



REPUBLIC OF KENYA



KENYA LAW
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**Safaricom PLC v Muriuki (Civil Appeal E162 of 2024)
[2025] KEHC 11667 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E162 OF 2024
FN MUCHEMI, J
JULY 31, 2025**

BETWEEN

SAFARICOM PLC APPELLANT

AND

ALBERT MWANIKI MURIUKI RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. Nkurunnah
Namunyak (RM/Adjudicator) delivered on 24th June 2024
in Thika Small Claims Court SCCCOMM No. E146 of 2024)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Thika Resident Magistrate/Adjudicator in SCCCOMM No. E146 of 2024 whereas the court entered judgment in favour of the respondent and awarded him Kshs. 190,727/-.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 10 grounds of appeal summarized as follows:-
 - a. The learned adjudicator erred in law and in fact in finding that the appellant had erroneously linked the respondent's pay bill number with an incorrect bank account.
 - b. The learned trial adjudicator erred in law and in fact in finding that the respondent had lost Kshs. 10,721/- due to the erroneous linking of the respondent's pay bill number with an incorrect bank account despite the appellant denying the same.
 - c. The learned trial adjudicator erred in law and in fact in directing the respondent to file additional documents in support of his claim after the conclusion of the hearing without according the appellant a chance to challenge the veracity of the said documents.



- d. The learned trial adjudicator erred in law and in fact in denying parties a chance to file written submissions despite directing the respondent to file additional evidence after the close of both parties' case.
 - e. The learned trial adjudicator erred in law and in fact in awarding the respondent Kshs. 180,000/- as general damages which award was neither pleaded nor proved by the respondent.
 - f. The learned trial adjudicator erred in law and in fact in placing reliance upon the Data protection Act 2019 in arriving at its decision thereby going beyond the scope of the dispute between the parties and outside the court's jurisdiction.
 - g. The learned trial adjudicator erred in law and in fact in disregarding the appellant's witness testimony during hearing.
3. Parties disposed of the appeal by way of written submissions.

The Appellant's Submissions

4. The appellant relies on Section 107 and 109 of the *Evidence Act* and submits that the respondent did not prove his case on a balance of probabilities. Further, although Section 32 of the *Small Claims Court Act* provides that the court shall not be bound by strict rules of evidence, the same does not exempt the respondent from providing evidence of his allegations. To support its contentions, the appellant relies on the case of *Eleser Limited vs Ark Limited* (Civil Appeal E023 of 2023) [2024] KEHC 6176 (KLR) (13 May 2024) (Judgment). Relying on the cases of *Ruriga & Another* (Both suing as administrators of the Estate of Isaac Ruriga Kariuki) vs *Murigi* (Civil Suit 115 of 2021) [2022] KEHC 14200 (KLR) (19 October 2022) (Judgment) and *Nairobi Bottlers Limited vs Wanjiru* (Civil Appeal 703 of 2017) [2023] KEHC 46 (KLR) (Civ) (17 January 2023) (Judgment), the appellant argues that in a suit founded on the tort of negligence, a claimant has a duty to prove all the elements of negligence. The respondent alleged that the appellant mistakenly linked his Safaricom pay bill with his KCB Account hereby occasioning him a loss of Kshs. 10,727/-. To support his claim for negligence, the respondent produced an M-pesa account statement for Albajes Agencies Pay bill which showed that the pay bill had received money, an M-pesa Service Application Form that did not have the appellant's received stamp, a customer ticket number which was not legible and a letter from KCB confirming the respondent's account with them and a handwritten note. The appellant argues that the said pieces of evidence do not prove that the respondent presented his documents to them for linking, that the linking was incorrectly done or that he lost money as alleged. There is no proof that the respondent presented his M-pesa Service Application forms to them and that the same were received or any loss of funds as alleged. The appellant submits that it filed the respondent's account statement which confirmed receipt of funds on various days into the respondent's pay bill account.
5. The appellant submits that during cross examination, its witness explained that to link their pay bill to a bank account, a customer would be required to visit its customer care shops where they are given forms to fill and are required to present the same alongside their KRA PIN, Identification Card together with other KYC documents. An original is left at the shop and the customer retains a stamped copy. The forms are then sent to the headquarters where configuration is done. The witness further confirmed that a customer is required to present the said documents to its customer care shop and not via WhatsApp as was done by the respondent.
6. The appellant faults the trial adjudicator for failing to address the issue of the respondent's contributor negligence in sharing his personal documents with a third party via WhatsApp. The appellant argues that it raised the issue of contributory negligence as a defence but the trial court failed to address the



