

**REPUBLIC OF KENYA**  
**IN THE SENIOR PRINCIPAL MAGISTRATE’S COURT**  
**AT MARALAL**  
**WAMBA MOBILE COURT CASE**  
**CRIMINAL CASE NUMBER E070 OF 2025**

**REPUBLIC.....**

**.....PROSECUTOR**

**VERSUS**

**ABDUBA ADAN GALGALO.....ACCUSED  
PERSON**

**RULING**

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**Yesterday afternoon, Mr. Guyo Galgalo Dida** appeared before this Court and applied to be a surety for the above-named accused person. In support of his application he produced, amongst other documents, a valuation report prepared by MR. NICHOLAS MBUGUA a registered valuer.

Upon the presentation of this valuation report the Prosecution Counsel Mr. Peter Eysimkele objected to the adoption of this report as proof of the value of the proposed security. The learned prosecutor submitted that this proposed security for the bond was a motor vehicle which ought to be valued by a qualified motor vehicle assessor as opposed to a land valuer who was only an expert for land valuation.

The Prosecutor urged the court to decline to approve the surety since the motor vehicle had been assessed by an unqualified valuer. He pointed out that he would not have opposed the application if the valuation had been done by motor vehicle assessor. In his closing contention, he pointed out that all motor vehicle assessors are regulated by the Insurance Regulatory Authority for the purposes of valuation.

In reply, Mr. Jarso Abdulatiff Advocate representing the accused person and the proposed surety, urged the court to dismiss the objection as unmerited. He submitted that the objection was not based on any sound law since any valuer can carry out motor vehicle valuation under section 2 of the Valuers Act. He pointed out that under the said section a valuer means a person who carries out and prepares valuations in respect of movable or immovable property. The learned counsel referred the court to section 12 of the Valuers Act wherein it is provided that a valuer must be a member of either the Institute of Surveyors of Kenya or the Royal Chartered Institute Surveyors or a holder of a degree from a university or college that is recognized by the board and qualifies to be a full member of the Institute of Surveyors of Kenya.

On the competence of the valuation report tendered to the court, the defence counsel pointed out that Mr. Mbugua was a registered valuer number 662 and competent to provide the valuation of this motor vehicle. In this regard, he held the view that the DPP's objection was unmerited because in his appreciation of the law, the purpose of a motor vehicle assessor under the Insurance Act was limited to assessment of damages to vehicles and other related issues for insurance purposes only. He argued that the use of a valuation report from any valuer would be sufficient to prove the value of the vehicle since a valuer can assess either movable or immovable property as provided for in the Valuers Act. Mr. Jarso contended that the court did not need a motor assessor since any registered valuer was sufficient.

In a brief rejoinder, the DPP stated that the objection was maintained. He pointed out that a land valuer cannot be used to value a motor vehicle and vice versa.

### **ISSUE FOR DETERMINATION**

**The only issue for determination is who is the proper person to prepare a motor vehicle valuation report for the purposes of proving the estimated value of a motor vehicle offered to be used**

**as a court security for the release on bond of an accused person charged with a criminal offence.**

**This question turned on the statutory interpretation of the Valuers Act cap 532 Laws of Kenya and other statutes including the Insurance Act cap 487 alluded to by the respective counsel.**

### **DETERMINATION**

In the present case, on the one hand the DPP contends that the only qualified person to conduct motor vehicle valuation is a motor vehicle assessor while on the other hand the defence counsel contends that any registered valuer can conduct a motor vehicle valuation.

The court found that under **section 150 as read with section 184 of the of the Insurance Act cap 487**, a person shall only operate as a motor assessor if he is so licensed and registered under the Act:

***150. Only licensed brokers, agents, risk managers, motor assessors, insurance investigator, loss adjusters, insurance surveyor, medical insurance provider and claims setting agents to carry on business***

*(1) No person shall, after the expiry of three months from the appointed date, commence, transact or carry on in Kenya the business of a broker, agent, risk manager, motor assessor, insurance investigator, loss adjuster, insurance surveyor, medical insurance provider, or claims settling agent unless he is licensed under this Act.*

Under section 152 (e) of the said Act, the Commissioner may not license or register such a person if the person does not possess the requisite **knowledge, skill or qualification to be a motor assessor.**

The court also found that under section 2 of the Valuers Act it is provided that a "practising valuer" means a person who carries out and prepares valuations in respect of any type of movable or immovable property provided that he is duly registered under section 6 thereof providing:

## **6. Register of valuers**

- (1) *The registrar shall keep and maintain a register in which the name of every person entitled to have his name entered therein shall be entered after his being accepted by the Board for registration under this Act showing against the name—*
- (a) *the date of the entry in the register;*
  - (b) *the address of the person registered;*
  - (c) **the qualifications of the person; and**
  - (d) **such other particulars as the Board may from time to time direct.**

On the expertise required, the DPP contended that the motor vehicle assessor regulated by the Insurance Regulatory Authority was the best qualified person to conduct a valuation for a motor vehicle. No authorities were cited but the court afterwards conducted its legal research to test this argument. The defence counsel on his part contended that once a person is registered as valuer with the Valuers Registration Board, that was sufficient.

