Langat v Kanini Haraka Enterprises Limited (Civil Appeal E230 of 2023)
[2025] KEHC 14566 (KLR) (16 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14566 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL APPEAL E230 OF 2023

HI ONG'UDI, J

OCTOBER 16, 2025

BETWEEN

ARON KIPKOECH LANGAT ..... APPELLANT

AND

KANINI HARAKA ENTERPRISES LIMITED ..... RESPONDENT

(Being an appeal from the Judgment of Hon. E.Oboge Resident Magistrate/ Adjudicator in SCCC No. E298 of 2023, delivered on 17th August, 2023)

JUDGMENT

1. This appeal arises from a judgment and decree entered in Nakuru SCCC No. E298 of 2023. In the said suit, the respondent (who was the claimant) sued the appellant (who was one of the respondents) for the sum of kshs. 940,100/= plus costs and any other appropriate relief.

2. The respondent is the owner of motor vehicle registration number KDA 029X/ZF 549F trailer. It was pleaded that on or about 12th March 2023, the said motor vehicle was lawfully and carefully being driven along Nairobi-Nakuru Highway at Mbaruk area within Nakuru county when the appellant, his agent servant or driver or under his authority so negligently drove motor vehicle KCF 641E Toyota Noah and caused the same to violently ram into the respondent's motor vehicle thereby occasioning it extensive damages.

3. After a full hearing the trial magistrate /adjudicator delivered a Judgment on 17th August, 2023 in which he found the appellant to be 100% liable and awarded the respondent Ksh 940,100/= as special damages plus costs of the suit with interest at court rates.

4. The appellant being aggrieved by the whole judgment lodged this appeal dated 24th August, 2023 setting out the following grounds: -

i. That the learned adjudicator erred in law in imputing and importing consent by parties to the determination of the suit under Section 30 of the *Small Claims Court Act* No. 2 of 2016 despite the fact that there was no such consent and in a matter that could not possibly have been determined by documents alone under the said section.

ii. That the learned adjudicator erred in law failing or refusing to record express objection by the respondent to the adjudication of the matter by way of documents pursuant to section 30 of the Small Claims Court and insinuating consent in his judgment an act that amounts to subversion of proceedings and miscarriage of justice.

iii. That the learned adjudicator erred in law in holding that the respondent herein had discharged its burden of proof on the claim of negligence in accordance with Section 107 of the *Evidence Act*, despite lack of viva voce evidence and on the erroneous notion that parties had consented to determination of the suit via Section 30 of the *Small Claims Court Act* No. 2 of 2016.

iv. That the learned adjudicator erred in law in failing to properly evaluate the evidence adduced on the issue of liability thereby erroneously finding that the respondent herein had discharged its burden of proof in accordance to section 107 of the *Evidence Act*.

v. That the learned adjudicator erred in law in relying solely on the entry on the police abstract as conclusive proof of liability by the appellant to the extent of 100% thereby abdicating and ceding his mandate to evaluate evidence of negligence to the police whose basis of blaming the appellant was not explained, in the absence of proper hearing.

vi. That the learned adjudicator erred in law in failing to properly evaluate the evidence adduced on the issue of quantum, more specifically on the claim of loss of user, thereby erroneously finding that the respondent herein had strictly pleaded and proved the same and thus discharged its burden of proof in accordance to section 107 of the *Evidence Act*.

vii. That the learned adjudicator erred in law in declining applicability of the doctrine of mitigation of loss in evaluating the claim of loss of user thereby holding that the respondent herein had strictly proved its claim of loss of user contrary to the respondent's own documents.

viii. That the learned trial magistrate erred in law and in principle in failing to appreciate the appellant's submissions and the recent comparable cases cited therein and thus making a prejudicial award to the respondent as against the appellant.

ix. That considering the nature of the claim, the procedure adopted by the learned adjudicator were farcical and denied the parties a fair hearing and adjudication of their matter but especially the appellant.

x. That the learned adjudicator erred in law in elevating the aspirational timeline set by the Small Claim Court Act and above the substantive rights of parties herein and sacrificed the substantive justice at the alter of procedure.

5. The appellant prayed that the appeal be allowed and the trial's court decision be set aside in its entirety and the matter remitted to any subordinate court with competent jurisdiction for fair hearing. Further, that the respondent be condemned to pay costs of the Appeal.

