Benue Enterprises Company Ltd v Mwangi & another (Civil Appeal E212 of 2022) [2025] KEHC 14946 (KLR) (Civ) (24 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14946 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E212 OF 2022

H NAMISI, J

OCTOBER 24, 2025

BETWEEN

BENUE ENTERPRISES COMPANY LTD ..... APPELLANT

AND

PIUS MWANGI ..... 1ST RESPONDENT

ERIC MUTUA MBAYA ..... 2ND RESPONDENT

(Being an Appeal against the Judgement of Hon. C .A. Okumu , RM/Adjudicator delivered on 29 November 2022 in Milimani Small Claims SCCCOM No. E2189 of 2022)

JUDGMENT

1. This appeal arises from a suit in the Small Claims Court filed by the Appellant, seeking the following reliefs:

    i. Liquidated damages in the sum of Kshs 324,724/=

    ii. Interest on the above at court rates;

    iii. Costs of the claim

2. The matter before the trial Court arose from an accident that occurred on 15 July 2022 along the Northern Bypass, involving the Appellant's motor vehicle registration number KCG 572Z and another vehicle registration number KBY 797Y, owned by the 2nd Respondent and driven by the 1st Respondent. The claim by the Appellant was for special damages, being the value of assorted goods that were being transported in the Appellant's vehicle and were allegedly damaged beyond salvage as a direct consequence of the collision.

3. Upon hearing the parties, the trial court made two principal findings, which form the substratum of the appeal. First, on the issue of liability, the trial court found the Respondents to be wholly responsible for the accident. This finding on liability is not in contention before this Court.

4. On the question of quantum, the trial court dismissed the Appellant's claim for compensation. In her determination, the learned Adjudicator relied on the case of S.G. laxman -vs- John Mwanjela in finding that the Appellant had not proved the claim for compensation as it is a special damage claim. Consequently, the claim was dismissed, with each party bearing their own costs.

5. Aggrieved by the judgment of the trial court, the Appellant lodged an appeal on the ground that the learned trial Adjudicator erred in law by finding that the Claimant had proved liability but failing to award special damages despite the Claimant specifically pleading and proving them.

6. The appeal was canvassed by way of written submissions.

7. The Appellant submitted that the trial court committed an error of law by applying an excessively rigid and formalistic standard for the proof of special damages. The Appellant argued that the trial court's insistence on the production of receipts or payment vouchers as the sole and exclusive means of proof was a misdirection that failed to appreciate the evolving jurisprudence on the subject and the specific objectives of the Small Claims Court. The Appellant contended that it has sufficiently proved its loss to the required standard through a combination of evidence tendered at trial. This evidence included:

    i. The oral testimonies of three witnesses; the driver of the vehicle, a director of the company and a Police Officer from Karuri Traffic Base;

    ii. A handwritten document from the Base Commander, Karuru Police Station dated 19 July 2022, which contained itemized list of the goods on board the vehicle, their value, the value of the salvaged items and the resultant loss;

    iii. A police Abstract which indicated that the driver of the Respondent's vehicle was blamed for the accident.

8. The Appellant urged this Court to adopt a more flexible approach to the standard of proof, arguing that what amounts to sufficient proof must be determined on a case-by-case basis. Reliance was placed on several authorities, including Julius Kariuki Kimani -vs- Evanson Kariuki eKLR, where the Court held that it is not in all cases that receipts must be supplied to prove special damages, especially where a credible explanation for their absence is provided. The Appellant also relied on the case of Jacob Ayiga Maruja & another v Simeon Obayo [2005] KECA 202 (KLR), where the Court of Appeal rejected the notion that only documentary evidence can prove such claims.

9. The Appellant invoked Rule 5(2)(c) of the Small Claims Court Rules, 2019 which requires a claimant to attach a copy of any document proving the value of the property sought to be recovered. It was submitted that the handwritten police inventory satisfied this requirement, thereby shifting the evidentiary burden to the Respondents to disprove the value of the loss, a burden which they failed to discharge.