In other words, the contest all boils down to qualifications. As Shakespeare famously said, *a rose by any other name would smell as sweet*. For both the DPP and the defence, it was common that whoever was the proper person had to be a “qualified” person for this exercise. **This brings into view who is a “qualified” person since** valuation requires expertise and whenever expertise is in question the court is expected to make an assessment as to the suitability of the person to make the expert report.

To resolve this contestation, the court considered the principles of gauging the suitability of an expert were set out not so recently by the Court of Appeal in **MUTONYI -V REPUBLIC** (1982) KLR 203 at 210 where Potter JA observed:

*“Expert evidence is evidence given by a person skilled and experienced in some professional or special sphere of knowledge of the conclusions he has reached on the basis of his knowledge, from facts reported to him or discovered by him by tests, measurements and the like.*

*Section 48 of the Evidence Act (Cap 80) provides that where, inter alia, the Court has to form an opinion upon a point “of science, art, or as to identity or genuineness of handwriting or finger or other impressions”, opinions on that point are admissible if made by persons “specialist skilled” in such matters.*

*In Cross on Evidence 5<sup>th</sup> edition at page 446, the following passage from the judgement of President Cooper in Davie v Edinburgh magistrates (1933) SC 34,40, as scenting the functions of expert witnesses:*

*“Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgement by the application of these criteria to the facts put in evidence.”*

*So, an expert witness who hopes to carry weight in a Court of law, must, before giving his expert opinion:*

- 1. Establish by evidence that he is specially skilled in his science or art.*
- 2. Instruct the Court in the criteria of his science or art, so that the Court may itself test the accuracy of his opinion and also form its own independent opinion by applying these criteria to the facts proved.*
- 3. Give evidence of the facts on which may be facts ascertained by him or facts reported to him by another witness.”*

Arising from the foregoing, this Honourable Court takes the position that as bare minimum the valuer must possess the necessary educational and professional qualifications. This view is well supported on many authorities including **CALTEX OIL (K) LTD vs AUTO SPRING MANUFACTURES LTD [2004] KEHC 2186 (KLR) (Ang'awa J.)** the learned Judge declined to award compensation for damage to motor vehicle after the Judge established that, notwithstanding the production of the motor vehicle assessment report by consent, the said assessment report on the value of the vehicle had been prepared by a garage assistant who was not qualified as a motor vehicle assessor - the Court's emphasizing on the lack of qualifications by the author of the valuation report.

Still on qualifications, in the authority of **LINUS FREDRICK MSAKY V LAZARO THURAM RICHORO & ANOTHER [2016] eKLR** Justice **Aburili** stated that:

*"In the case of damages to a motor vehicle, it was critical that the specific damages or the nature of the damage itself be pleaded and strictly proven. The court would not assess damages which are not specifically pleaded. Only a specialist and qualified motor vehicle assessor would have examined the vehicle and set out the exact damages before stating what parts required replacement or repair as the case may be. It was not enough for a garage to quote for repairs without an accident assessment report on the specific damages caused by the accident and the value estimated for each damaged part." (underlining mine).*

Most recently in **MACHARIA V KIRUTHI [2024] KEHC 3685 (KLR) (S. MOHOCHI J.)** held, citing the Court of Appeal, that a motor vehicle assessor as long as he is possessed of the necessary qualifications would be the best person to undertake a value assessment of a motor vehicle:

*"The Appellant urges this Court to consider the Court of appeal decision in **NKUENE DAIRY FARMERS COOPERATIVE SOCIETY ITD & ANOTHER V NGACHA NDEIYA** (2010) eKLR,*

