

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILLIMANI LAW COURTS
CIVIL APPEAL NO. E633 OF 2024

ROBERT ODHIAMBO ODENY.....
APPELLANT

VERSUS

ALBERT AMOS OKUMU.....
RESPONDENT

(BEING AN APPEAL FROM THE JUDGMENT/DECREE OF HON
D.S ASWANI (RM-ADJUDICATOR) DELIVERED ON 27th APRIL
2023 IN NAIROBI MILLIMANI SCCC NO E1699 OF 2022)

BETWEEN

ALBERT AMOS OKUMU...
.....PLAINTIFF

VERSUS

**ROBERT
DEFENDANT**

ODHIAMBO

ODENY.....

J U D G M E N T

A. Introduction

- 1.** This Appeal arises from the judgment of **Hon D.S Aswani Resident Magistrate/Adjudicator** who awarded the respondent a sum of **Kshs.250,050.00/=** being special damages being costs of repairing his car **KAW 385Q Toyota Estima** (hereinafter referred to as the suit motor vehicle) in order to return it to its original mechanical state. The respondent was also awarded the costs of the suit.
- 2.** In his statement of claim, the respondent averred that on or about June 2016, the appellant came to his house, situated at Millimani estate, Kitengela and declared his interest in purchasing the suit motor vehicle. After discussion they did settle on a purchase price of **Kshs.350,000/=**, which the appellant promised to pay within two weeks, but failed to do so.

In October 2016 he was summoned by a police officer based at Capitol hill police station and informed that the suit motor vehicle had remained abandoned at NHIF building for about one month. He explained himself and the appellant too, was summoned and after discussions, the appellant formally agreed to repair the suit motor vehicle within one month, in order to return it back to its original state and hand it back to the respondent.

- 3.** The suit motor vehicle was then taken to a garage suggested/approved by the appellant, but he failed to pay for the costs of repair as agreed. As a result, the respondent averred that he had suffered loss and prayed to be compensated for the loss suffered estimated at **Kshs.250,050/=**, damages for breach of contract and for costs of the suit.
- 4.** In response the appellant averred that it is true that he did intend to buy the suit motor vehicle from the appellant at an agreed consideration of **Ksh.350,000/=**, but the same was subject to a test drive, which revealed several mechanical problems as enumerated in the statement of response and he eventually decided against purchasing the said motor

vehicle. It was agreed that he would return the said motor vehicle to the appellants resident, and indeed assigned a mechanic to do so, but the suit motor vehicle stalled at Total petrol station situated along Kitengela-Namanga road and on the following day had it towed back to NHIF building, where he had a designated parking slot since the appellant had refused to take possession of the said motor vehicle.

5. Later he was summoned to capital hill police station and partly as a result of police harassment agreed to repair the suit motor vehicle at a garage of his choice, but despite all efforts failed to do so due to unavailability of spare parts. The appellant thus urged the court to find that the suit filed was frivolous, scandalous and vexatious, and thus prayed that it be dismissed.
6. The trial court, heard both parties, whose evidence mirrored the pleading, considered the submissions filed and partially upheld the respondents claim by awarding him special damages of **Kshs.250,050.00/=** being costs of repairing the suit motor vehicle, but

dismissed his claim to be awarded general damages for breach of contract.

7. Being dissatisfied with the said award, the appellant filed his memorandum of Appeal dated 14th May, 2024, raising eight (8) grounds of appeal, namely: -

a) That the trial court erred in law and fact to note that there was no formal agreement between the claimant and the respondent for purchase of M/V Registration No KAW 385Q indicating conditions of sale.

b) That the trial court failed to note that the only relationship between the claimant and the respondent was that of colleagues working together in the same employment where a colleague can request for assistance/help.

c) That the trial court erred in law and fact by failing to note that there was no documentary evidence from the claimant stating the purchase price and the mode of payment by the respondent, but only relied on the witness statements of the claimant to punish the respondent/Appellant.

d) That the trial court erred in law and fact to note that the claimant used the police to coercion the respondent to admit repair

of the Motor vehicle which he had not damaged and also used the same statements that were written before the police to file the claim against the respondent/Appellant.

- e) That the trial Magistrate erred in law and fact by failing to note that the time the motor vehicle was delivered by the claimant to the respondent, it was defective and if there was purchase that was to be made, it was depended on approval by the respondent after testing the motor vehicle.**
- f) That the trial Magistrate erred in law and in fact by admitting the claimants claim based on quotation forms, which cannot stand by law and are not made by a registered motor vehicle assessor.**
- g) That the trial Magistrate failed or erred to note that the claimant was informed of the intention not to proceed to buying the motor vehicle when the said motor vehicle was driven to his residence by the driver but he refused to accept it before the two weeks elapsed.**
- h) That the trial Magistrate erred in law and fact by not considering the testimony of the respondent/Appellant but admitted the Claimant's testimony to pass the judgment**

without seeking any second opinion of a third party.

