



REPUBLIC OF KENYA



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**Lumbasi v Wekesa (Civil Appeal E068 of 2024)
[2025] KEHC 18242 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E068 OF 2024
PJO OTIENO, J
DECEMBER 3, 2025**

BETWEEN

BILL JUMA LUMBASI APPELLANT

AND

PHANICE NELIMA WEKESA RESPONDENT

(Being an Appeal from the Judgment of the Small Claims Court of Kenya at Kitale by Hon. Magwi Wilkister Ghati delivered on 31st October 2023 in Kitale Small Claims Court SCCC No. E068 of 2024)

JUDGMENT

Background

1. The genesis of the Appeal follows a claim by the Respondent against the Appellant in SCCC No. E041 of 2024 in which the Respondent claimed liquidated claim of Kshs. 903,198/=, being repair costs arising from a road traffic accident involving motor vehicle registration number KCU 740S owned by the Respondent and KDA 793W driven by the Appellant. The Claimant's action was initiated under the doctrine of subrogation, seeking to recover costs incurred by her insurer, CIC General Insurance Limited, for the repair and restoration of the damaged motor vehicle.
2. The Appellants denied liability vide their Statement of Defence and the matter proceeded to full trial with the Respondent calling five witnesses while the Appellants relied on the testimony of sole witness and the then driver of the motor vehicle.
3. CW1, the driver of KCU 740S testified that the Appellant's motor vehicle KDA 793W was being driven at speed in the Claimant's Lane, forcing him to swerve and consequently hit a third lorry. CW2 produced the Police Abstract, CExhibit2, which indicated that the Appellant admitted to have lost control while driving and hit the Claimant's vehicle. CW2 conceded that he was not present at the accident scene and relied solely on the police report.



4. CW4, the insurer Legal Officer adopted his statement and produced numerous documents, including reports, fee notes, invoices, and file credit notes, CExhibit 15(a-e), demonstrating the indemnity process. During cross-examination, the witness admitted that while credit notes had been filed, primary evidence of financial disbursement, such as payment vouchers, cheques, RTGS, or a statement of account, were not produced to confirm actual payment. The Claimant and CW5 adopted her statement, confirmed she was not present at the accident, and admitted that the motor vehicle logbook was in another person's name. The Claimant's case was that the Appellant's negligence caused the loss, and the loss was quantified at Kshs. 903,198/=, comprising repair costs, assessment fees, towing charges, and tracing fees.
5. In his defence, the Appellant testifying as DW1, denied being negligent. He asserted that he was travelling in his correct lane when the Respondent's lorry suddenly appeared in his path, thereby causing the accident. He squarely placed the blame for the collision on the driver of KCU 740S.
6. The trial court having considered the evidence tendered before it found the Appellant 100% liable for the accident. In its judgement delivered on 31st October 2024; the court awarded the Respondent the full sum claimed of Kshs. 903,198/= plus costs and interest.
7. Being dissatisfied with this outcome, the Appellant lodged this appeal by the Memorandum of Appeal dated 31/10/2024. The Memorandum sets out four grounds upon which the appeal is premised and which are, THAT:
 - a. The Learned Magistrate/Adjudicator erred in fact and in law by admitting an unsigned statement of claim.
 - b. The learned Magistrate/Adjudicator erred in Law by misapplying Section 23 (1), (5) and (6) of the [Small Claims Court Act](#), CAP 10A Laws of Kenya.
 - c. The Honourable Learned Magistrate/Adjudicator erred in law by admitting evidence of credit notes as proof of payment which was the basis of the Claimant's case on special damages.
 - d. The Honourable Magistrate/Adjudicator erred in law and in fact by failing to take into account submissions of the Counsel for the Respondent and authorities relied upon by the Respondent.
8. The court gave directions that the appeal be canvassed by way of written submission. From the records, it is evident that both parties complied with such direction with the Appellant filing their submissions on 28/8/2025 while the Respondent on 3/9/2025.

Summary of the Appellant's Submissions

9. The Appellant, through their counsel asserted that the appeal should be allowed, and the claim dismissed for fundamental legal errors. On procedural competence the Appellant argued that Sections 23(1), (5), and (6) of the [Small Claims Court Act](#) constitute a substantive statutory requirement going to the root of jurisdiction, not a mere procedural formality. That failure to comply with the mandatory requirement for the claimant's signature or authentication, as demanded by S. 23(1), coupled with the failure to utilize the curative process in S. 23(5), triggers the categorical sanction in S. 23(6): the claim is deemed abandoned. Reference was made to the Supreme Court case of *Moses Mwigigi & 14 Others v IEBC & 5 Others* eKLR, affirming that compliance with signature requirements is a matter of law.
10. On proof of special damages, the Appellant submitted that special damages must be strictly proved, citing *Hahn v Singh*. A credit note, being merely an internal accounting document acknowledging a transaction, does not constitute proof of actual payment. That the trial court erred by treating



these notes as conclusive proof of expenditure, particularly given the absence of receipts or payment vouchers.

11. On due process, the Appellant contended that the Adjudicator erred by failing to take into account the submissions and authorities relied upon by the defence, amounting to a denial of the right to a fair hearing under Article 50(1) of *the Constitution*.

