

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPELLATE DIVISION
CIVIL APPEAL NO. E1489 OF 2022
(Coram: Andayi W. F., J.)

MOHAMED
ABDINASSIR.....A
APPELLANT

VERSUS

SIMON
NGUGI.....RESPONDENT
MBUGUA
RESPO

(Being an Appeal against the judgment and decree of Hon.
Caroline I. Ireri Adjudicator, delivered on 22nd November 2024 in
Nairobi SCCC Claim No. E2942 of 2024)

JUDGMENT

Background

1. This appeal through the memorandum dated 17th December 2024 arises from a judgment of the Small Claims Court (SCC) delivered on 22nd November 2024. The claim at the SCC dated 12th June 2024 by the respondent herein Simon Mbugua Ngugi (claimant in the SCC) against the appellant Mohamed Abdinassir (respondent in the SCC) was for compensation for material damage caused to the respondent's motor vehicle registration number KCW 721B. It was alleged in the statement of claim that on 15th June 2021 at around 2000 Hours along Mombasa road an accident occurred involving the appellant's motor vehicle registration number KCZ 716N and the respondent's motor vehicle registration number KCW 721B.

The case before the Small Claims Court

2. Each of the parties filed witness statements and documents to support his case.
3. According to the respondent, as captured in his statement of claim and witness statement dated 12th June 2024, and

further witness statement dated 12th September 2024, the appellant's said motor vehicle collided into the respondent's vehicle from behind thereby causing extensive damage to the respondent's vehicle. The respondent blamed the appellant's authorized driver, servant and/or agent for negligence in causing the accident. The respondent averred that he thereby suffered loss and damage amounting to KShs 117,630/= being the repair costs of the vehicle.

4. The repair costs were settled by the respondent's insurer Occidental Insurance Company Ltd. After the insurer had fully indemnified him of the loss, the respondent lodged the claim for compensation against the appellant before the SCC on behalf of its said insurer under the doctrine of subrogation.
5. The respondent made available several documents in support of his claim.
6. The appellant in his response dated 30th July 2024 denied the respondent's claim for compensation *in toto*. While referring to motor vehicle registration No. KCN 716N (not KCZ 716N as pleaded by the respondent) in his pleading, the appellant denied that the said vehicle was involved in an accident on 15th June 2021. However, in his witness statement dated 20th July 2024 he referred to motor vehicle registration number KCZ 716N and conceded that he was the registered owner. He averred that he had not received any communication from the police, the insurance company or the respondent regarding the alleged accident. He further pleaded that he was a stranger to the allegations of damage and loss to the respondent's vehicle as alleged in the statement of claim. In further denial of the claim, the appellant stated in his witness statement that the name Mohamed Bashir and telephone number appearing in the police abstract were not his.
7. Upon considering the material before her, the learned Adjudicator found that the respondent had proved his claim.

She found the appellant wholly liable for the accident. She entered judgment for the respondent in the sum of KShs 117,630/= against the appellant with costs assessed at KShs 13,000/=.

Grounds of appeal

8. Dissatisfied with the learned Adjudicator's decision the appellant now appeals to this court setting out four grounds of appeal in his memorandum and praying that the appeal be allowed and the judgment of the learned trial Adjudicator be set aside and the claim be dismissed on the grounds below. This court has rearranged the grounds in order to bring common grounds together and address them at once.
 - a. That the learned Magistrate erred both in law and fact and fell into error by failing to consider the discrepancies in the make and model of the motor vehicle in the abstract and the actual make and model of the Appellant/ Respondent's motor vehicle.
 - b. The Learned Magistrate erred both in law and fact when she made a finding that the Appellant/Respondent's motor vehicle make and colour was a minor error on the police abstract yet the Respondent/Claimant never called the Police Officer to testify on this fact.
 - c. The Learned Magistrate erred in law and in fact by failing to take consideration of the fact that the Police Officer who filled the abstract never testified in the matter to address the discrepancies in the police abstract and evidence.
 - d. The Learned Magistrate erred in law and fact by failing to note and take into consideration that the police abstract made reference to Mohammed Bashir who is not the Appellant/ Respondent.
 - e. The Learned Magistrate erred in law and fact in failing to address the obvious fact that the Claimant was not the registered owner of motor vehicle KCW 721B.