10. On their part, the Respondents contended that the trial court's decision, though perhaps narrowly reasoned, was ultimately correct in law. The Respondents challenged the admissibility of the handwritten Police note, which was the primary documentary evidence supporting the quantum of the claim. It was argued that this document was inadmissible for being hearsay. The Respondent pointed out that the author of the note explicitly stated that the valuation was done by personnel staff from the company. Furthermore, PW3, the Police Officer who produced the document, admitted in cross examination that he did not prepare the list and that there was no way a police officer could quantity the

damage. Reliance was placed on the case of Charles Mwithalii v Julius Bariu M'Itobi [1988] KECA 132 (KLR). The Respondent submitted that since the opinion evidence on value came from an unqualified person who was not called as witness, the document was hearsay and devoid of any probative value.

11. The Respondents further argued that the claim for special damages was not specifically pleaded as required by law. PW2 revealed that the sum claimed represented the total value of all goods dispatched for the day, without distinguishing between goods that were actually damaged in the accident and those that may have been sold prior thereto. The Respondent argued that this rendered the pleading imprecise and speculative.

12. It was the Respondent's submission that the claim was not strictly proved. There were several deficiencies in the evidence presented by the Appellant. For instance, a significant mathematical inconsistency in the police note where the stated value of good was Kshs 350,964/=, yet the summation of the itemized values yielded a figure of Kshs 294,525/=. Secondly, there was absence of foundational evidence such as business licences, an original loading inventory, or any proof that the Appellant was in the business of distributing the listing products. Finally, the Appellant failed to engage a professional loss adjuster to provide an expert opinion on the value of the damaged goods. The Respondents argued that these shortcomings were indicative that the Appellant had failed to discharge its burden of proof.

Analysis & Determination

13. Section 38 of the *Small Claims Court Act* provides as follows:

    1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;

    2. An appeal from any decision or order referred to in sub section (1) shall be final.

14. In the case of Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

> " 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)."

15. Similarly in the case of Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

> " This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of Stanley N. Muriithi & Another v Bernard Munene Ithiga [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also Kenya Breweries Limited v Godfrey Odoyo [2010] eKLR in which it was held that: "In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two 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."

16. Section 38 of the Act confines the appellate jurisdiction of this Court to a supervisory role focused on the correct application of legal principles by the trial court. A point of law concerns the interpretation of statute, the application of a legal principle, the admissibility of evidence, or the standard of proof required. Therefore, this Court is not at liberty to re-weigh the evidence or substitute its own factual findings for those of the trial court, which had the distinct advantage of seeing and hearing the witnesses. This Court can only interfere if it is demonstrated that the trial Court's decision was based on no evidence at all, or that the court misapprehended the evidence in a manner that reveals a misunderstanding of the applicable law, or that the court applied the wrong legal principle to the facts as found. It is through this narrow legal lens that the single ground of appeal must be examined.

17. In their submissions, the Respondents have raised a formidable issue regarding the admissibility of the handwritten police note, which forms the evidentiary bedrock of the Appellant's claim on quantum. The rule against hearsay is a fundamental tenet of the law of evidence. It provides that an assertion made out of court is inadmissible if it is tendered to prove the truth of the facts asserted. The rationale is to guard against the admission of evidence that has not been tested by cross-examination and whose maker's credibility has not been assessed by the court.

18. In the case herein, the note from the Base Commander of Karuri Police Station purports to state the value of the goods damaged in the accident. The crucial part of the note reads, "This report was made a day after because the personnel staff responsible was being awaited from the company to make valuations." This is an admission by the author that the valuation figures contained therein did not originate from him or any police investigation, but from an unnamed third party.

19. The above is compounded by the testimony of PW3, who produced the document. On cross examination, PW3 confirmed that he did not prepare the list, but that it was prepared by an officer in the records office. He added that the lorry had damaged items so there was no way a police officer could quantity the damage. This testimony confirms that the Police were merely acting as scribes, recording information provided by an external party. The document was, therefore, tendered to prove the truth of the valuation provided by the Appellant's staff, who was not called to testify and be cross examined on the basis of his/her valuation.

