an assessor because of the covid 19 lock down. They told him to get his own assessor and he engaged an assessor called Daniel Musili who did the assessment and gave the report. The trial court in its judgement found that the said report was not produced in court as evidence. What the Appellant had in reference to this is the quotation from Central motors garage.

13. The Appellant testified that his vehicle was repaired by Central Motors Garage under the Respondent's instructions and the garage was aware that his motor vehicle was being repaired by the insurance. On cross examination the Appellant stated that he did not know if an insurance company has to authorize repairs.

14. The Appellant argued that motor vehicle repair costs are special damages which are proved by production of receipts and that the same had been proved by him. He further stated that the Respondent's evidence is of no value as the makers of the documents were not the ones who testified in court.

15. RW1, Olgan Sarange, the Respondent's legal officer on the other hand testified that they appointed Oris Auto Limited to assess the Appellant's motor vehicle and he gave an estimate of Kshs.102,500/= which was later revised to Kshs.97,500/= and they never revised the figure again. That they authorized the repairs by Central Motors Garage but the amount is yet to be paid since they are yet to receive an invoice. The spare parts were to be sourced by the person in charge of doing the repairs. The prices were given by the assessor who was better placed to know the prices. That in case of change in price, the garage was supposed to write to the Respondent seeking a revision. Further, as per the letter dated 29th May 2020, the insurance informed the garage that the amount would be paid 60 days after receipt of the invoice. The Respondent asserted that the Appellant had not proved any assessment report to prove how he arrived at the repair costs of Kshs.269,680/=. This witness stated that he had authority to testify in the matter.

16. RW2, John Waweru Njoroge, a motor vehicle assessor from Oris Watch Auto Assessor produced a one-page assessment report which was prepared by his employee after assessing the Appellant's motor vehicle on instructions from the Respondent. He also produced the emails correspondences to prove that he was instructed by the Respondent.

**Analysis and Determination:**

17. I have carefully perused the Record of Appeal, considered and weighed the evidence that was adduced before the trial court and the Appellant's submissions on the appeal. Thus, the bone of contention is:-

    i. Whether the Appellant was entitled to repair costs of Kshs.269,680/= or Kshs.97,500/=; and

    ii. Whether the Appellant was entitled to interest on the awardable amount in issue (i) above.

**Whether the Appellant was entitled to repair costs of Kshs.269,680/= or Kshs.97,500/=**

18. It is trite law that he who alleges must prove. The Appellant maintains that the trial court erred in law and in fact in awarding him Kshs.97,500/= instead of Kshs.269,680/= in repair costs to his damaged motor vehicle. The Appellant argues that the claim for material damages being a special damage claim has to be specifically pleaded and strictly proved and he pleaded and proved the same to the required standard by production of relevant receipts.

19. The Respondent called an assessor as RW2 who testified that he assessed motor vehicle KBL 066K but at the same time stated that the assessment was done by one of his assessors on instructions of the Respondent and prepared a report which he produced in evidence. On cross-examination, RW2 testified that the assessment report was done by his employee Ignatius Mbugua who was no longer his employee. RW2 stated that although the report shows at the top that it was assessed by J.W Njoroge, he did not see the motor vehicle himself. Ignatius was acting on his behalf. Ignatius saw the motor vehicle while in Wamunyu, Machakos County although again the report shows the location as Makueni. He stated that the assessment was done in Wamunyu. He confirmed that there was an error in the date of assessment. He admitted that he is the one who prepared the final drafting of the report after the assessor did it and presented it to him. He alleged that photographs were presented to him which were part of the report but the trial court noted that no photos were attached to the report.

20. He stated that the cost of repair was from quotations from various shops and their data bank but the quotations were not produced as exhibits.

He further confirmed that the figure for repairs was exclusive of VAT, it is highly unlikely that the figure would go down. He stated that they never re-assessed the motor vehicle. He was categorical that purchasing of motor vehicle parts is done by the garage and sometimes there can be variation between the estimates and the actual figure.

21. On re-examination, PW2 stated that the date is a typo error 7/5/2020 is the date they sent the report to trident insurance. That the vehicle was assessed at a restaurant and not at a garage. It is not mandatory to include the quotation in their assessment report. The report usually has a provision for variation and there is a process for obtaining the extract cash.

22. It is my observation from the trial court's record that the Appellant issued a demand and notice to sue upon the Respondent on 11/10/2022 and specifically stated the amount demanded of Kshs.239,680/= plus collection charges of Kshs.20,000/= receipt of which is acknowledged by RW1 in his testimony where he states that, they received the demand but did not respond as they were waiting for invoices from the Claimant's side. On the foregoing, RW1 did admit they received the demand and explained why they did not respond. The reason given is however not making sense since there is nothing showing the alleged invoices had been called for from the Appellant or the garage.

23. It is to be noted that RW1 stated that the spare parts were to be sourced by the person in charge of doing the repairs. The prices were given by the assessor who was better placed to know the prices. That in case of change in price, the garage was supposed to write to the Respondent seeking a revision.

24. I have had the opportunity to read through the Respondent's authorization letter dated 13/5/2020 addressed to the Workshop Manager Central Motors Garage. The letter clearly gives the figure of Kshs.97,500/=VAT inclusive as estimates and not the actual amount. The letter also requested for all the replaced Parts to be kept safely for the Respondent's collection.