- same and found the respondent responsible for his own loss. To support its contentions, the appellant relies on the case of Wayne Ann Holdings Limited t/a Supreplus Food Stores vs Sandra Morgan (no citation given).
7. The appellant submits that the learned adjudicator erred by finding that the issue of loss of Kshs. 10,721/- was not a disputed issue, which it disputed in its response to the statement of claim and at the hearing. The appellant further submits that the learned adjudicator erred in finding that liability on its part was proved or could be imputed because it failed to provide any supporting documents or evidence. Relying on the decision in Charterhouse Bank Limited (under statutory management) vs Frank Kamau (2016) eKLR, the appellant submits that even in the absence of evidence by itself, the respondent still bore the burden to prove his case on a balance of probabilities.
 8. The appellant refers to the case of Palms Resort Limited vs Qureshi & 2 Others (Civil Appeal E167 of 2022) [2023] KEHC 23644 (KLR) (16 October 2023) (Judgment) and submits that a court has a duty to adjudicate only on matters placed before it and anything else would amount to traversing beyond the scope of the dispute between the parties. The appellant argues that the learned adjudicator erred in relying on the Data Protection Act 2019 and held that the appellant owed the respondent a duty to ensure accuracy of his data and promptly correcting any inconsistencies and further proceeded to cite Section 65 of the Act and held that the respondent had suffered damages which include direct financial loss and distress and proceeded to award him general damages. The appellant argues that to enforce the provisions of the Data Protection Act, as per Section 56(2) of the Act, a person may lodge a complaint with the Data Commissioner with any appeals to be filed in the high Court as per Section 64. To support its contentions, the applicant relies on the cases of Mwangi & Another vs Naivasha County Hotel t/a Sawela Lodges (Petition E003 of 2021) [2022] KEHC 10975 (KLR) (19 July 2022) (Ruling) and Sonko vs County Assembly of Nairobi City & 11 Others Petition 11 (E008) of 2022.
 9. Relying on the cases of John Richard Okuku Oloo vs South Nyanza Sugar Co. Ltd [2013] eKLR and Anastassios Thomos vs Occidental Insurance Company Limited [2017] eKLR, the appellant submits that special damages must be strictly pleaded and proven and yet the respondent did not present any evidence to show that he lost money. The M-Pesa statement filed indicates that his pay bill received the said funds and thus the award was erroneous and ought to be set aside.
 10. The appellant relies on the cases of Matulai vs Mwikya (Civil Appeal 12 of 2022) [2024] KEHC 1909 (KLR) (22 February 2024) (Judgment) and Daniel Karuru Mwaura t/a Karuru Mwaura & Co. Advocates vs Barclays Bank of Kenya Limited [2020] eKLR and submits that although an award for general damages is discretionary, the same should not be excessive so as to make it an entirely erroneous estimate of the damage. The trial adjudicator awarded the respondent Kshs. 180,000/- upon satisfying herself that the respondent had suffered damages which include direct financial loss and distress. However, the learned adjudicator did not give an indication as to how she arrived at the said amount, neither did she give her reason for the said amount. The appellant relies on the cases of Equity Bank (Kenya) Limited vs Westlink Mbo Ltd & 2 Others (Civil Appeal 532 of 2019) [2024] KECA 518 (KLR) (26 April 2024) (Judgment) and Peter Ndegwa Kiai t/a Pema Wines & Spirits vs Attorney General & Others (Civil Appeal 243 of 2017) [2021] KECA 328 (KLR) (17 December 2021) (Judgment) and submits that the award was excessive and arbitrary noting that the court did not indicate the factors or provide a reference in awarding the same.
 11. The appellant argues that from the evidence on record, it cannot be said that the respondent experienced mental torture as alleged. In his statement of claim and witness statement, the respondent indicated that when he visited their offices, the appellant's agents listened to him, corrected the account number and directed him where he could be assisted which conduct cannot be considered as inflicting mental torture. To support its contentions, the appellant relies on the case of Mwangi vs Kiambu