8. The Appellant thus did pray that this Appeal be allowed, the judgment of the trial court be set aside and that the primary suit be dismissed. He also sought to be awarded the costs of this Appeal.

B. Analysis and Determination

9. I have considered this appeal, the parties respective submissions filed, and the impugned judgment. I have also considered the decisions relied on and perused the trial court's record. 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.

10. 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.

11. 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.

- 12.** This Appeal turns on two issues, which is whether the Appellant was coerced and/or forced into accepting that he would repair the suit motor vehicle and secondly whether the said repair estimated were properly tabulated and proved before the trial court.
- 13.** During trial, the respondent did produce written commitment dated 25.09.2017, signed by the appellant admitting that he would repair the suit motor vehicle, ***“to the state it was when I took it from him”*** and the said repairs were to be carried out within one month of him taking possession of the suit motor vehicle. Further SMS correspondence was produced where the parties exchange information on the various mechanics who would repair the said motor vehicle, include one, “Mr Ochieng” and “Mr Njuguna”.

14. The Appellant in response avers that he was coerced and harassed by the police into accepting that he would repair the suit motor vehicle. The burden of proving undue influence or coercion, lies on the person making the allegation and he/she must show, on a balance of probabilities, that the transaction or agreement did not result from his/her own free will.

15. In **Jayantilala Lalji Gandhi & another v Mavji Ruda [1986] eKLR** the court held: -

‘Duress at common law, or what is sometimes called legal duress, means actual violence or threats to violence to the person i.e, threats calculated to produce fear of loss of life or bodily harm. The rule here is that the threat must be illegal in the sense that it must be threat to commit a crime or a tort.’

16. The Court of Appeal in **John Mburu Vs Consolidated Bank of Kenya (2018) eKLR**, stated: -

“But there is also economic duress which was discussed by this court in Kenya Commercial Bank Ltd & another Vs Samuel Kamau

Macharia & 2 Others (2008) eKLR. The court cited with approval the decision of the privy council in PAO and Others Vs Lau Yiu & another 1979 3 ALL ER 65 stating thus: -

‘Duress whatever form it takes is coercion of the will so as to vitiate consent. Their Lordships agree that in a contractual situation commercial pressure is not enough. There must be present some facts on which called in law be regarded as coercion of his will, so as to vitalize his consent..... In destemming whether there was coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did not did not protest whether at the time he was allegedly coerced into making the contract he did or he did not have an intensive course open to him. Such as an adequate legal remedy, whether he was independently advised and whether after entering the contract he took steps to avoid it.’

- 17.** As correctly pointed out by the trial Magistrate, the Appellant did not demonstrate, and/or prove that he was harassed, coerced and forced to sign the agreement acknowledging that he would repair the suit motor vehicle and to buttress this fact he did expressly acknowledged his commitment through SMS later exchanged with the respondent. This ground of Appeal therefore fails.
- 18.** On the second issue, it is often stated that, "**Equity will not suffer a wrong without a remedy**", meaning that where a person has a legal right, the law will provide a means to enforce it and a remedy for its infringement. This principle is expressed by the Latin phrase **ubi jus ibi remedium** ("where there is a right, there is a remedy"). The appellant pleaded and presented evidence from Alindi Auto Ltd, giving estimates of the costs of repairs, totaling to **Kshs.250,050.00/=**. This evidence was admitted into evidence and was not controverted in any manner by the appellant and he cannot be heard to demand proof of payment of the said costs, yet he had expressly undertaken to incur the same but failed to do so.

C. Disposition

- 19.** Having arrived at the above finding, I do find and hold that this Appeal lacks merit and the same is dismissed with half costs as both parties’ hubris and intransigence played a large part in escalating what would otherwise been a simple dispute. They both must heed to the advice given in (**Mathew 5:25**) and strive to be and do better next time .
- 20.** It is so ordered.

Dated, signed, and delivered in open court at **MARSABIT** this **15th** day of **JANAURY, 2026**.

**FRANCIS RAYOLA OLEL
JUDGE**

Delivered on the virtual platform, Team this **15th** day of **JANAUARY ,2026**.

In the presence of: -

.....Appellant

..... Respondent

..... Court

Assistant

ORIGINAL