- f. That the Learned Magistrate erred both in law and fact when she failed to consider the fact that the Respondent/Claimant was not the registered owner of motor vehicle KCW 721B.
- g. That the Learned Magistrate misdirected herself and fell into error by ignoring the fact that the Respondent/Claimant did not provide any evidence to prove that he had acquired motor vehicle KCW 721B.
- h. The Learned Magistrate erred in law and fact in failing to properly evaluate the evidence on record and therefore arriving at a wrong decision.

Submissions

9. The appeal was canvassed by way of written submissions filed by learned counsels for both parties. The same are considered in the analysis that follows.
10. It is apparent from these grounds of appeal and the submissions that the same is on liability only and not on the assessment of damages by the SCC.
11. I have considered the grounds of appeal raised in the memorandum of appeal, the record of appeal and the submissions by learned counsels for the parties. The grounds of appeal can be reduced into three, that the learned Adjudicator fell into error in the following ways:
 - a. First by failing to consider the discrepancies in the police abstract regarding the make, model and colour of the vehicle allegedly belonging to the appellant as well as the name of the alleged owner of the vehicle whereas documents made available by the appellant showed different particulars.
 - b. Second by failing to consider that the respondent was not the registered owner of motor vehicle registration number KCW 721B.
 - c. Third, by failing to properly evaluate the evidence before her.

12. These form the issues for determination in this court.
13. Both parties have raised similar issues for this court's determination. They are also the same ones raised before the SCC being:
 - a. Whether the Respondent had capacity to sue in the claim dated 12th June 2024 as the owner of motor vehicle No. KCW 721B.
 - b. Whether there was an accident between the respondent's motor vehicle and the appellant's motor vehicle and whether the appellant was liable for the same.
 - c. Whether the respondent was entitled to the orders sought in the claim dated 12th June 2024 (sic).
14. These issues align with the issues identified for determination by this court above.

Analysis

15. As a preliminary issue for guidance to learned counsel for the appellant, he may wish to note that the SCC is presided over by an Adjudicator and not a magistrate because he keeps referring to the learned magistrate in his grounds of appeal and submissions. It is important to bear in mind seemingly little but very vital provisions of the SCCA in order to appreciate and always have at the back of the mind the spirit behind the creation of this very distinguished court because, otherwise it gets meshed up with the operations of the magistrates' court and there it loses meaning as a different court. In the Kenyan context, an Adjudicator is indeed a magistrate, with full legal training and an admitted advocate of the High Court. However, while presiding over the SCC he removes the robes of a magistrate and wears the ordinary garment of an Adjudicator who in my thinking, in the spirit of the SCCA, should come down to the level of the ordinary man on the streets. The reasons are that the SCC is designed to be simple, that is, without the strictures of formal procedure and

strict evidentiary rules, fast and accessible. These reasons will come out clearer in the analysis and evaluation of the evidence that follows because the operations of the SCC must be distinguished from those of the magistrate's court.

16. First, an appeal to this court from the SCC is on points of law only as provided for under **section 38** of the **SCC Act**. So, the first issue for this court to consider is whether the grounds of appeal raised by the appellant are on points of law only. The submissions by both learned counsels take the form of submissions before the magistrates' court, urging this court to analyze and reassess the evidence on record and reach its own findings. That is misplaced. From the provisions of the Act, it follows that this court cannot proceed with the case by way of a rehearing and re-evaluation of evidence as is the norm in other civil matters as provided for under the Civil Procedure Act and Rules which has limited application in proceedings before the SCC.

17. Learned counsel for the appellant would do well to refer and be guided by the Court of Appeal's observation in the case of [Independent Electoral and Boundaries Commission & another v Mule & 3 others \[2014\] KECA 890 \(KLR\)](#) that:

“Those points in an appeal of the kind before us, being from an election court's decision, are further circumscribed by Section 85A of the Elections Act which limits appeals to the Court of Appeal to matters of law only. It is therefore quite strange and improper that each of the seventeen grounds, without exception, commences with a standard expression “the judge erred in fact and law” or “the learned Judge erred in law and in fact.” Clearly the drafters of the memorandum did not have the legal provision in active contemplation. Had they done so, they would have found that by invoking factual errors, they were inviting jurisdictional objections to their entire appeal.”

18. It follows from this decision that an appeal to this court from the SCC being on points of law only as provided for under **section 38** of the **SCC Act** this court is not permitted to interfere with the findings of fact by the trial court unless the decision is bad in law and cannot be supported by the evidence tendered. On that issue the Court of Appeal in **M’Riungu v. Republic [1983] KLR 455**, held thus:

“where a right of appeal is confined to question of law, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of fact and law and it should not interfere with the decision of the trial court or the first appellate court unless it is apparent that on evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision is bad in law”.

19. The appellate court may however interfere with the findings of the trial court where it is demonstrated that there was no evidence at all upon which such findings were based or that the evidence relied upon was of such a nature that no reasonable tribunal, properly addressing its mind on it, could have made such findings (see for instance **Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others [2014] eKLR**).

20. The first port of call in this appeal is to understand the working of the SCC. In my understanding of the Small Claims Court Act (Cap. 10A) Laws of Kenya (SCC Act), a claim under the Act is a small not just limited in the name or the monetary value or jurisdiction of the court but also small or limited in terms of the procedures of lodging and prosecuting it, in terms of evidence required to prove it and the flexible evaluation of the same by the court, the limited timelines for the hearing and determination, and in terms of the brevity of the court’s decision on the claim. The disputes are therefore

meant to be determined in a simple way almost informally and expeditiously as per the SCC Act. So, when a party subjects its claim before this court, let it be prepared to abide by the constitutive elements of this court which guide hearing and disposal of claims.

21. These elements are for instance as outlined under **section 3(3)** of the **Act** where it is provided that the Court shall adopt such procedures as the Court deems appropriate to ensure *inter alia* the timely disposal of all proceedings before the Court using the least expensive method and simplicity of procedure. The court is, therefore, under **section 17** of the **Act** granted the discretion to control its own procedure in conformity with the Act in the determination of claims before it. In the exercise of that control, the Court is obliged to have regard to the principles of natural justice.
22. Moreover, under **Section 32** of the Act the strict evidentiary rules applicable in other courts are not wholly applied in the Small Claims Court. It is further provided that the Court may admit as evidence any oral or written testimony, record, or **other material even though the same is not admissible as evidence in any other Court under the law of evidence** (Emphasis and underlying supplied).
23. Considering these elements of the SCC it would appear to me that the manner of proof of a claim in a SCC is that of a reasonable person as per the appreciation of the material tendered to the Adjudicator who is seized of the matter properly applying her mind to the law and facts of the case. Secondly, the Adjudicator having observed the rules of natural justice as provided for under the Act should not be held captive by the strictures of the magistrates' court processes as laid down in the Civil Procedure Act (Cap. 21) Laws of Kenya and the Rules made thereunder and the Law of Evidence Act (Cap. 80) Laws of Kenya.

