

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE DIVISION
CIVIL APPEAL NO. E511 OF 2024

JAMES MACHOKI M'IMUNYA
APPELLANT

VERSUS

BERNARD NYANDEGE ABUYA
RESPONDENT

(BEING AN APPEAL FROM THE JUDGEMENT AND DECREE
OF THE SMALL CLAIMS COURT AT NAIROBI
DELEIVERED BY HONORABLE J.W NASIMIYU-
ADJUDICATOR ON THE 25th MARCH 2024 IN SCCC No
5786 OF 2023AT NAIROBI)

BETWEEN

JAMES MACHOKI M'IMUNYA.....CLAIMANT

VERSUS

BENARD

NYANDEGE.....

.....DEFENDANT

J U D G M E N T

A. INTRODUCTION

- 1.** The Appellant filed a suit before the smalls claim court against the respondent seeking compensation to the tune of **Kshs.264,831.00/=** being outlay spent to repair his motor vehicle registration No **KAN 871R MISTUBISHI PAJERO (hereinafter referred to as the 1st suit Motor Vehicle)**, which had been involved in a road traffic accident, with the respondents motor vehicle registration No **KBK 693C TOYOTA HARRIER (hereinafter referred to as the 2nd suit Motor Vehicle)** on 9th November 2020 along Harambee Avenue-Nairobi.
- 2.** In response, the respondent denied all the averments made in the statement of claim and pleaded in the alternative that if indeed an accident did occur as alleged, it was solely caused and/or substantially contributed to by the

Appellant and/or his authorized driver, who managed and controlled the 1st suit motor vehicle in a reckless and negligent manner, resulting in the aforesaid accident. He further stated that the doctrine of vicarious liability was inapplicable and also that the Appellant was not entitled to the special damages pleaded thus put him to strict proof thereof.

3. When the suit came up for hearing before the trial Magistrate, the parties consented to have the matter proceed under **Section 30 of the Small claims Act**. The party's documents were adopted and produced as evidence and they proceeded to file their submissions.
4. The trial Magistrate in her considered judgment, did suo moto raise a preliminary issue on time limitation, which she dealt with first as it touched on jurisdiction and held that the suit had been filed (one day) late and thus was statutorily time barred. she thus could not delve into the merits of the said case and proceed to struck it out on the basis that was statute barred. Each party was ordered to bear their own costs.

5. The Appellants, being dissatisfied with the said Judgement, raised three (3) grounds of appeal, namely: -

a) That the learned adjudicator erred in law and in fact in dismissing the Appellant's case.

b) That the learned Adjudicator erred in law and in fact in reaching a conclusion that was contrary to the evidence placed before her and therefore finding that the Appellant's case was statutorily time barred.

c) That the learned adjudicator erred in law and in fact by basing her decision on extraneous considerations and factors.

6. The Appellant thus prayed that the appeal be allowed and the judgment of the trial court be set aside and his claim be allowed as pleaded in his statement of claim.

B. ANALYSIS AND DETERMINATION

7. I have considered the entire record of Appeal and pleadings filed, the grounds of appeal raised, the submissions filed by both parties, and the cited authorities. This being an appeal from the Small

Claims Court, it is important to point out that **Section 38 of the Small Claims Court Act** provides that appeals from the said court shall be only on issues of law. It provides thus:

Section 38

1.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.

2. An appeal from any decision or order referred to in subsection (1) shall be final.”

8. It is clear from the aforementioned provision that the jurisdiction of this Court from the Small Claims Court will only lie on matters of law and not on factual issues. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts.

9. In **John Munuve Mati Vr The returning officer, Mwingi North Constituency & 2 others (2018) eKLR**, what amounts to ***“matters of law”*** was described as;

(38) The interpretation or construction of the constitution, statute, or regulations made thereunder or their application to the sets of facts established by the trial court. As far as facts are concerned, our engagement with them is limited to background and context, and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into consideration of the credibility of witnesses or which witnesses are more believable than others; by law, that is the province of the trial court.

- 10.** This Appeal is centered on the question of interpreting **Section 4(2) of the limitation of Actions Act**, which provided that a claim founded on tort must be filed within three (3) years from the date the cause of Action arose. The accident in this matter occurred on 9th November 2020, and the Appellant filed the primary suit on 9th November

2023. After considering the said provision of law, the trial court held that the suit was filed one day late and thus was statutorily time barred. The Appellant has faulted this finding as the trial magistrate had literally computed three calendar years, without considering **Section 57(a) of the Interpretation and General Provisions Act, Cap 2 Laws of Kenya**, which provided guidelines as to how time is to be computed.

- 11. The Interpretation and General Provisions Act, Cap 2, specifically Section 57** provides for the computation of time for the purpose of any written law. This section provides as follows:

“In computing time for the purposes of a written law, unless the contrary intention appears -

(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) If the last day of the period is Sunday or a public holiday or all official non-working days, (which days are in this section referred to as excluded days), the

period shall include the next following day, not being an excluded day;

(c) Where an act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) Where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

12. Similarly ***Order 50 Rule 8 of the Civil Procedure Rules, 2010*** also provide that;

“Where by these rules or by any judgement or order given or made by the court, time for doing any act or taking any proceedings is limited by days, the same shall be reckoned exclusive of the first day and inclusive of the last day.”

13. It is obvious that the trial Magistrate failed to consider, the above parameters of law in her

judgement and arrived at the wrong determination by including the first day, when the cause of action arose, instead of excluding the same, and thus arrived at a wrong legal conclusion, that the suit filed was statutorily time barred, when it was not.

C. DISPOSITION

- 14.** The Judgment/decreed issued in **NAIROBI SCCC E5786 OF 2023** dated 25th March 2024 is hereby set aside in its entirety and the suit will be heard afresh by a different Magistrate/ Adjudicator.
- 15.** Each party will bear their own costs of this Appeal as the issue appealed against was raised and determined suo moto by the trial Court.
- 16.** It is so ordered.

Dated, signed, and delivered in open court at **MARSABIT** this **16th** day of **JANUARY, 2026.**

FRANCIS RAYOLA OLEL
JUDGE

Delivered on the virtual platform, Team this **16th** day of **JANUARY, 2026.**

In the presence of: -

N/AAppellant

N/A Respondent

Mr. JarsoCourt Assistant

ORIGINAL