



Busia Sugar Industry Limited v Thando Africa Limited (Civil Appeal E057 of 2024) [2025] KEHC 11670 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E057 OF 2024
WM MUSYOKA, J
JULY 31, 2025**

BETWEEN

BUSIA SUGAR INDUSTRY LIMITED APPELLANT

AND

THANDO AFRICA LIMITED RESPONDENT

(Appeal from judgement and decree of Hon. Kassim Akida, Resident Magistrate, RM, delivered on 24th September 2024, in Busia SCCC No. E032 of 2024)

JUDGMENT

1. The suit, at the primary court, was by the respondent, against the appellant, for compensation, with respect to special damages of Kshs. 162,550.00. The suit was resisted by the appellant, who denied the cause of action, the manner it allegedly arose, the particulars of negligence pleaded and damages. There was also specific pleading with respect to the cause of action having arisen at a public utility road, no evidence availed of the appellant's tractor crossing the alleged culvert and no evidence on road signs or erected barriers forewarning road users of the state of the road.
2. The matter proceeded under section 30 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya. Judgement was delivered, on 24th September 2024, for Kshs. 162,550.00, upon liability being assessed at 100%.
3. The appellant was aggrieved, hence the appeal, around the decision not being in sync with section 30 of the *Small Claims Court Act*, defence evidence being disregarded without court reasons being assigned, and the trial court disregarding of the *Traffic Act*.
4. Directions were taken, on 12th May 2025, for disposal of the appeal by written submissions. Both parties have complied.



5. The appellant argues that the matter was to proceed under section 30 of the *Small Claims Court Act*, based only on documents, yet the trial court held that the appellant failed to call its driver to give an account of the events of the day, which suggested that the appellant was condemned unheard. It is further submitted that the trial court did not interrogate the issues before it. It is submitted that the road in question was public, and any other road user could have caused damage. It is also submitted that the respondent did not adduce evidence that he had complied with relevant statutes on road construction.
6. I have perused the trial record, and it is evident that the matter proceeded under section 30 of the *Small Claims Court Act*, going by the proceedings of 2nd September 2024. No evidence was taken viva voce, and the judgement was determined based on the material filed.
7. The appellant complains that the trial court departed from section 30 to the extent that the court, in the judgement, stated that the appellant “did not call the driver of the vehicle to counteract the narration as to how the events happened.”
8. With respect, the appellant is taking this a little too literally. The record speaks for itself. There was no oral or viva voce hearing. No evidence was taken orally. “Narration”, as used in the judgement, in my understanding, only referred to the witness statements of the partis, and the trial court was just saying that the appellant ought to have relied on a witness statement by the driver of the accident vehicle, as he would have been better placed, compared with any other employee of the appellant, to give a proper account of the incident, as he was eyewitness to it. I see no departure from section 30 of the *Small Claims Court Act* in the circumstances.
9. On the evidence or defence of the appellant being disregarded, I note that the trial court referred to the witness statement of the witness for the appellant, Dickens Wallace Makokha. It is from this witness statement that it was noted that Dickens Wallace Makokha was not the driver of the accident vehicle, and the observation that the appellant would have better off with a witness statement by the driver. It is also noted, in the judgment, that that witness confirmed that the respondent had complained to the appellant about the judgment. I have noted that judgment correctly captures the contents of the witness statement of Dickens Wallace Makokha. That would be testimony that it was considered, not disregarded, and that the trial believed the version by the respondent. It cannot be said that the appellant was condemned unheard, for its witness statement was considered by the trial court.
10. On the road in question being a public road, the witness statement by the appellant did not address that issue, hence it cannot arise on appeal. As to warnings and road signs, the appellant has not cited any law which would have required the respondent to put up such warnings or erect such road signs.
11. On the matter of it not being proved that the accident vehicle was out on that culvert, it should be pointed out that this is a civil matter, not a criminal one. The standard of proof is not that beyond reasonable doubt, but that on a balance of probability. The material presented by the parties was adequate for the trial court to evaluate the matter on the basis of balance of probability.
12. Overall, I do not find merit in the appeal herein. I accordingly dismiss the same, with costs. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE



Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ipapu, instructed by Ipapu P. Jackah & Company, Advocates for the appellant.

Mr. Mbeka, instructed by Mbeka & Associates, Advocates for the respondent.

