



**Moja Expressway Company Limited v Dreamstorm Investments Limited & another (Civil Appeal E309 of 2024) [2025] KEHC 17707 (KLR) (Civ) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E309 OF 2024**

**WM MUSYOKA, J**

**NOVEMBER 27, 2025**

**BETWEEN**

**MOJA EXPRESSWAY COMPANY LIMITED ..... APPELLANT**

**AND**

**DREAMSTORM INVESTMENTS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ZACHARY KIBICHO ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the judgement and decree, of Hon. CA Okumu, Adjudicator,  
of 2nd February 2022, in Milimani SCCC No. E3206 of 2023)*

**JUDGMENT**

1. The suit, at the trial court, was by the appellant, against the respondents, for recovery of Kshs. 218,760.80, for damage to property. I have not seen filings by the respondents; hence I cannot tell whether or not the cause was resisted. A formal oral hearing was conducted. The appellant presented 2 witnesses. The respondents did not present any. Judgement was delivered on 2<sup>nd</sup> February 2024, where an award of Kshs. 550.00 was made, in favour of the appellant.
2. The appellant was aggrieved hence the instant appeal. It is argued that the appellant had proved special damages, and the testimony of a key witness was disregarded.
3. Directions were taken, on 2<sup>nd</sup> May 2025, for disposal by way of written submissions. I have seen written submissions by both sides.
4. The claim was brought under the provisions of the *Small Claims Court Act*, Cap 10A, Laws of Kenya. Under section 34(1) of that Act, the Adjudicator has 60 days, from the date of the filing of the claim, to hear and determine the matter. That would mean that any determination made after expiry of the 60 days, would be without jurisdiction, and, therefore, a nullity.



5. The cause, at the trial court, was initiated on 13<sup>th</sup> July 2023. The 60 days expired on 13<sup>th</sup> September 2023. The Judgment was rendered on 2<sup>nd</sup> February 2024, which was well outside the 60-day limitation, hence it was a nullity. The appeal herein challenges that judgement on its merits. A null Judgment cannot find basis for a valid appeal on merits. There is, therefore, no valid appeal before me.
6. The claim, at the trial court, was founded on the tort of negligence. Under section 4(2) of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, a claim founded on tort ought to be filed within 3 years. The cause of action arose on 7<sup>th</sup> July 2022. The claim was filed on 13<sup>th</sup> July 2023; hence it was within the appropriate limitation period. The lapse of the jurisdiction of the Adjudicator, under section 34(1) of the *Small Claims Court Act*, ought not affect the viability and validity of the claim. It would still be available for determination by any other court with jurisdiction, such as the High Court and the Magistrate Court.
7. Since the monetary value of the claim is within the pecuniary jurisdiction of the Magistrate Court, it would be most prudent to have the claim placed before that court, for fresh hearing and determination.
8. Consequently, in exercise of the supervisory jurisdiction, conferred on the High Court, by Article 165(6)(7) of *the Constitution*, I do hereby order, under section 18 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, that the claim, in Milimani SCCC/E206/2023, be transferred to the Magistrate Court, at the Milimani Commercial Courts, for fresh hearing and disposal.
9. To facilitate the fresh hearing, I hereby declare that the proceedings of the Small Claims Court a nullity, and I hereby vacate the impugned judgement, of that court, delivered on 2<sup>nd</sup> February 2024.
10. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

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

Advocates

Mr. Masila, instructed by SINA Law, Advocates for the appellant.

Ms. Onyango, instructed by Owiti Otieno & Ragot, Advocates for the respondents.

