

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL APPEAL NO E093 OF 2024

ZEPHANIA AMENYA AREBA t/a

REMMA AUCTIONEERS.....

APPELLANT

VERSUS

TOM LUCAS OPIYO.....1ST

RESPONDENT

EVERLYN NAFULA NYONGESA.....2ND

RESPONDENT

***(Being an appeal against the ruling of T.M Olando (PM) in
Bungoma CMCC No 282 of 2018 delivered on 5/06/2024)***

JUDGMENT

1. The appellant had proclaimed property belonging to the 1st respondent, but had been ordered to release the attached goods by the subordinate court. The proclaimed goods were itemised as follows: *one printer; three computer sets complete with CPUs, keyboards, and mice; five steel stools; one Kyocera 180 photocopier; an additional printer; and one monitor.*

2. The 1st respondent filed a notice of motion before the subordinate court seeking an order compelling the appellant to pay/compensate for the damages, missing machines and components/parts amounting to Kshs 86,600/-. It was made on the grounds that the 1st respondent's tools of trade in the custody of the appellant were damaged and missing vital components. Therefore, the appellant should pay for the damaged or missing parts.

3. The appellant filed a replying affidavit and blamed the 1st respondent for waiting over a year to collect the goods after he had obtained a release order. He faulted the 1st respondent for failing to provide an independent valuation report over the seized property or receipts of the goods.

4. The 1st respondent in a supplementary affidavit produced a receipt showing that he had bought the items at Kshs 176,000/-.

5. In further response, the appellant contended that although the 1st respondent alleged to have purchased the items from Sifa Tronix Computers, the foot of the computerised receipt indicated that the goods were supplied and serviced by Cybene Technologies. He further faulted the 1st respondent for producing receipts that lacked the supplier's contact information. The appellant additionally pointed out that the total amount reflected in the computerised receipt was inconsistent with that appearing on the handwritten receipt.

6. The court ordered the appellant to return the goods to the 1st respondent in good working condition, and in default, he was ordered to pay Kshs 86,600/-.

7. The appellant is dissatisfied with the finding of the court and has filed an appeal against his Ruling on the following grounds:

- 1. That the learned trial magistrate erred in law and in fact when he ignored the appellant's response dated 20/5/2024, further affidavit dated 23/5/2024 and the appellant's submissions dated 23/5/2024, thereby arriving at an unjustified decision against the appellant.*

2. That the learned trial magistrate erred in law and in fact when he declined to analyze both the appellant's and 1st respondent's evidence and failed to consider the nature of the orders, prayers and reliefs sought by the 1st respondent in the application dated 26/4/2024 in the sense that at the time of attachment, the 1st respondent did not make any application for independent valuation of the property seized in order to ascertain their condition and value.

3. That the learned trial magistrate erred in law and in fact by proceeding to allow the application dated 26/4/2024 and subsequently proceeded to order the appellant to return the goods to the 1st respondent in good working condition and in default to pay the 1st respondent Kshs 86,600 as per the application.

8. The appellant seeks that the appeal be allowed and that the court's ruling dated 05/06/2024 allowing the respondent's application dated 26/4/2024 be set aside and the same be substituted with an order dismissing the respondent's application dated 26/4/2024.

9. The appellant, in his submissions, argues that the 1st respondent did not seek an order compelling the appellant to return the goods in good working condition as granted by the subordinate court.

10. The appellant submits that the damages sought by the 1st respondent were like special damages, which need to be proved strictly. A computer specialist and assessor needed to examine the damage caused to the items and parts that

required replacement. It was not enough for the 1st respondent to claim damages amounting to Kshs 86,600 without an assessment report. He relied on the case of **Douglas Odhiambo Apel & Another v Telkom Kenya Limited (2014) eKLR** to support his arguments on special damages.

11. The 1st respondent submits that he is a qualified computer technician, and the quote of Kshs 86,000/- was the cumulative cost of key parts damaged.

ANALYSIS AND DETERMINATION

12. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court, both on points of law and fact and come up with its own findings and conclusions [see **Peters -vs- Sunday Post Limited [1958] E.A 424**].

13. The appellant noted that some parts of the items seized by the appellant were missing. The appellant did not provide any evidence that the goods had actually been damaged. The 1st respondent estimated the cost of the damaged parts at Kshs 86,000/-, but it failed to provide an itemised list of the broken items and the cost of each part. I am compelled to agree with the appellant that, to be compensated for the repair costs of Kshs 86,000/-, the 1st respondent needed to specifically prove the cost of the damaged components.

14. The 1st respondent produced receipts showing he purchased the items from Sifa Tronix Computers. However, the computerised receipt and the handwritten receipt for the items bought did not match. Therefore, the court cannot rely on the evidence regarding the price of the items as stated by the 1st

respondent. In any case, the 1st respondent's case was not for a refund of the money spent on the items but for the cost of damaged parts, which he failed to provide.

15. The 1st respondent observed that some components of the seized items were missing. However, no evidence was presented by the 1st respondent to show that the goods had not been damaged. The 1st respondent estimated the cost of the damaged parts at KShs 86,000/-. The appellant provided a list of faulty items, marked as TL0-1B, annexed to his supplementary affidavit. The items included an Epson printer without a power adaptor, two CPU units missing RAMs, start buttons, and CMOS batteries, one CPU unit unaccounted for, and two monitors missing.

16. To justify compensation for repairs and replacement of damaged parts, the 1st respondent was required to provide an itemised list with the cost of each component, amounting to Kshs. 86,000/-. The receipts did not clarify the specific costs of the damaged itemised parts.

17. I also observe that the 1st respondent produced receipts claiming to show that the items were bought from **Sifa Tronix Computers**. However, the computerised and handwritten receipts displayed discrepancies in the prices listed. As a result, the court cannot rely on the evidence provided concerning the purchase price of the items.

18. Therefore, I find that since the 1st respondent failed to provide sufficient proof of the cost of damaged items, the trial court erred in awarding the 1st respondent Kshs 86,000/-. As a result, the ruling of the subordinate court dated 5.6.2024 is

hereby set aside. The appellant is accordingly awarded the costs of this appeal.

**Dated, Signed and Delivered at BUNGOMA this 9th day
of October 2025**

**R.E. OUGO
JUDGE**

In the presence of:

Appellant	- Absent
Respondent	- Absent
Wilkister	-C/A

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