



**Sanlam General Insurance Limited v Thuo (Civil Appeal
E131 of 2024) [2025] KEHC 10183 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E131 OF 2024
GL NZIOKA, J
JUNE 25, 2025**

BETWEEN

SANLAM GENERAL INSURANCE LIMITED APPELLANT

AND

SAMUEL GIKONYO THUO RESPONDENT

*(Being an appeal from the Judgment of Hon. E. Cherop (RM) in Naivasha
Small Claims Case No. E105 of 2024 delivered on 28th May, 2024)*

JUDGMENT

1. By a statement of claim dated 9th February, 2024 wherein the claimant was seeking for judgment against the respondent for the following orders: -
 - a. Judgment in the sum of Ksh 1,000,000
 - b. Costs of the claim
 - c. Other appropriate relief
2. The Claimant's Claim is that at all times material to this suit, he was the registered owner and/or beneficial owner of motor vehicle registration number KDD 586Z. That, the respondent is a company dealing in the insurance business and was the insurer of the aforementioned motor vehicle. Consequently, he had a valid cover of insurance issued by the respondent at the time of the accident.
3. That on the 15th day of October, 2022, the subject motor vehicle was involved in an injury accident at Sagutek along Naivasha – Ngondi road and as a result, two persons Martin Njoroge Nyamangu and Daniel Kungu Njuguna sustained injuries. That the injured proceeded to file compensatory suits at Naivasha Small Claims Court being; Naivasha Small Claims Court Claim No. E372 of 2023 Martin Njoroge Nyamangu v Samuel Gikonyo Thuo and Naivasha Small Claims Court Claim No. E371 of 2023 Daniel Kungu Njuguna v Samuel Gikonyo Thuo. Further, that upon receiving the statements



of claim and the mention notices, the claimant informed the respondent's agent and immediately forwarded the necessary documents.

4. The claimant avers that, it was his hope that the respondent would immediately proceed and defend the claim on his behalf owing to the principle of indemnity but unfortunately, the defendant failed to do so as such the matters proceeded for trial. On the 20th day of November, 2023, the claimant motor vehicle was proclaimed and attached by Messrs Direct O Auctioneers in a bid to settle the decrees emanating from the suits in the trial court. However despite the protests from the claimant, the motor vehicle was attached and remained in the auctioneer's yard until the 11th day of January, 2024. The claimant avers that, the subject vehicle, a lorry is his only source of income.
5. That when the respondent finally settled the claim with the third party advocates, the respondent's counsels without the claimant's authority proceeded to negotiate a consent on settlement of the auctioneer's costs at a sum of Ksh 100,000.00 and paid storage charges of Ksh27,500 to secure release of his motor vehicle.
6. That as a result of the seizure of the vehicle from 20th November, 2023 to 11th January, 2024, he suffered loss and damage which he now seeks to recover. The particulars of loss and damage are tabulated as follows:

Particulars of loss and damage
 - i. Loss of income for 50 days at Ksh 20,000 per day Ksh 900,000
 - ii. Auctioneer fees and storage charges-----Ksh 127,500Total Ksh 1,027,500
7. That despite demand and notice of intention to sue, the respondent has failed and/or refused to compensate him and/or make good the claim hence this suit.
8. However, the respondent filed a response to the statement of claim dated 2nd February, 2024 in which it denied the claim and averred that, without prejudice the claimant's claim is fatal, inept, incompetent, ambiguous and does not sufficiently disclose the material particulars and may be struck out on these grounds.
9. That the respondent denied the claimant's claim in toto and averred that it does not owe the claimant any money.
10. However, the respondent acknowledged the existence of the compensatory suits filed at Naivasha Small Claims Court, Naivasha SCCC No. E372 of 2023 and Naivasha SCCC No. E371 of 2023 but argued that the claimants in Naivasha SCCC Nos E372 and E371 all of 2023 were not persons covered in the policy and denied the averment that the claimant informed the respondent agents of the accident and forwarded the statement of claim and mention notices.
11. Further, without prejudice basis the respondent stated that the claimant having been in breach of the insurance cover herein cannot seek to enforce the same. Particulars of breach by the plaintiff are tabulated as follows:
 - i. Failure to timely report the accident/claim
 - ii. Failure to report the accident all together
 - iii. Failure to document the claim
12. Further that the claimant is in breach the principle of uberrimae fidei on the following particulars: -



