

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL APPELLATE DIVISION
CIVIL APPEAL NO. E816 OF 2024

JOHN MBIRI KAMAU.....
APPELLANT

VERSUS

KENNEDY GICHABA ORANGI.....
RESPONDENT

**(BEING AN APPEAL FROM THE JUDGMENT/ DECREE OF
HON J.W. MUNENE, RESIDENT MAGISTRATE/ADJUDICATOR
DELIVERED ON 28th JUNE 2024 IN NAIROBI MILIMANI
SCCC NO E4270 OF 2023)**

ARISING BETWEEN

KENNEDY GICHABA ORANGI
.....CLAIMANT

VERSUS

JOHN MBIRI KAMAU
RESPONDENT

J U D G M E N T

A. Introduction

- 1.** This Appeal challenges the Judgment/decreed of ***Hon J.W Munene, Resident Magistrate/Adjudicator*** dated 28th June 2024, delivered in ***Milimani Small claims court in SCCC No 4270 of 2023***, where she awarded the respondent general damages of **Kshs.500,000/=** for the injuries sustained in a road traffic accident and special damages of **Kshs.19,050/=** plus costs and interest at court rates.
- 2.** The background hereto was that the respondent filed his statement of claim dated 29th April 2023 against the respondent wherein he averred that on or about the 6th August 2022 he was standing off outer-ring road at a Matatu stage next to GSU headquarters when the appellants motor vehicle registration Number **KAE 375T ISUZU LORRY (FH)** was carelessly, negligently and/or recklessly driven by the appellants driver, servant and/or agent that he caused the same to veer off the road and violently knocked him down, causing him to suffer serious bodily injuries, loss and damage. He therefore claimed compensation for the same.
- 3.** In response, the Appellant did file his amended statement of defence dated 19th October 2023 where he denied all

the averments made by the respondent and put him to strict proof thereof. In the alternative, if indeed an accident did occur, then the respondent too was partial blame for the same due to his negligence, recklessness and lack of caution.

4. Further the appellant averred that based on investigation carried out by their insurer, Kenya Alliance Insurance Company it had been established that this claim was false since the respondent's claim supporting documents were all forgeries and the purported victim (respondent) was an impersonator and had not been involved in the said accident. The cause of action therefore was misconceived, and no legal consequence could arise from the same. He thus requested that the suit be dismissed in its entirety with costs.
5. At the hearing of the said suit the parties counsels informed the learned trial Magistrate that liability had been determined in ***Milimani SCCC No 4496 of 2023*** and consented to proceeding by way of documentation under ***Section 30 of the small claims Act*** to establish quantum awardable. The learned trial Magistrate considered the same and awarded the respondent General damages of ***Ksh.500,000/=*** , Special damages of ***Kshs.19,050/=*** plus costs and interest at court rates.

B. THE APPEAL

6. The Appellant, being dissatisfied with the said Judgment, raised four (4) grounds of appeal, namely: -

a) That the learned Adjudicator erred in law by making an award against the Appellant which failed to follow the established principles related to the law of negligence and fraud and the legal standards required to prove claims associated with the two principles respectively.

b) That the learned Adjudicator considered matters she ought not to have considered and that the learned Adjudicator failed to consider matters she should have considered at arriving at her final judgment.

c) That looking at the proceedings and evidence as a whole the learned Adjudicator was plainly wrong in her final decision and orders and no reasonable court or tribunal properly directing itself on the law would have arrived at a similar finding/judgment.

d) That the learned Adjudicator erred in law by failing to consider the Appellants final submissions on the law and thereafter proceeded to make a determination on the case based on a consideration of irrelevant factors and failing to consider relevant

factors that would have aided in the just determination of the case

7. The Appellant thus prayed that the appeal be allowed and the judgment of the trial court be set aside and the respondents claim be dismissed with costs. He also urged the court to award him the costs of this Appeal

C. ANALYSIS AND DETERMINATION

8. I have considered the entire record of Appeal and pleadings filed, the grounds of appeal raised, the submissions filed by the Appellant, 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. 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. See **John Munuve Mati Vr The returning officer, Mwingi North Constituency & 2 others (2018) eKLR & Charles Kipkoech Leting Vs Express (K) Ltd & Another NKU CA Civil Appeal No 40 of 2016 (2018) eKLR**

9. The parties herein did adopt the award on liability as determined in the sister file ***Milimani Small Claims Court SCCC No 4496 of 2023*** and allowed the trial magistrate to proceed to determine the question of quantum awardable based on the documentation filed. Evidently it was at this point that the appellant shot himself in the foot as the respondent was not called to testify and be cross examined on the veracity of the claim supporting documents. There is therefore no basis upon which this court can be called to reconsider the same. The evidence used to determine liability of the claimant **in Millimani SCCC No 4496 of 2023** too, was irrelevant in ***Milimani SCCC No 4270 of 2024*** and had no bearing on quantum awardable in the latter suit.

C. DISPOSITION

12. I do therefore find and hold that this Appeal has no merit and the same is dismissed with costs, which are assessed at **Kshs.100,000/=** all inclusive.
13. Stay of execution 45 days.
14. It is so ordered.

Dated, signed, and delivered in open court at this **11th** day of **MAY 2026**.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this **11th** day of **MAY 2026.**

In the presence of: -

.....N/A.....Appellant
.....N/A..... Respondent
.....JARSO.....Court Assistant