24. This is because the SCC Act exempts the court proceedings from the rigid application of the standards of evidence applicable in other court proceedings and permits the court to include as evidence any material that it deems credible or trustworthy. It is upon the Adjudicator to determine the material to rely upon. To this end, the method and style of the SCC has been referred to as “unceremonious” by Bruce Zucker and Monica Her in their seminal paper “*The People's Court Examined: A Legal and Empirical Analysis of the Small Claims Court System.*” It is a court bereft of procedural technicalities. Thus, the case before a SCC is a claim and not a suit and not strictly adversarial.
25. In that regard, it is my thinking that broadly a claim before the SCC would largely proceed by way of negotiation for settlement rather than a trial. The SCC would be the place where ADR taking the form of negotiation would be the primary mode of disposal of the disputes. Considering the constitutive elements of the SCC as provided for under the Act, a hearing would be resorted to only on very limited issues where parties have failed or are taking long to reach a settlement through negotiations.
26. For instance, in cases of negligence, there are many instances where parties have an agreement on apportionment of liability. In road traffic accident cases, the remaining issue would be the assessment of damages. If that is the point at which parties bring their claim to the SCC or where the SCC has guided the parties through a negotiated settlement on liability and the parties do not seem to agree on damages, it is easy for the court to consider the medical reports presented, then using a template on comparable injuries it can there and then point out to the parties the range of general damages that it is likely to award if they are not settling. Where there is only one medical report it is easy then for the court to base its award on the extent of injuries

as per the report. Where there are two or more reports with markedly deferring findings by the doctors, the SCC will point out the contentious issue within the report and then probably ask the parties to present the doctors for say cross-examination only on the contested issues. Once clarity is found from the expert witness, the court can proceed to pronounce its award on general damages at once.

27. In my understanding therefore, the SCC should be a court of settlement rather than a trial court, the Adjudicator's work being to superintend on the negotiations rather than hold laborious hearings, go through voluminous submissions and come up with "considered judgments" as is expected in the trials before magistrates' courts. Without appearing to limit the jurisdiction of the SCC as laid out in the Act I believe that matters that go before it should almost be what is termed "plain and obvious" cases that can be dealt with summarily and which do not require technical "evidentiary proof" as is the case in the other trials before magistrates' courts. There and then, the court will make a finding and issue a decision at once as is provided under section 34(1) and (2) of the Act where decisions are expected to be delivered the same day the hearing is concluded. That is only possible where the court and the parties appreciate and adhere to the constitutive elements of the court under the Act.
28. In such cases, appeals arising therefrom will be properly on points of law for instance, to set aside the settlement on the laid down principles of setting aside an agreement or where rules of natural justice were not observed during the conduct of the proceedings. Thus, appeals to the High Court are only on issues of law and the appeal is final.
29. Otherwise, issues that come for appeal will continue to be blurred as mixed fact and law and since courts are not wont to dismiss cases summarily, many will proceed by way of retrial, rehearing and re-evaluation of evidence even when it

is clear that they ought not to and thereby undermine the spirit of this great court which no doubt is a big deal for the judiciary in expeditiously concluding low value cases and reducing backlog.

30. Take for instance the present case. Upon agreement of the parties through their learned counsels, the claim before the SCC proceeded on the basis of documents statements, and written submissions filed by the parties as provided for under **section 30 of the SCC Act**. The section provides as follows:

S. 30. "Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court."

31. There was no hearing of the case and therefore **no evidence**, in the strict sense, taken before the learned trial Adjudicator since no witness was sworn to adduce, produce or even adopt any prior written statements as evidence. But that was perfectly in order under section 30 of the SCC for parties to choose to rely on their written and filed witness statements, filed documents as their evidence and submissions by counsels.

32. The respondent stated in his statement of claim and witness statement how the accident involving his motor vehicle registration number KCW 721B and the appellant's motor vehicle registration number KCZ 716N occurred on 15th June 2021 along Mombasa road and made available the police abstract issued to confirm that indeed the accident was reported at Industrial Area police station. In his response the appellant referred to motor vehicle registration number KCN 716N and denied that this was not involved in the accident. Yet in his witness statement he conceded that motor vehicle registration number KCZ 716N was registered in his name.

His pleading was therefore at variance with his witness statement and so under the strict rules of evidence, it would have been found unreliable.