20. In Charles Mwithalii v Julius Bariu M'Itobi [1988] KECA 132 (KLR), the Court of Appeal held:

> " Although counsel for the appellant did not so put it, the opinion evidence of the document examiner who was not called as a witness before the court as to the author of the disputed documents was hearsay and was inadmissible in evidence on that ground. That being so, there was no legal evidence before the court on which it could properly hold that the appellant "wrote and published" the allegedly defamatory documents."

21. Applying this principle, the handwritten note is classic hearsay. It is an out-of-court statement by an unidentified person, tendered to prove the truth of its contents. It was not subjected to the crucible of cross examination. Consequently, I find that this document was inadmissible in evidence to prove the Appellant's loss. It, therefore, follows that there was no legally admissible evidence before the trial court upon which an award for special damages could have been founded.

22. Although the finding on admissibility is dispositive of this appeal, for the sake of completeness, I will proceed to consider the central ground of the appeal concerning the standard of proof for special damages.

23. It is trite law that special damages must be specifically pleaded and strictly proved. The Appellant argues that the trial court erred in law by interpreting strict proof to mean proof exclusively by way of receipts

and vouchers. The Appellant correctly points to a line of authorities, such as Julius Kariuki Kimani v Evanson Kariuki [2021] KEHC 4272 (KLR), which advocate for a more pragmatic and less formalistic approach. These decisions recognise that the standard of proof, while strict, must be reasonable in the circumstances. In certain situations, particularly in the informal sector or where documents are lost in the very incident that gave rise to the claim, a court must be satisfied with other credible evidence.

24. The creation of the Small Claims Court was a deliberate legislative intervention to provide accessible, inexpensive, and expeditious justice to claims for a certain pecuniary value. Its procedure is designed to be less rigid than that of the Magistrates' or High Court. It would be contrary to the spirit and objective of the Act to impose an evidential standard so high as to be unattainable for the very litigants the court was designed to serve. Therefore, a learned Adjudicator, when faced with a claim for special damages, should not automatically dismiss it for the mere absence of receipts. The Adjudicator must consider the totality of the evidence presented - be it oral testimony, contemporaneous notes, invoices, or other credible documents – and determine whether the claimant has, on a balance of probabilities, provided proof that is as certain and particular as is reasonable in the circumstances.

25. To that extent, the trial court's reasoning, which appeared to create a blanket rule that special damages can only be proved by receipts or vouchers, was an oversimplification of the law and could, in a different case, amount to misdirection.

26. However, in this case, even if one were to set aside the issue of admissibility and apply the more flexible standard of proof advocated by the Appellant, the evidence tendered was so riddled with inconsistencies and deficiencies that it lacked the requisite probative value to ground an award. The most glaring of these is the mathematical error pointed out by the Respondents. The claim was for goods valued at Kshs 350,964/=, yet the items listed in the document relied upon by the Appellant sum up to Kshs 294,525/=. The substantial variance of over Kshs 56,000/- fundamentally undermines the credibility and reliability of the entire valuation. The Appellant offered no explanation for this inconsistency either at trial or on appeal.

27. When this fatal inconsistency is viewed alongside the other evidentiary gaps, it becomes clear that the Appellant failed to discharge its burden of proof. The evidence was not merely informal; it was unreliable and contradictory. Therefore, the trial court's ultimate finding that the claimant had not proved the claim for compensation was a conclusion of fact that was amply supported by the state of the evidence before it. Such a finding on the sufficiency and weight of evidence is a matter of fact, not law, and is not open to review by this Court on appeal.

28. For the reasons stated hereinabove, this Court finds that the appeal is unmeritorious. The appeal is hereby dismissed with costs to the Respondents, assessed at Kshs 40,000/=.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Appellant: Ms. Mulomgo for the Appellant

For Respondents: Ms. Pyoko Nyongesa

Court Assistant: Lucy Mwangi