- i. Failure to forward all the pleadings as served upon him
 - ii. Failure to forward the proclamation notice
 - iii. Misrepresenting material facts
 - iv. Concealing material facts.
13. Furthermore, the claim in the loss of user does not lie having been ousted by the insurance contract, and that the doctrine of mitigation of loss and principles of remoteness and causation applies.
14. The alleged negotiated a settlement of the auctioneer's cost at a sum of Kshs 100,000 without the claimant's authority and payment of a storage fee of Ksh 27,500 to secure the release of his motor vehicle was denied.
15. Further the allegation that the motor vehicle would make Ksh20,000 per day and/or the fact that the claimant suffered loss and damage as a result of the seizure of his alleged motor vehicle from 20/11/2023 to 11/1/2024 was denied.
16. That the motor vehicle remained in the custody of the auctioneers solely due to the breaches, misrepresentation and inaction on the part of the claimant.
17. The respondent in addition, filed a notice of preliminary objection dated 20th March, 2024 in which it states: -
 - a. That the Honourable Court does not have the jurisdiction to handle the subject matter.
 - b. That the matter does not fall within the ambit of Section 12 of the *Small Claims Court Act*.
 - c. That the claim falls without the pecuniary jurisdiction of the Honourable Court.
18. The preliminary objection was canvassed and disposed of vide a ruling delivered by the court on 9th April, 2024 wherein the same was dismissed with cost to the claimant/respondent.
19. The matter proceeded to full hearing with the claimant's case supported by the claimant who adopted his statement filed alongside the claim and the documents annexed thereto. The statement reiterates the averments in the claim. The respondent's response was supported by the evidence of Raymond Odhiambo its Legal Officer who too reiterated contents of the response to the claim.
20. At the conclusion of the trial and upon considering the evidence adduced and the submissions by the parties, the trial court delivered its judgment dated 28th May 2024 entered judgment in favour of the claimant as against the respondent as follows: -
 - a. Judgment in the sum of Kshs. 827,500/=
 - b. Costs of the claim and interests from the date of filing until payment in full.
21. However, the appellant is aggrieved by the decision of the trial court on the following grounds: -
 - a. That the learned Trial Magistrate erred and misdirected himself in fact and law in failing to critically analyze and apply the evidence led by the respective parties and specifically the appellant.
 - b. That the learned Trial Magistrate/Adjudicator erred in law and in fact in failing to appreciate and apply the principles against award of consequential losses on breach of contract claims.



- c. That the learned Trial Magistrate/Adjudicator erred in law and in fact in failing to hold and find that the respondent having been in breach of the insurance contract, he could not derive any benefits therefrom.
 - d. That the learned Trial Magistrate/Adjudicator erred in law and in fact in failing to appreciate that an insurance agent is for all intent and purpose an agent of an insured and not the insurer.
 - e. That the learned Trial Magistrate/Adjudicator erred in law and in fact in awarding general damages/consequential losses on a breach of contract claim.
 - f. That the learned Trial Magistrate/Adjudicator erred in law and in fact to critically analyze and consider the submissions made on behalf of the appellants.
22. The appeal was canvassed vide filing of the submissions. Despite being given ample time to file its submissions, as at the time of writing the judgment the appellant had not filed its submissions.
 23. Be that as it may, the respondent in submissions dated 5th June 2025 argued that, the appeal is fatally defective as it does not meet the threshold of section 38 of the Small Claims Act, which is couched in mandatory terms. That none of grounds of appeal herein are on points of law.
 24. Further, the trial court critically analysed the evidence by both parties and ruled in favour of the respondent. That, the appellant’s lawyer recorded a consent dated 11th December 2024, and at clause 6, discharged the respondent from liability and that, the consent has never been set aside. Furthermore, the appellant confirmed that, Quensie was their agent and cannot plead otherwise.
 25. Further as regard alleged breach of contract each party blamed the other as per the pleadings, but the allegations were never proved and remain allegations.
 26. Finally, the respondent submitted that, the appellant admitted that, there was a valid insurance cover at the time of the accident, therefore, they were bound to settle claims arising out of the accident. That award made herein was appropriate. That, the appellate failed to file the agreement with S.K Waweru and the respondent
 27. Be that as it were, the law is settled that appeals from the small Claims Court lies to the High Court on matters of law only as provided for under Section 38 of the *Small Claims Court Act* which states that:
 - (1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
 28. Similarly, in the case of Charles Kipkoech Leting v Express (K) Ltd & another [2018] eKLR the Court of Appeal dealt with an appellate court’s mandate where an appeal is confined only to a question of law and stated as follows: -

“This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See *Maina v Mugiria* [1983] KLR 78, *Kenya Breweries Ltd v Godfrey Odongo*, Civil Appeal No. 127 of 2007, and *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the English case of *Martin v Glywed Distributors Ltd (t/a MBS Fastenings)* 1983 ICR 511 where in, it was held inter alia that, where a right of appeal is confined to questions of law only, 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 and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.”

29. Pursuant to the afore said, I have considered the grounds of appeal herein and from the outset, the grounds they are generally on matters of evidence. Even then, the appellant has failed to file any submissions to substantiate the grounds of appeal and enable the court to establish whether there is an arguable point of law. Furthermore, based on the entire judgment, it is clear that the trial court dealt with all issues raised in detail and analysed the same well.
30. This appellate court cannot delve into matters of fact or evidence and there being no arguable point of law I find no merit in the appeal. Consequently, appeal dismissed with costs to the Respondent.

DATED, DELIVERED, SIGNED THIS 25TH DAY OF JUNE 2025.

GRACE L. NZIOKA.

JUDGE

In the presence of:

Mr. Nganga for the appellant

Mr. Mwaniki for the respondent

MS. Hannah: court assistant