33. The appellant now complains that witnesses such as the police officer who conducted investigations was not called to testify and produce the police abstract and that the learned trial Adjudicator failed to properly evaluate the evidence on record and therefore arrived at a wrong decision. That complaint is not valid because the claim could only be considered in light of the bare materials presented before the court, the statements of witnesses and the documents.
34. The other ground of appeal is that the learned Adjudicator failed to properly evaluate the evidence on record and therefore arrived at a wrong decision. That complaint is not valid. The learned Adjudicator set out the claim and the response thereto, the evidence by both parties and analyzed it and arrived at her conclusion.
35. In fact, that was too much. There is no requirement for the learned Adjudicator to prepare a lengthy decision under the SCC Act as is the case under the Civil Procedure Rules. **Rule 23(4) of the SCC Rules** provides that at the end of the hearing, the Court shall prepare a written record of its decision in final determination of the claims before it and (a) pronounce its decision in accordance with section 34(2) of the Act; or (b) send a copy of its written decision to the parties. This is in contrast to **Order 21 Rule 4 of the Civil Procedure Rules** which provides that “**Judgement in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.**”
36. In a SCC the Adjudicator has a wide discretion on which material to rely upon in arriving at her decision. In doing so, she does not even need to offer any analysis or reasons because that is not provided for in the SCC Act. She only

needs to state the materials relied upon for the decision to be found to be reasonable. That in my thinking is why **section 34(2)** of the Act provides that judgment given in determination of any claim shall be delivered **on the same day** and in any event, not later than three (3) days from the date of the hearing. There is no court that can render a considered decision the same day of the hearing where tens of cases are concluded before that court as in the Small Claims Court. That is why in my thinking the spirit behind the SCC is one of negotiation and settlement and hearings become an exception and even then on very narrow issues that can be disposed of in no more than three days as provided for under the Act. That is why under the Guiding Principles of the Court under **section 3(2) of the SCCA**, the parties and their duly authorized representatives, are directed (shall) to assist the Court to facilitate the observance of the guiding principles set out under the section, to participate in the proceedings of the Court and to comply with directions and orders of that Court. The court is expected to guide the parties and give directions at every turn as the negotiations take place. The negotiations would take place on a day to day basis until a settlement is had. In that case, 60 days are sufficient to complete the hearing and determination of the claim. When the negotiations are taking place, the court's duty would be to ensure that rules of natural justice are adhered to as provided for under **section 17** of the Act. In doing so the court will ensure that each party has an equal opportunity to present its case and there is fairness of process as provided for under **section 3(b) and (c)** of the Act.

37. For me therefore, the SCC is a court where parties go for a negotiated settlement. Essentially, parties have largely agreed on the issues and one is either dragging its feet on settlement or they are unable to agree on some mundane or

very limited issues and the court steps in to give guidance or through its coercive power brings authority to bear upon the parties and complete the settlement in a timely manner (see section 3(a) of the Act). No doubt, negotiation becomes the least expensive method of disposal of the dispute (section 3(a) SCCA).

38. All these should be done in good faith and openness to amicable settlement of the claim.
39. On the issue of whether or not the respondent proved that he was the owner of motor vehicle registration number KCW 721B and therefore whether or not he had capacity to sue the appellant has made heavy weather of this issue, submitting that it is the backbone of the appeal but in real fact, there is no issue here.
40. The trial court found and in my considered view correctly, that the respondent herein had provided a log book showing that motor vehicle registration number KCW 721B belonged to him Simon Mbugua Ngugi. This being an issue of fact, this court should not reevaluate the evidence where the trial court had made a determination.
41. But the appellant raises an issue of the respondent having referred in his statement of claim under the heading of "Particulars of Negligence of the Respondent." paragraph, "(b) Recklessly colliding with motor vehicle registration KCB 251N." That means the appellant is contending that the learned Adjudicator failed to take into account a material issue, thereby rendering it a point of law.
42. It is apparent that here the respondent made reference to the wrong registration number of his motor vehicle as KCB 251N instead of what he had been referring to all along in the preceding paragraphs as KCW 721B. This is clearly a minor discrepancy which obviously arose due to failure by the drafter of the pleadings to go through them keenly to ensure that the registration number of the vehicle was properly

captured in all instances. It is nothing to base one's case and allege that the respondent was not the registered owner of the vehicle in question.

