

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. 122 OF 2023

ANTONY MUTHIANI KAMUDA
.....APPELLANT

-VERSUS-

ANDREW MUTHIANI
RESPONDENT

***(Being an Appeal from the Judgment delivered by Hon.
M. Thibaru (R.M) on 8th May 2023 in SCC Civil Suit No.
E645 of 2022 at Machakos Law Courts)***

JUDGMENT

1. This is an appeal from the judgment of the Small Claims Court (SCC) at Machakos, delivered on the 8th of May, 2023, in SCC Civil Suit No. E645 of 2022. In that judgment the trial court dismissed the Appellant's claim for damages arising from a road traffic accident. The trial court held that the claimant failed to prove the case on a balance of probability and dismissed the claim with costs to the respondents.
2. The dispute centers on a road traffic accident that occurred on 6th August 2022 along College Road, Machakos. The Appellant alleged that his motorcycle (KMDC 902Z) was carefully and lawfully being ridden along College Road when the Respondent's motor vehicle

(KDF 050F) while being driven recklessly and negligently lost control and hit the appellant's motorcycle causing an extensive damage.

3. The Respondent's defense was that the accident was caused solely by the negligence of the motorcycle rider, who allegedly made a sudden and unexpected right turn from the pavement into the path of the Respondent's vehicle.
4. Aggrieved by the judgment, the appellant lodged this appeal on four grounds namely that the learned magistrate erred in law and fact by failing to consider the entirety of the appellant's evidence and submission; erred in law and fact by only considering the evidence tendered by the respondent; erred in law and fact by holding that the Respondent was not negligent and erred in law and in fact by dismissing the suit.
5. The appeal was heard by way of submissions. The appellants set out the brief facts of the case and urged the court to exercise its appellate jurisdiction by reconsidering and reviewing the evidence a fresh and making fresh conclusion as set out in the case of **Selle vs Associated Motor Boat Co. Ltd & Others(1968)EA 123**. They set out the issue for determination as whether the learned magistrate erred in law and in fact in holding that the respondent was not negligent.
6. The appellant urged that the trial court only considered the evidence tendered by the respondent yet it was

marred by inconsistencies. He made reference to the viva voce evidence tendered and urged the court to find that the inconsistencies in the respondent's case are not mere mistakes but falsified evidence that continues to prejudice them. Numerous authorities were relied to buttress this assertion.

7. The appellant also faulted the trial court for failing to consider the admissions made by the respondent while he was testifying. They urged this court to find that the trial court erred in finding that the respondent was not negligent. On costs they urged the court to award it costs. Reference was made to the case of **Orix Oil (Kenya) Limited vs Paul Kabeu & 2 Others (2014)eKLR** where it was held that costs follow the event.
8. Thus, it was their prayer that the court set aside and quash the judgment of the trial court and to find the respondent 100 per cent liable for the accident and that judgment be entered in favour of the appellant as sought in the statement of claim.
9. The respondent in its submission also urged this court to re-evaluate the evidence and draw its conclusions on liability as well as quantum. He submitted that the appeal is purely against the finding on liability, and that the issue for determination is whether the trial's court finding on liability ought to be disturbed. They urged that the appellant utterly failed to prove that the respondent was

in any way liable for the accident. He urged the court to dismiss the appeal with costs to the respondent.

10. Having reviewed the Record of Appeal and the parties' submissions, this Court identifies the issue for determination as; whether the grounds of appeal raise "matters of law" as prescribed under Section 38 of the Small Claims Court Act.

11. The jurisdiction of this Court to entertain appeals from the Small Claims Court is strictly circumscribed by Section 38(1) of the Small Claims Court Act, 2016, which limits appeals to "matters of law. It expressly provides:

38. (1) A person aggrieved by the decision or an order Appeals 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."

12. The scope of what constitutes, points of law, has been settled see the case of ***Otieno, Ragot & Company Advocates v. National Bank of Kenya Limited [2020] eKLR; Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, Petition 2B of 2014 [2014] eKLR.***

13. Upon review, the Court notes that the Memorandum of Appeal sets out four grounds. However, all of them are framed around issues of fact and law. While it is well-settled that an appellate court jurisdiction is limited to

matters of law and is not permitted to substitute its own factual findings for those of the trial court. Both the appellants and the respondents are urging this court to review and reassess the evidence and come up with its own findings.

14. The Appellant's principal grievance against the impugned decision is that the learned trial Magistrate erred in holding that the respondent was not negligent. The Appellant's grievances regarding the weighting of the police abstract and the credibility of the Respondent's testimony are inherently factual. This contention, however, invites the court to re-evaluate the evidence and arrive at a different factual conclusion. This Court, acting within its limited jurisdiction under Section 38, cannot re-evaluate the credibility of witnesses seen and heard by the lower court. Such an exercise would amount to a reassessment of facts, which lies outside the jurisdiction of this Court under Section 38 of the Act. The appellate jurisdiction is strictly confined to issues of law, and the Appellant has failed to frame any legal issue beyond challenging the trial court's factual assessment of the evidence.

15. Consequently, based on the above this court makes the following orders;

- a. The appeal is dismissed.
- b. The judgment delivered on 8th May 2023 in Machakos SCCC No. E645 of 2022 is upheld.

c. Respondent is awarded costs of this appeal assessed at kshs 20,000/-.

Dated, signed and delivered at Machakos this 12th day of February, 2026

RHODA RUTTO
JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant