

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE DIVISION
CIVIL APPEAL NO.E1466 OF 2024

LUKAS NGUGI CHEGE..... APPELLANT

VERSUS

NORMAN WACHIRA OMARI.....

RESPONDENT

**(BEING AN APPEAL FROM THE JUDGEMENT AND DECREE OF THE
SMALL CLAIMS COURT AT NAIROBI DELIVERED BY
HONORABLE WAMAE E.M MUINDI-ADJUDICATOR ON THE 14th
NOVEMBER 2024 IN SCCC No 3331 OF 2024 AT NAIROBI)**

BETWEEN

NORMAN WACHIRA OMARI.

.....CLAIMANT

VERSUS

LUKAS NGUGI CHEGE.....DEFENDANT

J U D G M E N T

A. INTRODUCTION

1. The respondent filed a Subrogation suit before the smalls claim court against the appellant seeking compensation to the tune of ***Kshs.99,411.00/=*** being outlay spent to repair his motor vehicle registration No ***KCS 407H Nissan X-Trail(hereinafter referred to as the 1st suit Motor Vehicle)***, which had been involved in a road

traffic accident, with the appellants motor vehicle registration No **KBP 819K Isuzu Lorry (hereinafter referred to as the 2nd suit Motor Vehicle)** on 10th July 2021, along Northern Bypass road, within, Nairobi.

2. In response, the appellant denied all the averments made in the statement of claim and pleaded in the alternative that he bought the 2nd suit motor vehicle through a public auction, conducted on 07.04.2021 by Momentum credit, who had attached the said 2nd suit motor vehicle due to a debt owned by the previous owner. He thereafter personally took the said motor vehicle to a garage at Ruiru Juakali for repairs/ service, and later collected the said motor vehicle from the said garage on 8th August,2021.It was therefore his contention that the 2nd suit motor vehicle was not on the road and/or was driven by his authorized agent and/or driver on the said accident date and thus urged the trial court to dismiss the suit in its entirety.
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. The trial Magistrate in her considered judgment, did find that on a balance of probability, the respondent had proved his case and entered judgment in his favour for the sum claimed.

4. The Appellants, being dissatisfied with the said Judgement, raised Seven (7) grounds of appeal, namely: -

a) That the learned Magistrate erred in law by failing to take into consideration the evidence tendered that the Appellant's Motor vehicle's involvement in the accident was in dispute and no evidence was tendered to controvert that position.

b) That the learned Magistrate erred in law in failing to appreciate the evidence that was placed before her and taking into account extraneous issues hence arrived at a decision that was erroneous and against the evidence placed before her.

c) That the learned Magistrate erred in fact and law by writing a judgment that was not only incomplete but also based on proper evaluation and consideration of pleadings, evidence on record, submissions and applicable law and principles.

d) That the learned Magistrate erred in fact and law in failing to find that the respondent had failed to discharge his burden of proof against the respondent as required by the law.

e) That the learned Magistrate erred in fact and law in finding that the respondent was liable for the damages caused on the respondent's Motor vehicle and in doing so adopted wrong principles in apportioning 100% liability to the respondent.

f) That the learned Magistrate erred in fact and law by arriving at a decision that was not based on the pleadings and evidence on record.

g) That in all the circumstances of the case, the learned Magistrate failed to render justice to the Appellant and to uphold the rule of law.

5. The Appellant thus prayed that the appeal be allowed and the judgment of the trial court be set aside and the respondents primary suit be dismissed with costs.

B. ANALYSIS AND DETERMINATION

6. 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.

7. 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. 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.

8. This Appeal is centered on the question of whether the burden of proof was discharged. The parties herein opted

to adopt their witness statements and admit the claim supporting documents and documents filed in opposition to the said claim. The respondent produced the police abstract, photographs of the damaged motor vehicle, assessments reports and receipts to prove that indeed the accident did occur and as a result he spent the sum claimed on repairing his motor vehicle. This evidence satisfactorily proved the facts pleaded and therefore the evidentiary burden shifted on the appellant to disprove the same based on **Section 109 and 112 of the Evidence Act, Cap 63 laws of Kenya.**

9. The respondent on the other hand alleged that the 2nd suit motor vehicle as at the said time of the alleged accident was undergoing repair works at Ruiru, Jua Kali garage from 26th May 2021, to 8th August 2021, when the repairs were completed and the said motor vehicle released and thus could not have been involved in the said accident. Unfortunately for the appellant all the issues raised are issues of fact, which this court has no jurisdiction to entertain. Further since, the parties opted not to call any witness, the veracity of their evidence remained untested through cross examination.

C. DISPOSITION

10. It is therefore obvious that this appeal lacks merit and the same is dismissed with costs of **Kshs 50,000/=** to the Respondent.

11. It is so ordered.

Dated, signed, and delivered in open court at **MARSABIT** this **21st** day of **APRIL, 2026**.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this **21st** day of **APRIL, 2026**.

In the presence of: -

.....Appellant

..... Respondent

.....Court Assistant