43. The respondent produced a log book which showed that he was the registered owner of motor vehicle registration number KCW 721B as at the time of the accident. The appellant on his part obtained a motor vehicle copy of records of the same vehicle from the National Transport and Safety Authority (NTSA) showing the details of registered ownership of vehicle **as at 5th August 2024 at 10:07:27** and the **current owner** as Joseph Gatu Huini. I agree with the submissions by the respondent that it is rather obvious that as at 5th August 2024, the vehicle was highly likely and indeed it had changed ownership since the accident occurred on 15th June 2021, three years before. Therefore, the copy of records produced by the appellant could not discount the fact that the respondent was the registered owner of the vehicle on 21st June 2021 as per the log book he produced to support his case.
44. In fact the appellant made a similar error in his statement of response when he referred to the accident motor vehicle as KCN 716N. To this the respondent submitted that he is a stranger to the same as for him the accident vehicle was KCZ 716N. Yet in his witness statement the appellant not only referred to the correct vehicle as KCZ 716N but conceded that he is the registered owner and even produced the registration certificate commonly referred to as log book showing that he was the registered owner. Therefore, he does not find help in the case he relies upon of **Thuranira Karauri v Agnes Ncheche [1997] eKLR** because in that case, the defendant had denied ownership of the vehicle and so the burden was on the plaintiff to prove ownership, In this case, the appellant conceded that he was the registered owner of the accident vehicle.

45. Looking at both discrepancies from the eye of a common and reasonable person on the streets and not the lenses and strictures of the CPR and the Evidence Act, one must come to the conclusion that these are typographical errors which, in the spirit of the SCC Act, the court should not dwell upon.
46. This being a claim before the SCC, the court having control of its own procedure in the determination of claims before it but having regard to the principles of natural justice, not being bound wholly by the rules of evidence and the parties having agreed that the matter be disposed of by way of statements, documents and submissions filed which were not subjected to oath or affirmation and cross-examination, the court had the discretion to consider the material before it and decide which one is persuasive to it and make its determination expeditiously.
47. That ground of appeal must therefore fail.
48. On the issue of whether or not there were discrepancies in the evidence of the respondent with regard to the make, model and colour of the vehicle as well as the name of the owner, yes indeed there were. However, I am satisfied that the learned Adjudicator properly evaluated the evidence and arrived at the correct finding that these were minor discrepancies arising out of the information given at the scene of the accident. The correct information was as supported by the documents produced in evidence. Minor discrepancies such as the ones identified herein that do not go to the root of the case are immaterial in determining a matter.
49. The learned authors of *Sarkar, The Law of Evidence* 16th edition, 2007, at page 48 state that -
- "Normal discrepancies in evidence are those which are due to normal errors of observation; normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and**

those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do."

50. Therefore, such minor discrepancies could not be reason for the learned Adjudicator to find that the claim had not been proved. That ground of appeal also fails.

Determination

51. I am satisfied that considering the evidential material before her, the learned Adjudicator properly applied her mind to the material and arrived at a sensible and reasonable decision in the circumstances under the constitutive elements of the SCC in finding the claim had been proved on the standards of a reasonable tribunal. I do not find reason to fault the decision.

52. Consequently, I find the appeal has no merit and it fails. The order of the learned Adjudicator is affirmed in its entirety.

53. The respondent shall also get the costs of this appeal assessed at KShs 30,000/=.

54. Delivered, dated and signed on the Virtual Platform, Teams this 6th day of February 2026.

ANDAYI W. FRANCIS
JUDGE

In the presence of:

Ouma h/b for Muema for the Appellant.

Talu (Ms) h/b for Mugalo for the Respondent.

Ummu: Court Assistant.

ANDAYI W. FRANCIS
JUDGE