

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E009 OF 2025

CFAO MOTORS KENYA LIMITED

formerly TOYOTA KENYA LIMITED.....
....APPELLANT

-VERSUS-

MUTAHI ENGINEERING SERVICES LIMITED.....RESPONDENT

(Being an appeal from judgment and decree of the Small Claims Court at Thika (Hon. M.W. Kamau) in claim number E171 of 2024 dated 19th December 2024)

JUDGMENT

This is an appeal from the small claims court at Thika which seeks to set aside the court's decree in its claim number E171 of 2024. The claim emanated from an accident which allegedly occurred on 12-02-2021 involving the appellant's motor vehicle registration number KDB 258S and the respondent's motor vehicle registration number KCV 532Z.

With proposal from the parties, the matter proceed under Section 30 of the Small Claims Court Act which allows matters to proceed by way of documents and statements already filed without calling witnesses. After going through the evidence filed and the parties' submissions, the trial court dismissed the claim with costs holding that the respondent's documents including photographs were in tandem with the statement of its witness that there was no collision between the two vehicles.

The appellant has in its memorandum of appeal dated 16-01-2025 raised the following grounds;

1. THAT the Honourable Adjudicator erred in law and in fact in finding that the respondent was not liable for the subject accident.
2. THAT the Honourable Adjudicator erred in law by completely ignoring the appellant's submissions, binding authorities and filed documents relied upon by the appellant despite the hearing of the case proceeding by way of documents under Section 30 of the Small Claims Courts Act and, therefore, arriving at a decision on liability that ignored the irrefutable evidence, law and facts prevailing.
3. THAT the Honourable Adjudicator failed to exercise her judicial powers and discretion judiciously and failed to consider all relevant facts.
4. THAT the Honourable Adjudicator erred in fact and in law in awarding costs of the suit to the respondent.

The appeal was disposed of by way of written submissions. The appellant filed its submissions dated 9-07-2025 while the respondent filed its dated 14-08-2025. I have carefully read the parties' submissions and the record of appeal including the judgement of the trial court. The basis of the claim was that the respondent's motor vehicle hit the appellant's motor vehicle from behind which in turn hit another vehicle from its front leading to the damage on the appellant's motor vehicle's front. It is clear to me that in its analysis of the evidence, the trial court found as a

matter of fact that the respondent's motor vehicle did not hit the appellant's motor vehicle.

The respondent has raised issue with this court's jurisdiction to entertain this appeal in light of the provisions of Section 38(1) of the Small Claims Court which states as follows;

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

As I have stated above, the trial court's finding was factual on whether the two vehicles collided. It is trite that where a statute limits an appeal to matters of law only, the appellate court would not possess the requisite jurisdiction to hear appeal on matters of law. To determine whether the issues raised on appeal are matters of law or fact, the court must go beyond the language or words used in the memorandum of appeal and do its own analysis of what is disputed.

A matter of facts is concerned with finding the truth of what is pleaded while a matter of law is that which is concerned with application of the law into the factual circumstances of the case. In the circumstances where the law limits appellate jurisdiction to matters of law only, the appellate court should not revisit the factual findings of the trial court unless the decision of the trial court is so perverse or unreasonable that a tribunal or court well guided cannot reach such a decision or the trial court considered matters it should not have considered or it failed to consider matters that it should have considered. In ***Mwita v Woodventure (K) Limited & another (2022) KECA 628 (KLR)***, it was held that;

'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.'

In my analysis, the only issue of law raised in the memorandum of appeal is the second ground which blames the Adjudicator for ignoring its evidence and submissions. If indeed the court ignored evidence of any of the parties, that would be a matter of law as a court is under legal obligation to analyse and apply the evidence as adduced. That is different from the court making an error of judgment.

I have looked at the judgement of the court and in my view, the court considered the evidence including citing the statements of the parties and the documents produced in evidence. In its submissions, the appellant has pointed out the court ignored the police abstract which shows that the respondent's motor vehicle was to be blamed. The court did consider the abstract in its judgment and made clear reference to it.

The fact that the court did not agree with the contents of the police abstract does not mean that it ignored the same. It was one of the matters of facts it considered alongside others. It was not the only document for consideration. The court considered it together with the statements of the witnesses and the photographs of both vehicles and the areas of damage. Finding of the police or the contents of the police abstract is not binding on the court and the court is entitled to put into consideration all the other pieces of evidence before it. Whether or not the trial

court was right in its analysis would be a matter of fact which this court has no jurisdiction to interfere with.

It would appear that this matter was not appropriate for hearing under Section 30 of the Small Claims Court Act. In my view, that Section is suitable for matters which do not need any clarifications or tests through cross-examination of witnesses especially where the statements of the parties give different versions of sequence of events leading to the cause of action. The way the parties have submitted would amount to court receiving contradicting evidence from the bar. It is the appellant who made the proposal for the court to proceed under Section 30 and the respondent concurred. They cannot turn around and attempt to convince the court with submissions which tend to adduce evidence.

In view of the above, it is my finding that this appeal is lacking in merits and the same is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this **11th** day of **December** 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Ndurumo for the plaintiff and Miss Keiro for the defendant.