*“Motor vehicle parts are sold in shops. An assessor, we think would be in a position to know their cost. The prices may vary from one shop to another but the prices are nonetheless ascertainable even without purchasing the item and fixing it on the damaged vehicle. Motor vehicle parts are Common items and any price which the assessor might have given could be counter checked and either accepted or disproved. The appellants having not questioned those prices must be taken to have accepted the report as representing the correct market prices of the various parts which were shown on the Assessor's report. The experience of the Assessor was not challenged and we think Onyancha J. was right in describing him as an expert, and his report as being opinion evidence. The Court had the right to accept or reject his opinion if the circumstances so dictated. The respondent, to our mind, particularized his claim in the plaint and called acceptable evidence to prove the same and we have no basis for faulting both the trial and first appellate Courts in the concurrent decision they came to. Indeed the decision of David Bagine v. Martin Bundi Civil Appeal No. 283 of 1996 which Mr. Kaburu cited to us, does state that a motor vehicle Assessor's report would provide acceptable evidence to prove the value of material damage to a motor vehicle. This Court differently constituted there said, as is material, as follows:"He said he had not at all repaired the vehicle as he could not afford it. This seems far-fetched. If he was earning as he said shs.5000/= to shs.9000/= a day he could easily have repaired the vehicle and put it back on the road. The best evidence in this respect could have been supplied by an automobile assessor."*

12. Further in, **Kimatu Mbuvi TIA Kimatu Mbuvi & Bros -v\_ Augustine Munyao Kioko, Civil Appeal No 203 of 2001(2007)** the Court opined,

*“We find this latter submission by Mr. Masika rather disconcerting since the suggestion appears to be that doctors would consciously sacrifice their professional integrity and honour at the altar of monetary benefit! Like other sciences, medicine is not an exact science and that is why expert medical opinion is no different from other expert opinions. We have stated before, and it bears repeating, that such opinions are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified. But a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so.”*

While these principles were not made during the interviewing of sureties, the principles are directly relevant since they speak to the qualifications and competency of the person who authors an expert’s valuation report.

Based on the foregoing, in the court’s considered view, a practising valuer may conduct valuation of either movable or immovable property based on his qualifications but the moment a valuer undertakes a specialization in one line, he may only conduct a valuation limited to that line.

This is best exemplified by the authority of **PATRICK WAMBUGU GITAHU T/A WAMBUGU GARAGE v KENYA POWER & LIGHTING CO. LTD [2010] KEHC 3260 (KLR) (W. OUKO J. as he then was but now SCJ)** where the learned Judge held the view that it was not desirable for a valuer who specialized in motor vehicle assessment only to also undertake an assessment of the value of a building. The learned Judge held as follows:

*“The term “Art” is defined in Black Law Dictionary to mean, inter alia, an occupation or business that requires skills.*

*Looking at the report presented in this trial by Paramount Assessors, and without losing sight of the standard of proof in civil cases, the evidence is far below the threshold of balance of probability.*

*The report is a mere compilation of six pages comprising photographs and a three-page list. It is signed by C. Wasike as Principal Assessor. There is no mention of his qualification, skills and experience in the sphere in question.*

*There is no description of the methodology used in arriving at the value of the burnt goods. It was the evidence of the witness from Paramount Assessors, which evidence was corroborated by the plaintiff that the list was supplied by the plaintiff from the bank of his memory; that the value was obtained from dealers in the spare parts in question and in respect of the motor vehicles, from the owners.*

*There was no evidence of the dealers who supplied the value or even in respect of which items. None of the owners of the destroyed motor vehicles were called to confirm the value of the vehicles and how that value was arrived at. What is also curious is the fact that despite their field of expertise, Paramount Assessors also conducted a valuation of the buildings that were destroyed. It should be clear from what I have stated so far that the basis of the plaintiff's claim is weak and does not meet the requirement of strict proof of special damages. Judged by the standards enunciated in the **Mutonyi Vs. Republic**, (supra) the assessor's evidence was most unsatisfactory." (underlining mine).*

Consequent upon the holding in *PATRICK WAMBUGU (supra)*, this Honourable Court takes the view that a registered valuer whether specialized or not may carry out valuations of movable or immovable property in accordance with his academic qualifications (certificate, diploma, degree or masters) and professionally acquired skills but the

moment the valuer takes one line of specialization, for instance to specialize only in movable properties he may not carry out valuations for immovable properties and vice versa if he does not possess the necessary qualifications. It is possible that a valuer may be an expert in the valuation of both movable and immovable properties but for this to be ascertained, the expert must state his precise qualifications as enabling him to value both movable or immovable properties.

**That being so, the court now turns to the qualifications of Mr. Nicholas Mbugua. From the material in court, the court is satisfied that Mr. Mbugua is a duly Registered Valuer No. 662 as per the Valuers Registration Board website and gazette notice number.**

Against his name, the qualifications indicated are a Bachelors of Arts degree in Land Economics (HONS), M.I.S.K. In the letterhead he had identified himself as involved in *Valuation & Land Consultant, Managing and Estate Agent, E.I.A. Consultant & Project Managers.*

From this, it is not clear whether this qualification extends to movables or is limited to immovables only and this distinction is important because section 2 of the Valuers Act uses “or” to set out the scope of valuations. The best rule to interpret this use of “or” would be a plain reading of the section as **explained in COUNCIL OF COUNTY GOVERNORS V ATTORNEY GENERAL & ANOTHER [2017] KEHC 6395 (KLR) (J.M. MATIVO J. ( as he then was) & E.C. Mwita J.)** in the following words:

***“Principles of statutory interpretation***

*This court has been called upon to determine the Constitutionality or otherwise of section 10 of The Election Laws (Amendment) Act 2017 [Act No. 1 of 2017] and as a basis for so doing I wish to state some crucial guiding principles. First, statutory interpretation is the process by which courts interpret and apply legislation. The court interprets how legislation*

*should apply in a particular case as no legislation unambiguously and specifically addresses all matters. Legislation may contain uncertainties for a variety of reasons such as:-*

- a. Words are imperfect symbols to communicate intent. They can be ambiguous and change in meaning over time.*
- b. Unforeseen situations are inevitable, and new technologies and cultures make application of existing laws difficult.*
- c. Uncertainties may be added to the statute in the course of enactment, such as the need to compromise or catering for certain groups.*

*Therefore, a court must try to determine how a statute should be enforced, but I am alive to the fact that in constructing a statute, the court can make sweeping changes in the operation of the law so this judicial power should be exercised carefully.*

*There are numerous rules of interpreting a statute, but in my view and without demeaning the others, the most important rule is the rule dealing with the statutes plain language. The starting point of interpreting a statute is the language itself. In the absence of an expressed legislative intention to the contrary, the language must ordinarily be taken as conclusive. In any event, one possible suggestion of the indeterminacy of canons is that statutory construction should be a narrow pursuit, not a broader one:-*

*"Canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon*

*is also the last: “judicial inquiry is complete see **Connecticut Nat’l Bank v. Germain, 503 U.S. 249, 253-54 (1992)***

*Thus, when the language is clear, then it is not necessary to belabour examining other rules of statutory interpretation. The Supreme court of India in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others [ {1987} 1 SCC 424] observed that:-*

*“Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual.”*

*A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim noscitur a sociis (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory provision. [see **K. Bhagirathi G. Shenoy and others v. K.P. Ballakuraya and another {1999} 4 SCC 135**]*

*In addition to being guided by rules of statutory interpretation, one key function of the court in interpreting a statute is the creation of certainty in law. Certainty in law enables planning of human affairs in reliance on the law, and the realization of expectations based on such planning. It makes for uniformity in the administration of justice, and prevents the unbridled discretion of the judiciary. It makes available the tested legal experience of the past.*

**From the natural and literal meaning of the use of “or” in section of the Valuers Act, the court interprets the same as a disjunctive “or”. If had used “and” then the same would be a conjunction.**

**Similarly, if it had used “both” the plain meaning would be conjunctive.**

The question that follows is whether as a land economist he is qualified to assess movable properties such as motor vehicles as he has done in the present application. It is possible that he is qualified for both but the court cannot tell the scope of his qualifications at this point. As already found from the authorities of *Patrick Wambugu (supra)*, *Caltex Oil (supra)* and *Linus Msaky (supra)*, unless either specially qualified to assess movable properties or additionally qualified to assess both movables and immovables, a valuer for immovable property may not conduct a valuation for movable property and vice versa.

Since it is not clear from the valuation report if Mr. Mbugua’s general competence on valuation is limited to movables or immovables or he is possessed of both the qualifications for valuation of movables and immovables, and noting that the proposed surety has already spent fees to obtain the said report, **the court exercises its discretion under section 77(3) of the Evidence Act to summon the said expert to be interviewed in court** either virtually or physically as the circumstances will permit as soon as is practicable. The said section 77 states that:

**77. Reports by Government analysts and geologists.**

**(1) In criminal proceedings any document purporting to be a report under the hand of a Government analyst, medical practitioner or of any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence. (underlining mine)**

**(2) The court may presume that the signature to any such document is genuine and that the person signing it held the office and qualifications which he professed to hold at the time when he signed it.**

**(3) When any report is so used the court may, if it thinks fit, summon the analyst, ballistics expert, document examiner, medical practitioner, or geologist, as the case may be, and examine him as to the subject matter thereof. (Underlining mine)**

The final decision shall then be made based on the outcome of the interview of the summoned expert.

**DATED, READ AND SIGNED AT MARALAL LAW COURTS THIS 12TH DAY OF NOVEMBER, 2025**

**HON.T.A. SITATI  
SENIOR PRINCIPAL MAGISTRATE  
MARALAL**

**PRESENT**

**PROPOSED SURETY GALGALO**

**MR. JARSO ADVOCATE FOR THE SURETY**

**MR. EYSIMKELE PROSECUTOR**

**MR. LEMUYA COURT ASSISTANT**