25. Having received the demand and noticed the amount demand, this court is wondering why the Respondent didn't raise an alarm with the Appellant at the first instance and proceeded to investigate the amount if they were disputing the same; why didn't the Respondent collect any replaced parts for verification purposes?

26. Further consideration on the evidence of RW2, he testified that he assessed motor vehicle KBL 066K but at the same time stated that the assessment was done by one of his assessors on instructions of the Respondent and prepared a report which he produced in evidence. On cross-examination, RW2 testified that the assessment report was done by his employee Ignatius Mbugua who was no longer his employee. RW2 stated that although the report shows at the top that it was assessed by J.W Njoroge, he did not see the motor vehicle himself. Ignatius was acting on his behalf. Ignatius saw the motor vehicle while in Wamunyu, Machakos County although again the report shows the location as Makueni. He stated that the assessment was done in Wamunyu. He confirmed that there was an error in the date of assessment. He admitted that he is the one who prepared the final drafting of the report after the assessor did it and presented it to him. He alleged that photographs were presented to him which were part of the report but the trial court noted that no photos were attached to the report.

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purchasing of motor vehicle parts is done by the garage and sometimes there can be variation between the estimates and the actual figure.

28. This court is of the view that RW2 having not personally assessed the damage to the subject motor vehicle and or taken its photographs was not in a position to testify on the assessment report. RW2 attempted to explain the error in the date in the assessment report but he said nothing on why Makueni which is a different County from Machakos County was reflecting in the report. Could this also have been an error?

29. Truly, the evidence of Respondent's witnesses was riddled with glaring inconsistences and with discrepancies in the assessment report thus unreliable. It was unsafe for the trial court to have relied on the said report in awarding the Appellant costs for repair.

30. Section 107 of the *Evidence Act* Cap 80 of the laws of Kenya states that;-

> " Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".

31. It is, therefore, settled law that in civil cases, a party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. The party must present to the court all the evidence reasonably available on a litigated factual issue.

32. It goes without saying that a party is bound by their own pleadings and the evidence they adduce in court. The purpose of pleadings is to ascertain with clarity the matters on which parties disagree and points of agreement so as to ascertain matters for determination.

33. I have keenly perused the Appellant's pleadings filed in the trial court and carefully reconsidered and re-evaluated all the evidence which was adduced in the trial court as well as the Appellant's submissions which were made before the trial Court and before me. I take note of the fact that mine is an appellate jurisdiction which has to be exercised with caution. However, I do note that the finding of the trial court regarding the proof of the Appellant's claim for material damage was not consistent with the evidence which was adduced before her.

34. The Appellant pleaded the amount claimed and produced receipts to support the same. There was no contrary evidence adduced to show that the receipts produced by the Appellant towards repair costs were not authentic or that re-assessment was done that was not reflecting the repairs done. As stated by RW2, the figure for repairs was exclusive of VAT and it is highly unlikely that the figure would go down. He stated that they never re-assessed the motor vehicle. He was categorical that purchasing of motor vehicle parts is done by the garage and sometimes there can be variation between the estimates and the actual figure. Most probably the Respondent's estimate of Kshs.97,500/= slightly went up as claimed by RW2. Accordingly, I find that the Appellant proved his claim to the required balance of probability.

**(ii)Whether the Appellant was entitled to interest on the awardable amount in issue (i) above.**

35. In the Statement of claim dated 14/2/2022, the Appellant sought for the following prayers:Judgement in the sum of Kshs.269,680.00Costs of the Claim (to be assessed by the court)Other appropriate relief (briefly explain)

36. It is noted that the Appellant did not pray for interest at any rate. A party is bound by its pleadings and the court has to base its decision on the pleadings. I thus find that the trial court was right in declining

to award the same as it was not pleaded. See Pius Machafu Isindu v Lavington Security Guards Limited [2017] KECA 225 (KLR), where the Court of Appeal stated that:-

> " Needless to say, parties are bound by their pleadings"

37. In addition, the power to award interest in a civil suit is at the discretion of the trial court. Section 26(1) of the *Civil Procedure Act* provides that:-

> " Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

38. It is trite law that an appellate court should not interfere with discretionary decisions of the trial court unless it is demonstrated that the trial court failed to consider a relevant factor or considered an irrelevant factor or applied the wrong principles of law or the same is openly or unreasonably wrong. It is also an established principle of the law that discretion should be exercised judiciously which in my understanding means that it should be in conformity with the law, respect the judicial authority of the courts and be applied in tandem with judicial and legal principles. In Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others [2018] eKLR the court held that:

> " First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong."

39. Consequently, this court also finds no basis upon which to award any interest in this appeal and like the trial court, declines to grant the same.

**Disposition**

40. In the end, I allow the appeal; set aside the judgment of the trial court and substitute thereof a judgment in favour of the Appellant for Kshs.269,680/= as prayed for in the Statement of Claim dated 14/02/2022.

41. I also award costs of Kshs.30,000/= collectively for both the Claim in the Small Claims Court and costs of this appeal to the Appellant.

42. I decline to award interest on the compensation and costs above.

43. Orders accordingly.

**JUDGEMENT WRITTEN, SIGNED & DATED AT MACHAKOS THIS 30TH SEPTEMBER 2025**

**NOEL I. ADAGI**

**JUDGE**

**DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 30TH SEPTEMBER 2025**

In the presence of :

Mr. Muigai..... for Appellant

NA..... for Respondent

Milly .....Court Assistant