6. The Appeal was canvassed through written submissions.

Appellant's submissions

7. These were filed by Sheth & Wathigo advocates and are dated 28th August, 2025. Counsel gave a brief background of the case and submitted on grounds 1, 2, 8, 9 and 10 of the memorandum of appeal. He stated that the appellant's main contention is that the lower court judgment was made on the premise that parties had consented to have the matter proceed under Section 30 of the *Small Claims Court Act*.

8. He further submitted that no such consent was ever recorded in the lower court matter between the parties. Thus, in the absence of such a consent the lower court should not have issued such directions on its own motion. He stated that the nature of the claim before the trial court was one of negligence. Therefore, the said cause of action could not be determined by way of documentation alone as the veracity thereof has to be established through full hearing and cross-examination on the makers of the documents relied upon by a party.

9. Regarding grounds 3, 4, 5, 6 and 7 of the memorandum of appeal, he submitted that the respondent failed in proving its case on a balance of probabilities and the learned magistrate/adjudicator erred in finding that the respondent had established the aforesaid threshold merely on the basis of a police abstract. He stated that the respondent ought to have proved that the said accident was as a result of the appellant's negligence.

10. He placed reliance on Sections 107-109 of the *Evidence Act* Cap 80, Laws of Kenya and the decision in Anns v Merton London Borough Council 1978 AC 728 which stated that;

> "...the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring facts of that situation within those of particular situations in which a duty of care has been held to exist. Rather, the question has to be approached in two stages: first, one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter, in which case a prima facie duty of care arises..."

11. See also; Simpson v Peat [1952] 1 ALL ER 443, Kirugi & Another v Kabiya & 3 others [1987] KLR as cited in Helle Sejer Hansen & 2 others v Julius Kakungi Mukavi [2020] eKLR and Philip Keipto Chemwolo & Mumias Sugar Company Limited v Augustine Kabunde (1982-880 1KAR 1036).

12. Counsel further submitted that the trial magistrate /adjudicator erred in law and in fact in finding that the claim of quantum, particularly on the issue of loss of user had been proved. He placed reliance on the decision in Farah Award Gullet v CMC Motor Group Limited [2018] eKLR and Matunda Fruits Bus Services Ltd v Moses Wangila Wangalia & Another [2018] eKLR as cited in the case of UAP Old Mutual & 2 others v Muchira (Civil Appeal E197 of 2023) [2024] KEHC 10954 (KLR) (19 September 2024) (Judgment).

13. He thus urged the court to set aside judgment and the matter be remitted to any subordinate court with competent jurisdiction for a fair hearing.

Respondent's submissions

14. These were filed by Nyambura Mwangi advocates & partners and are dated 28th July, 2025. Counsel identified two issues for determination.

15. On the issue of appeals to the high court, counsel submitted that the court's jurisdiction in dealing with appeals from the small claims court was limited by section 38(1) of the *Small Claims Court Act* which limits appeals to matters of law.

16. Counsel further submitted that grounds 3,4,5,6,7 and 8 ought to fail as they raise points of facts which is outside the purview of the law when it comes to appeals as lodged. She stated that there was no evidence adduced to show that the subordinate court considered matters it should not have considered or failed to consider matters it ought to have considered.

17. On the issue of discretion to proceed by way of section 30 of the *Small Claims Court Act*, counsel submitted that they were cognizant that the 60 days provided under section 34 of the *Small Claims Court Act* were aspirational and the courts strive to meet them and in case of exceeding they ensure that they use every tool at their disposal including the said section to finalise the matter. She stated that the appellant was ambushed or denied audience as the parties were acquiescent to the matter proceeding. She placed reliance on the decision in Biosystems Consultants v Nyali Links Arcarde (Civil Appeal E185 of 2023) [2023] KEHC 21068 (KLR) (31 July 2023) (Ruling) where the Kizito Magare J stated that when it came to the timelines the court is encouraged to use provisions of section 30 of the *Small Claims Court Act* for matters that are past 40 days. She urged the court to dismiss the appeal and uphold the decision of the lower court.

Analysis and determination

18. Having considered the record of appeal, grounds of appeal, the submissions and the authorities relied on by the respective parties, I find the issue for determination to be; whether the appeal herein is merited.

19. This being an appeal from the small claims court, the duty of this court is circumscribed under 38 of the *Small Claims Court Act* which provides as follows:

    (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.

20. Further, an appeal on points of law only is akin to a second appeal to the Court of Appeal. The duty of a second appellate court was set out in the case of M/s Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:

> " This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR)."

