

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E220 OF 2022

CHARLES OMBATI NYAKUNDI.....1ST
APPELLANT
HARRISSON KAMAU KURIA.....2ND
APPELLANT
ELIZABETH KAMAU.....3RD APPELLANT

VERSUS

MUSYOKA MWANZA..... 1ST RESPONDENT
JOHN MBIJIWE
t/a BEALINE AUCTIONEERS..... 2ND RESPONDENT

**(Appeal from the judgement and decree, of Hon. GO Odhiambo,
Adjudicator, of 9th March, 2022, in Milimani SCC No. E975 of 2021)**

JUDGEMENT

1. The claim, at the trial court, was by the respondent, against the appellants, for compensation, with respect to loss and damage suffered consequent to a road traffic accident. The claim was resisted by the appellants.
2. I have not seen the original trial court record, although I have seen a judgement, dated 9th March 2022. However, there is no copy of the proceedings that were conducted by the trial court, in the record of appeal, hence I cannot figure out the kind of proceedings that were conducted, leading up to that judgement. Nevertheless, the trial court found in favour of the respondent, and awarded damages.
3. The appellants were aggrieved, hence the appeal herein. The grounds revolve around the wrong principles on assessment of damages being applied; the general damages awarded being inordinately high; and failure to evaluate evidence and exhibits.
4. It is not clear when directions were taken, for canvassing of the appeal, by way of written submissions, but I do see a copy of written submissions, filed by the 1st respondent.
5. Section 34(1) of the Small Claims Court Act, Cap 10A, Laws of Kenya, grants, to the Small Claims Court, a limited jurisdiction of 60 days, from the date of the filing of the claim. That would mean that a

determination, outside the 60 days, would be without jurisdiction, and a nullity.

6. The suit herein was filed sometime in 2021. Judgment was rendered on 9th March 2022. That of itself would be proof that it was done outside the 60 days. I see a decree, dated 9th March 2022, which calculates interest, on general damages, from 20th December 2021. I suppose that was the date of the filing of the claim. 60 days, from 20th December 2021, lapsed on 20th February 2022. That was when jurisdiction expired. A determination of 9th March 2022 was clearly outside jurisdiction, and was a nullity.
7. Although the jurisdiction of the Small Claims Court had expired by 9th March 2022, when judgement was delivered, the suit was still valid, for it had been filed within limitation period, the accident, the subject of the suit, having happened on 12th October 2021. Other courts, such as the Magistrate's Court and the High Court, would still have jurisdiction to do justice to the parties.
8. Consequently, I do hereby set aside the judgement of 9th March 2022, being the nullity that it is, and direct that the suit, in Milimani SCCC No. E975 of 2021, be transferred to the Magistrate's Court, at the Milimani Commercial Courts, for fresh hearing and determination. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA, ON THIS 26TH DAY OF NOVEMBER 2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Bosire, instructed by Kimondo Gachoka & Company, Advocates for the appellant.

Ms. Mungania, instructed by Rwito Imbaya & Company, Advocates for the respondents.