



**Musaji v Tawakal Parcel Services (Civil Case E003 of 2024)
[2024] SCC 8 (KLR) (4 March 2024) (Judgment)**

Neutral citation: [2024] SCC 8 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT LAMU
CIVIL CASE E003 OF 2024
FM MULAMA, RM
MARCH 4, 2024**

BETWEEN

INAYAT HUSSEIN IBRAHIM MUSAJI CLAIMANT

AND

TAWAKAL PARCEL SERVICES RESPONDENT

JUDGMENT

Introduction.

1. The claimant seeks compensation for Kshs.51,800/= being the value of his goods that were destroyed while on transit from Malindi to Lamu under the care and transportation of the respondent.
2. The claimant avers that on 3/12/2023 he delivered assorted goods to the respondent to transport them to Lamu from Malindi. Among the assorted items were 2 boxes that had in them personal household items.
3. On the said 3/12/2023 the road especially at Gamba became impassable due to flash floods which lasted 17 days and on 20/12/2023 the roads became passable once more and the goods were delivered in Lamu on 3/1/2024.
4. The Claimant was notified of the arrival and went to collect the goods at the Respondent's offices in Lamu. Upon reaching the respondent's offices, he received other goods save for the 2 boxes that had in them household items.
5. Upon enquiry, he was informed that as a result of the floods the 2 boxes had been destroyed and the items that were in the boxes transferred into a sack and which sack was handed over to him and he left.
6. On 4/1/2024 when inspecting the goods in the sack the claimant alleges that he realized some of the items that were in the boxes were missing and some are destroyed and the claimant has listed a total of 21 items as missing.



7. The claimant further avers that his attempts to have the matter resolved amicably and his items paid back have borne no fruit despite lodging a complaint and visiting the offices on numerous times hence this suit.
8. The respondent on the other hand denies the claim in toto and states that the type of things in the boxes were not declared at their offices before transportation, the claimant collected goods and left the offices without any complaints raised and that if any goods were destroyed the same were as a result of natural causes which were beyond their control.

Issue For Determination.

- a. Whether the claimant proved the claim for Kshs.51,800/=.

Analysis And Determination.

Whether the claimant proved the claim for Kshs.51,800/=.

9. It is the claimant's case that the listed items were lost and/or destroyed while on transit by the respondent and since they were in the custody of the respondent he should be held wholly liable. In support of this, the claimant produced in evidence various communications, waybill and photos of the items.
10. The respondent on the other hand asserts strongly that such goods the claimant asserts were lost and which were in the 2 boxes were never declared at their offices and as such it is difficult to even tell whether the listed goods and those that are claimed to be lost were actually the goods that were in the box.
11. Secondly, the respondent asserts that on 3/1/2024, the claimant collected the goods and went home when all was well only for him to return the following day and claim that the listed items were missing.
12. In the ordinary sense of things, it is my view that it was expected of the claimant when he went to collect the goods and realized that they were not in the manner he packed them and especially after it was moved from the boxes to a sack to ascertain in the presence of the respondent so that the loss is ascertained in the presence of the respondent.
13. I agree with the respondent that the taking of the goods/items by the claimant was a demonstration that he was satisfied that the goods were in good shape save for the packaging and he was satisfied and coming back a day after amount to stealing a match against the respondent.
14. Secondly am persuaded by the argument put forth by the respondent that it would be almost impossible to tell with precision the type of assorted items that were in the boxes and whether the said items were the ones as listed and which are now claimed to be lost.
15. A look at the waybill issued by Ali Omar Kibwana, it is easy to discern that bed 3 pieces, 2boxes, 1 bicycle, 1 frame and 1D yam toto plastic were things that were sent by the claimant. For instance, one can easily tell all the rest save for the contents of the boxes and this is the argument put forth by the respondent.
16. The claimant has also gone a head to award various prices for each of the lost items. In my view the said prices are without any basis and it is not clear whether the said items were new and/or used and if so whether the price is for new similar items or it has taken into account depreciation.



17. It would have been a different story had the claimant opened the goods at the respondent's offices given that they were not in the manner in which they were sent and they agreed on at least the obviously damaged goods and this would have at least aided the parties and indeed the court to even estimate the price of the lost and/or damaged goods.
18. Although, it would have still been an impasse and almost an impossibility to ascertain what were in the boxes and whether they were the same items as received by the respondent in the absence of the declaration at the point of sending them.
19. To this end it is indeed not possible for this court to first ascertain whether the alleged lost items were lost under the custody of the respondent and secondly assuming that they were as listed whether they attract each cost attached to it.
20. The Claimant has not proved to this court that the items listed and which he considers as lost were indeed the exact items that were sent from Malindi and had he proved this the court would have delved into the issue of how much the loss would have been.

Conclusion And Disposition.

21. The upshot of the foregoing I make the following final orders;
 - a. The claim for Kshs.51,800/= is not proved for reasons set out hereinabove and the claim is thus dismissed.
 - b. Let each party bear their own costs of the claim.
 - c. Let the file be closed forthwith.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS .4TH DAY OF MARCH 2024.

HON. FLAVIAN.M. MULAMA

ADJUDICATOR SCC LAMU

In the presence of:

Court Assistant:- Vivian Wambui.

Mr. Inayat Hussein Ibrahim Musaji.

Mr. Faraj Abdulrahman on behalf of Tawakal Parcel Services.

