

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E204 OF 2023

STEPHEN MUTURI KARIUKI.....APPELLANT

-VERSUS-

JOHN MACHARIA MUGO.....
RESPONDENT

(Being an appeal from judgment and decree of the Small Claims Court at Thika (Hon O.J. Muthoni RM) claim number E120 of 2023 dated 23rd June 2023)

JUDGMENT

The respondent was on 30th April 2022 riding motor cycle registration number KMFH 629H along Thika-Garissa road when at Polysack area, he was involved in an accident with the respondent's motor vehicle registration number KDE 274F. The appellant sued the respondent in the trial court accusing him of negligence and claiming general and special damages. In his response to the claim, the respondent blamed the appellant for the accident and after a full trial, the court found the appellant 100 per cent liable and dismissed the claim.

In this appeal, the appellant seeks to set aside the lower court's aforesaid judgment relying on the following grounds which are contained in his memorandum of appeal dated 20th July 2023;

1. **THAT** the Honourable Magistrate erred in fact and in law in finding the appellant 100 per cent liable for the accident.

2. **THAT** the Honourable Magistrate erred in fact and in law in solely relying on the contents of the police abstract to determine the issue of liability.
3. **THAT** the Honourable Magistrate misdirected herself in totally ignoring the testimony of the appellant on how the subject accident occurred.
4. **THAT** the Honourable Magistrate failed in law and fact in failing to appreciate the testimony of the appellant that it was the respondent who caused the accident by carelessly joining the highway from a feeder road.
5. **THAT** the Honourable Magistrate failed in law and fact in failing to appreciate that even if the police abstract indicated that the appellant was to blame for the accident, the said abstract was not conclusive proof of liability in the absence of evidence being called to support it.
6. **THAT** the Honourable Magistrate failed in fact and law in failing to appreciate that no other evidence was called to support the contents of the police abstract.
7. **THAT** the Honourable Magistrate erred in failing to appreciate that a police abstract is only proof that an accident occurred and it was reported in a particular police station and not how an accident occurred.
8. **THAT** the Honourable Magistrate misdirected herself in failing to appreciate that the circumstances surrounding how an accident occurred can only be authoritatively shown by the parties involved in the accident being the appellant and the respondent.

9. **THAT** the Honourable Magistrate misdirected herself in failing to appreciate that in situations where both parties to an accident gave conflicting versions of how the accident occurred and no side is able to establish the fault of the other, liability should be apportioned equally on each driver.

10. **THAT** the learned Magistrate erred in fact and in law in dismissing the appellant's claim.

The appeal was canvassed by way of written submissions, the appellant having filed his submissions dated 28th July 2025 and the respondents having filed his dated 7th May 2025. I have read the submissions of the parties and noted therefrom that the only issues in contest are; who between the parties was to blame for the accident and what is the appropriate quantum of damages due to the appellant if any.

This is an appeal from a small claims court and by virtue of Section 38(1) of the said Act, this court can only entertain the appeal on matters of law only. It is trite that where the court is limited by the Constitution or Statute on the issues or nature of cases it can handle, it must confine itself to the boundaries of the mandate so donated. In *Erick Onyango Ondeng' v Republic (2014) KECA 523 (KLR)*, the Court of Appeal in restating this position cited its own earlier judgment in *M'riungu vs Republic (1983) KLR 455* thus;

'Earlier in M'RIUNGU VS REPUBLIC (1983) KLR 455 the Court had strongly expressed the same view in these terms:

"Where a right of appeal is confined to question of law, an appellate court has loyalty to accept the findings of fact of the lower court(s)

and resist the temptation to treat findings of fact as holdings of fact and law and it should not interfere with the decision of the trial court or the first appellate court unless it is apparent that on evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision is bad in law”.

It is the position in law remains that jurisdiction is granted by either the Constitution or Statute and a court cannot confer on itself powers it does not possess in law. This court is limited in the nature of issues it should handle in appeals from the small claims court. The Supreme Court of Kenya held in ***Macharia & another v Kenya Commercial Bank Limited & 2 others (2012) KESC 8 (KLR)*** that;

‘A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law could only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law. The issue as to whether a court of law had jurisdiction to entertain a matter before it, was not one of mere procedural technicality; it went to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.’

Having said the above, I pause to ask; are the two issues I have identified above or any of them, of law or facts? Once I identify an issue of fact, I must avoid it. An issue of fact is that which entails investigations in order to establish the truth of contents of the pleadings while an issue of law concerns application of the law on the pleaded facts.

In my analysis and interpretation, to establish who was to blame for the accident, the court must carry out investigations by evaluating evidence in support of the pleadings. In this case, the question of who was to blame for the accident must involve analysis of the facts as pleaded to find out the truth of the circumstances under which the accident occurred. Consequently, I hold and find that doing such an exercise, the court will be dealing with matters of facts and therefore that issue is not appealable to this court unless it is shown that the finding was perverse or in violation of the law which in my view is not the case in this matter.

Turning to the issue of damages, whereas it has been held that quantum is an issue of law as it involves application of established legal principles, an award of damages depends on the court's finding on liability. This court will be acting in futility in going into the issue of quantum save to add that the court erred in failing to assess quantum of damages in the event it was wrong on liability but nothing turns on the position.

Having found that the issue of liability is not appealable to this court, this appeal lacks merits and it is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this **14th** day of **November** 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Wambui for the appellant and Miss Amera holding brief for Mr. Kinyua for the respondent.