Summary of the Respondent's Submissions

12. In response the Respondent in their submissions urged the Court to dismiss the appeal and uphold the judgment. On procedural competence, the Respondent argued that the pleadings were properly on record, having been executed and dated by the Claimant's advocate in compliance with Order 2 Rule 16 of the Civil Procedure Rules, which allows an advocate to sign pleadings. Citing the Court of Appeal in *Atulkumar Maganlal Shah vs. Investment & Mortgages Bank Limited & 2 Others* 1 EA 274, the Respondent argued that the signature serves as a voucher for ownership and responsibility for the claim contents, which the advocate's signature fulfils.
13. On proof of special damages, the Respondent conceded that special damages must be strictly proved. However, they contended that the filed credit notes served as cogent evidence that the expenditure was settled by the insurer, CIC General Insurance Limited, pursuant to the doctrine of indemnity. The Respondent heavily relied on the principle enunciated in *Nkuene Dairy Farmer Co-operative Society Ltd Versus Ngacha Ndeiya* 2010, which dictates that for material damage claims, the claimant needs only to show the extent and cost of restoration, not necessarily that the costs were actually incurred. They also cited *Machiri Limited v JB Legacy Enterprises Limited* (2024), where a court relied on credit notes alongside invoices and delivery notes to prove a liquidated claim.

Issues, Analysis and Determination

14. Following a complete review of the grounds of appeal in the Memorandum of Appeal, the record of proceedings at trial and the parties' submissions, the Court isolates the issues for determination to be; whether the Statement of Claim, signed only by the Claimant's advocate, was rendered incompetent and deemed abandoned under the specific mandatory provisions of Section 23(1), (5), and (6) of the *Small Claims Court Act*, whether the Adjudicator erred in law by admitting credit notes as strict proof of special damages in a subrogation recovery claim, thereby fulfilling the burden of strict proof, and, whether the Adjudicator erred in fact and law in finding the Appellant 100% liable for the accident.

Analysis and Determination

Whether the Statement of Claim, signed only by the Claimant's advocate, was rendered incompetent and deemed abandoned under the specific mandatory provisions of Section 23(1), (5), and (6) of the *Small Claims Court Act*?

15. The determination of this issue rests on the question whether the *Small Claims Court Act*, being a specialized statute, overrides the general principles of the Civil Procedure Rules regarding the signing of pleadings, forms the crux of this appeal.
16. Section 23 of the *Small Claims Court Act*, No. 2 of 2016, specifically governs the commencement of claims. Section 23(1) requires the claim to be signed or authenticated by the claimant or an authorized representative. It is the law that he who acts by an advocate, acts by himself. The court views it as an absurdity that a party acting by an advocate would be required to personally sign the statement of claim. The absurdity would be more prominent where the claimant is a corporate and is expected that an officer of the corporate would present self before the adjudicator only for purposes of being



approved. The court therefore finds that the adjudicator was apt in her exposition of the law when he found that signature by an advocate was adequate for purposes of authentication.

17. In any event Section 23(5) provides a specific curative mechanism to be that where a claim lacks authentication, the Adjudicator shall require the claimant to sign the statement before the commencement of the hearing and determination. The subsequent provision, Section 23(6), is a categorical sanction that failure to comply with S. 23(5) shall result in the claimant's name being struck out and the claim deemed abandoned.
18. The law gives to the adjudicator the duty and obligation to ensure that the pleadings are authenticated yet the record of the trial court does not reflect that the Adjudicator invoked the provision before proceeding to hear the merits. If that provision was to be read strictly then failure in compliance would be that of the court not to be blamed upon the litigant. In this matter the adjudicator found that the advocate's signature inherently met the statutory definition of an authorised representative and the court finds no error in such finding.
19. That ground fails and is dismissed.

Whether the Adjudicator erred in law by admitting credit notes as strict proof of special damages in a subrogated recovery claim, thereby fulfilling the burden of strict proof?

20. The Appellant contended that the special damages award of Kshs. 903,198/= was improperly granted because the basis of proof being the credit notes did not meet the standard of strict proof.
21. It is trite law that special damages must be specifically pleaded and strictly proved as was reiterated by the Court of Appeal in *David Bagine v Martin Bundi* [1997] eKLR when the court stated: -

“It has been held time and again by this Court that special damages must be pleaded and strictly proved. We refer to the remarks by this Court in the case of *Mariam Maghema Ali v Jackson M. Nyambu t/a Sisera store*, Civil Appeal No. 5 of 1990 (unreported) and *Idi Ayub Sahbani v City Council of Nairobi* [1982-88] IKAR 681 at page 684: "...special damages in addition to being pleaded, must be strictly proved ...”

22. In the circumstances, the Adjudicator relied on the principle established in *Nkuene Dairy Farmer Co-operative Society Ltd -vs- Ngacha Ndeiya*, and held that for material damage claims, a claimant only needs to demonstrate the cost required to restore the damaged item, not necessarily that the costs were already incurred. The court is of the learning that strict proof of special damages is never limited to production of receipts. It is enough that the trial court is satisfied that the expense had been incurred. Here the master of the facts was satisfied that the expense had been incurred and on appeal it takes a very strong case for interference with such a finding.

Whether the Adjudicator erred in fact and law in finding the Appellant 100% liable for the accident?

23. The claim having been based on the tort of negligence all the respondent was obligated to do was to establish on a balance of probabilities, that it was the appellants wrongdoing that occasioned the accident.
24. In this matter, the only eye witnesses were the two drivers who gave rival versions on how the accident occurred. That evidence was given before the adjudicator who enjoyed the benefit of seeing and hearing the witnesses testify a benefit this court lacks.
25. In any event, an appeal from the adjudicator's decision to this court is limited to questions of law only. It has not been alleged that the finding by the trial court was a perversion of the evidence led. For the



reason that the court on appeal must defer to the master of the facts and the law that this appeal must be limited to questions of law only, the court finds that to delve into analysis of the evidence would exceed the mandate of the court. Even that ground fails and is dismissed.

26. In upshot, the court finds the instant appeal is bereft of any merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF DECEMBER, 2025.

PATRICK J O OTIENO

JUDGE

In the presence of:

No appearance for parties.

Court Assistant - Hannah