21. On what a point of law entails, the high court in Barrack v Amimo t/a Blissful (Civil Appeal E101 of 2024) [2025] KEHC 12 (KLR) (10 January 2025) (Judgment), observed as follows;

> " 16. A matter of law is similar to a preliminary point of law but has a broader meaning. Justice prof J.B. Ojwang J (as he then was) succinctly addressed the issue of preliminary objection in the case of Oraro vs Mbaja [2005] eKLR:

> "I think the principle is abundantly clear. A preliminary objection as correctly understood is now well settled. It is identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. I am in agreement that where a court needs to investigate facts, a matter cannot be raised as a preliminary point."

22. It is not disputed that the respondent's claim proceeded by way of section 30 of the Small Claims Act. The said section provides as follows:

> " Subject to agreement of all parties to the proceedings, the court may determine any claim and give such orders as it considers it fair and just on the basis of documents and written submissions, statements or other submissions presented to the court."

23. The adjudicator/trial magistrate was faulted by the appellant for proceeding to determine the matter and enter judgment based on the fact that parties had consented to have the matter proceed under Section 30 of the *Small Claims Court Act*, yet there was no such consent.

24. Having perused the lower court file and a look at the judgment it is true that the trial magistrate/ adjudicator noted that parties had consented that the matter proceed by way of section 30 of the *Small Claims Court Act*. From the proceedings, on 16th August 2023 the respondent's advocate requested the court to proceed with the matter by way of section 30 of the Small Claims Act Court. I note that the appellant's advocate was present in court on that material day and she did not raise any objection. Thus, the appellant's claim that there was no consent is false. Therefore, the trial court cannot be said to have entered judgment on basis of a consent which did not exist. Further, that ground is not a point of law and this also applies to the ground raised by the appellant on his submissions not being appreciated.

25. Having found as above, I now proceed to re-evaluate the findings on of liability which is a point of law. The trial magistrate/adjudicator in his judgment under paragraph 12 noted that on the strength of the police abstract he found the appellant guilty. From the lower court records, I note that none of the appellant's and the respondents' witnesses testified. Reliance was placed on their statements and documents produced. No police officer testified and neither was any police report, sketch maps from the accident scene produced as evidence.

26. Further, none of the witnesses told the court much on how the accident occurred. In such circumstances the law requires that the court apportions liability which is not what the small claims court did. Reference on this is placed on the Court of Appeal decision in Farah V Lento Agencies [2006] 1 KLR 124, 125 (also relied on by the adjudicator/resident magistrate) where it was held as follows:

> " Where there is no concrete evidence to determine who is to blame between the two drivers, both should be held equally to blame. As no side could establish the fault of the opposite party, liability for the accident could be equally on both the drivers. Therefore, each driver was to blame".

27. For the above stated reasons, I find that the trial magistrate/adjudicator ought to have apportioned liability between the appellant and respondent in the ratio of 50:50.

28. On quantum and specifically special damages which is also a point of law, it is trite law that the same ought to be specifically pleaded and proved. In Mbaka Nguru & Another -v- James George Rakwar [Civil Appeal No. 133 of 1998 (UR). the Court cited with approval Lord Goddard, C.J. in Bonham Carter -v- Park [1948] 647 T.L.R. 177 and continued:

> " It will suffice to say that plaintiffs who do not plead their damages properly and who then do not prove the same do so at their own risk. They will not get those damages however sympathetic the court may feel towards them. The rules of pleading and modes of proof must be adhered to. In the absence of any pleading as to damages claimed under this head, we are constrained to disallow the whole of that award and we set it aside wholly."

29. The respondent under paragraph 4 of the claim indicated particulars for special damages to include; repair costs kshs. 615, 950/=, loss of use (7 trips for 20 days @ kshs. 44,800/= kshs. 313,600/=), assessment fees kshs 10,000/= and copy of records kshs.550/=. This amounts to pleading and the said amounts were proved as required in law save for the loss of user, which was not proved.

30. For the said reasons, I find that the trial court applied the wrong approach in assessing both liability and part of the special damages. I therefore set aside the Judgment and make the following orders;

    i. Liability is apportioned in the ratio of 50:50 between the appellant and respondent.

    ii. Special damages awarded at kshs. 626,500/= (ksh 615,950/= + ksh 10,000/= + ksh 500/=) less 50% contribution plus costs.

31. Each party to bear his/its own costs of the appeal.

32. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 16TH DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE