



**Mwakio v Mwadime (Civil Case E018 of 2025) [2025] SCC 14 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] SCC 14 (KLR)

**REPUBLIC OF KENYA  
IN THE SMALL CLAIMS COURT AT VOI  
CIVIL CASE E018 OF 2025  
FM MULAMA, RM  
JULY 18, 2025**

**BETWEEN**

**COLLINS SENGE MWAKIO ..... CLAIMANT**

**AND**

**HERMAN NGOLO MWADIME ..... RESPONDENT**

**JUDGMENT**

1. This is a claim for compensation for damages to property caused by an accident caused by negligent driving according to the claimant. He further avers that the respondent's motor vehicle registration number KCC 573J a Mitsubishi lorry on 8/2/2025 veered off the road and crashed into the claimant's commercial building causing structural damages.
2. The accident was reported vide OB no.16/8/2/2025 and later on a valuation exercise was conducted by Rightend Appraisal Ltd which assessed the damage at Kshs.830,000/= an amount the claimant now claims in this suit as against the respondent.
3. The respondent on the other hand denies any liability for the accident and infact blamed the claimant for the accident for among other reasons erecting a building on a road reserve and without approvals from the relevant authority and prays that the claim be dismissed with costs.
4. The matter was heard viva voce to assess both liability and quantum and at the close of respective cases, parties proposed to file submissions in support of their respective cases which submissions and authorities have been duly considered and appreciated.
5. Following from the case and the submissions, the following issues commend themselves for determination

**Issue For Determination.**

- a. Whether the Mr. Japheth and the claimant had authority to testify and sign pleadings.



- b. whether the Respondent is liable for the accident.
- c. What is the quantum of damages awardable if.
- d. Who bears costs of the claim.

### **Analysis And Determination.**

- a. Whether the Mr. Japheth and the claimant had authority to testify and sign pleadings.
6. It arose during cross examination that the Japheth Mwanyengela Chewe was the one who signed the response to claim in addition to his statement. No authority or board resolution was produced in evidence authorizing the said Japheth to represent the respondent. This, according to the claimant goes against the clear provision of section 20 of the SCC Act. Since no authority or board resolution having been filed and produced in evidence.
7. A keen perusal of the response to claim there is a signature as against the name of the respondent. The respondent's counsel in her submissions asserts that the signature is that of the advocate and not of Mr. Japheth.
8. According to her there is nothing wrong with counsel signing pleadings on behalf of his clients and has relied on the cases of GS Law LLP Advocates vs Wilbur Khasilwa Otichillo and Mohammed Ashraf Sadik & another vs Mathew Oseko T/A Oseko & co. advocates where in both rulings the court held that an advocate who has complied with the qualifications and requirements under section 32 of the Advocates Act and related provisions can validly sign and file documents on behalf of their clients as their agents.
9. I have looked at the said authorities and in my view they have no relevance to the issue of locus as raised in this matter. In the case of GS Law LLP(supra) there were 2 issues for determination to wit whether the respondent instructed the applicant to act for him in the election petition and whether instructions to an advocate have to be in writing whereas in the Mohammed Ashraf Sadik case(supra) the main issue for determination was the capacity of advocates to draw and lodge pleadings as they did not qualify to practice law.
10. The 2 cases as cited as distinguishable from the circumstances obtaining herein and they do not support the argument put forth by the respondent. It is not any different even if the advocates on record for the respondent were to sign the response to claim just like the witness did.
11. The respondent being an unnatural person even if it were to authorize their counsel to do so, the same ought to have been through a board resolution or a written authority.
12. Furthermore, a look at the standard forms attached to the Act, the legislators were intentional that the said response is to be signed by the respondent to affirm and confirm that the information given is true.
13. I am not satisfied that the witness and /or the counsel had the necessary authority to sign the response to claim.
14. I agree with the claimant that such provision is to safeguard against unauthorized persons from litigating on a company's behalf a situation that can lead to fraudulent actions if countenanced.
15. Furthermore, the said witness never availed any proof to indicate that he is infact an employee of the respondent. In such cases, a job identity card or a formal letter from the respondent would in the circumstances be sufficient proof. The net effect being that the signed response of claim by counsel



- and/or the witness is fatally defective and without locus and consequently the failure to have in place such a board resolution or authority from the respondent's board.
16. The net effect therefore is that the response to claim is incompetent and it is hereby struck out for the above stated reasons and the suit stands as unopposed in the absence of a valid defence/ response to claim.
  17. However, on the other hand, it became apparent at cross examination of the claimant that the suit property the substratum of this claim is not registered in the name of the claimant rather in the name of the claimant's father-now deceased.
  18. It was the claimant's averment that he was the designate administrator in a succession cause involving the estate of his father in Wundanyi vide MC SUCC NO. E017 of 2025. No such pleadings relating to the said succession cause were ever produced in court and that the claimant admitted to not producing grant of letters administration appointing him as an administrator; designate or otherwise.
  19. I wish to point out for purposes of this claim, it would have been easier for the claimant to obtain an ad litem grant to enable him file the suit on behalf of the estate as that would have granted him the locus he is now accusing the respondent of not having.
  20. It is said in Kiswahili that kila mwamba ngoma huvutia kwake. Parties hitherto have tried to justify why one has locus while the other doesn't and each of them has in their submissions defended their respective positions on the issue of locus although the claimant never submitted on the issue of locus as directed to the claimant in cross examination and gave the issue a wide berth.
  21. What is good for the goose should surely be good for the gander. The claimant is similarly devoid of any locus to institute the claim without first obtaining grant ad litem. The claimant pointed a finger to the respondent for not regularizing his position by belatedly filing an authority to deal in the claim but unknown to him, 4 other fingers were pointing at him as well.
  22. Consequently, I do find that the claimant had no locus to institute this claim without grant ad litem.
  23. Since both parties have no locus to either institute or defend the claim as discussed above, I do not propose to consider the other issues as formulated as both the claim and the response to it are fatally defective.
  24. It suffices to note however, should the claimant had in place the requisite locus to institute the claim, I would have allowed the claim in its entirety after evaluating the evidence on record and in the strength of the case of Nkunene Dairy farmers co-op society Ltd & another vs Ngacha Ndeyiya(2010) eKLR cited in the case of Haulage Services Ltd vs Complast Industries Ltd & another (2015) eKLR the court of appeal held as follows;

“in our view special damages in a material damage claim need not be shown to have actually been incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item to as near as possible condition it was in before the damage complained of. An accident assessor gave details of the part of the respondent's vehicle which were damaged. Against each item he assigned a value. We think the particulars of damage and the value of the repairs were given with some degree of certainty.”
  25. From the decision above it is clear to me that all the claimant needs to do is to show the extent of the damage and what it would cost to restore the damage to its original position. The claimant did exactly that by filing in court a report that showed how much would be required to repair the building. This is after the respondent's own witness admitted to have lost control as he tried to avoid hitting



a motorcycle rider and hit the building and as such the respondent would have been 100% liable for the accident.

**Conclusion And Disposition.**

26. The upshot of the foregoing I make the following final orders;
- a. The claim contained in the statement of claim dated 22<sup>nd</sup> April 2025 is struck out.
  - b. Since both the claimant and the respondent did not have locus to either file the claim or the response, let each of them bear their own costs of the claim
27. Those shall be the orders of the court..

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT  
THIS....18<sup>th</sup>.....DAY OF ...July...2025**

**F.M. MULAMA**

**ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Fathiya Loo.

Ms. Kamwana h/b for Mr. Karanja Harry for the Claimant

Ms. Machuka for the respondent.

