

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL APPELLATE DIVISION**  
**CIVIL APPEAL NO. E1469 OF 2023**

**MOSES KINYUA MUGO.....**  
**APPELLANT**

**VERSUS**

**ERASTUS MIYA MWANGI..... 1<sup>st</sup>**  
**RESPONDENT**

**JOAN MUTHONI MBUGUA.....2<sup>nd</sup>**  
**RESPONDENT**

**(BEING AN APPEAL FROM THE JUDGMENT/ DECREE OF**  
**HON C.A. OKUMU, RESIDENT MAGISTRATE/ADJUDICATOR**  
**DELIVERED ON 24th NOVEMBER 2023 IN NAIROBI**  
**MILIMANI SCCC NO E2885 OF 2023 )**

**ARISING BETWEEN**

**MOSES KINYUA MUGO .....**  
**.....CLAIMANT**

**VERSUS**

**ERASTUS MIYA MWANGI..... 1<sup>st</sup>  
RESPONDENT**

**JOAN MUTHONI MBUGUA.....2<sup>nd</sup>  
RESPONDENT**

## **J U D G M E N T**

### **A. Introduction**

1. This Appeal challenges the Judgment/decree of **Hon C.A Okumu, Resident Magistrate/Adjudicator** dated 24<sup>th</sup> November 2024, delivered in **Milimani Small claims court in SCCC No E2885 of 2023** wherein she dismissed the appellants material damage claim for **Kshs.206,550/=**.The background hereto was that the Appellant filed his statement of claim dated 21<sup>st</sup> June 2023 against the respondent wherein he averred that on or about the 30<sup>th</sup> April 2023 he was lawfully driving his motor vehicle registration Number **KAG 125R - Hyundai ( hereinafter referred to as the 1<sup>st</sup> suit motor vehicle )** along Thika Road at Kastemil, when the respondents by themselves their authorized driver agent and/or servant negligently drove managed and/or controlled the respondents motor vehicle registration Number **KCS 737C - Mercedes Benz ( hereinafter referred to as the 2<sup>nd</sup> suit motor vehicle )** that its driver lost control and rammed onto the rear of the 1<sup>st</sup> suit motor vehicle thereby causing it extensive damage, As a result the appellant averred that he had to spend **Ksh.206,550/=** to repair the said motor vehicle and sought compensation for the same.

2. The respondents though served did not enter appearance and interlocutory judgment was entered as against them and the only issue pending determination was assessment of quantum by way of formal proof. The court proceeded to consider the evidence tendered and held that the claimant had failed to prove his case against the respondents and dismissed the claim with no orders as to costs.

### **B. THE APPEAL**

3. The Appellant, being dissatisfied with the said Judgment, raised seven (7) grounds of appeal, namely: -

***a) That the learned Magistrate erred in law and fact in finding that the Appellant did not prove negligence as against the Respondents on a balance of probabilities.***

***b) That the learned Magistrate erred in law and fact in failing to appreciate that an interlocutory judgment had been entered in this matter and that this being a civil case, the standard of proof required was on a balance of probabilities and not beyond any reasonable doubt.***

***c) That the learned Magistrate erred in fact and in law in claiming that the police abstract adduced into evidence by the appellant blamed the Appellants motor vehicle registration Number KAG 125R when no such evidence was on record.***

***d) That the learned Magistrate erred in fact and in law in failing to award the Appellant***

***special damage claim as against the law and weight of evidence on record.***

***e) That the learned trial Magistrate erred in fact and law in dismissing the Appellants case in toto.***

***f) That the learned Magistrate erred in law in failing to consider the totality of the submissions filed on behalf of the appellant.***

***g) That the learned trial Magistrate erred in law by failing to exercise her discretion judiciously.***

4. The Appellant thus prayed that the appeal be allowed and the judgment of the trial court be set aside and he be awarded special damages of **Kshs.206,550/=** plus costs and Interest.

### **C. ANALYSIS AND DETERMINATION**

5. 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**

6. The respondents were served with the pleadings filed but failed to enter appearance and/or to file their statement of defence. Interlocutory judgment was therefore entered as against them on 31.07.2023. The issue of liability was therefore effectively settled. See **Felix Mathege Vs Kenya Power & lighting Company Ltd NRB CA Civil Appeal No 215 of 2002 (2008) eKLR** Whereby it was observed that;

***“The respondent having failed to enter appearance within the prescribed time after the appellant had requested for it, it became mandatory upon the court to enter interlocutory judgment and for the appellant to set down the suit for assessment of damages. Having entered interlocutory judgment, it was not open once again for the same court in the instant case to state that the appellant had not proved liability against the respondent. The role of the court after entering the interlocutory judgement in such a case like this was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability***

***and was unassailable. It was only interlocutory with regard to the quantum of damages”***

- 7.** The learned trial magistrate did proceed to determine if the appellant had proved the loss suffered and held that he had only relied on the police abstract dated 01.03.2023, where it was stated that it was his own motor vehicle, (the 1<sup>st</sup> suit motor vehicle) which was at fault and therefore found that the appellant had not proved his case and proceeded to dismiss the suit with costs.
- 8.** With respect to the learned trial Magistrate, the said police abstract does not state that it was the 1<sup>st</sup> suit motor vehicle to blame for the said accident and that finding with respect was an error, which must be corrected. Secondly, the Appellant’s evidence was not controverted in any manner and the documents produced in support of the claim especially the Motor vehicle assessment report dated 19.05.2023 , photographs of damaged body parts and receipt for special damage incurred conclusively proved that indeed his motor vehicle was knocked from the rear and as a result the appellant had spent the sum claimed to repair the said motor vehicle.

### **C. DISPOSITION**

1. The upshot therefore, is that i do therefore find and hold that this Appeal has merit and the same is allowed. The judgment/decreed dated 24<sup>th</sup> November 2023 delivered by **Hon C.A.Okumu RM in Milimani SCCC No E2885 of 2023** is hereby set aside in its entirety and substituted with an order that judgment is entered in favour of the appellant in the sum of **Kshs.206,550/=** plus cost and interest at court rates calculated from the day the suit was filed.
2. Each party will bear their own cost of this Appeal.
3. Stay of execution 45 days.
4. It is so ordered.

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

**FRANCIS RAYOLA OLEL**  
**JUDGE**

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

**In the presence of: -**

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

ORIGINAL