The Respondent's Submissions

12. The respondent submits that he submitted a pay bill application form to the appellant, accompanied by a letter from KCB confirming the correct account details. The appellant through its own internal error proceeded to link his pay bill service to a completely different KCB account which was reckless considering that financial services involving client payments demand the highest degree of diligence. The respondent submits that he promptly raised a complaint when a client's Kshs. 10,727/- payment was diverted to the wrong account and the appellant's own internal service ticket MS256 acknowledged the issue. Despite that, the appellant failed to reverse the transaction or take any meaningful corrective action. The respondent argues that Section 25(d) of the Data Protection Act 2019 imposes a mandatory obligation on data controllers to ensure the accuracy of personal data and Section 65 of the Act provides for compensation for anyone who suffers damage due to a breach of data protection obligations. The respondent submits that the appellant neither challenged the authenticity of the submitted documents nor provided any technical audit trail to disprove him.
13. The respondent submits that the special damages of Kshs. 10,727/- were specifically pleaded and substantiated by the client's M-Pesa payment receipt, bank statements and oral evidence. The trial court also awarded general damages of Kshs. 180,000/- informed by his business operations were adversely affected for over a year, he lost a valuable client due to the failed transaction, he endured significant stress, time wastage and repeated back and forth visits to Safaricom and KCB Branches and his professional reputation as a reliable property manager suffered unjustly. The respondent submits that the appellant's failure to act with diligence and its continued indifference even after notification of the error worsened the situation. Thus the award of general damages was an appropriate remedy in the circumstances and served both compensatory and deterrent purposes.
14. The respondent relies on Section 17 of the *Small Claims Court Act* and submits that the court has discretion to admit relevant documents in the interest of justice. The appellant did not object when the documents were presented and neither did it seek an adjournment or offer rebuttal evidence. Thus it cannot now feign prejudice after sleeping on its rights. Furthermore, the trial court based its decision on a totality of the evidence, including documentation that the appellant had access to and chose not to contest.

Issues for determination

15. The main issues for determination are:-
 - a. Whether the appeal is properly before the court.
 - b. If so, whether the appeal has merit.

The Law

16. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the *Small Claims Court Act*, set out the duty of



the second appellate court in the case of Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:-

I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

17. In distinguishing between matters of law and fact the Court of Appeal stated in Kenya Breweries Ltd vs Godfrey Odoyo [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two 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.

Whether the appeal is properly before the court

18. Section 38 of the Act provides:-

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.

19. The Court of Appeal in *Mwangi vs Wambugu* [1984] KLR 453 commented of what amount to points of law as follows:-

A Court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding; and an appellate court is not bound to accept the trial Judge's finding of fact if it appears either that he has clearly failed on some material point to take account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.

20. Similarly in *Peter Gichuki King'ara vs Independent Electoral and Boundaries Commission & 2 Others* [2014] eKLR the court held that:-

Bearing in mind the above principles, the most contentious issues in this appeal is whether the grounds of appeal are matters of law or facts. Having established that we have jurisdiction to determine only issues of law as per the provisions of Section 85A of the *Elections Act*, to us the whole question of whether the trial Judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence with of course the usual caveat, that we did not see the witness demeanor is an issue of law.



21. I have perused the grounds in the memorandum of appeal and noted that the appellant largely argues that the respondent failed to prove that the appellant linked his pay bill number with an incorrect KCB account number thus occasioning him loss. These grounds as raised by the appellant are matters of fact which will require this court to scrutinize and re-evaluate the evidence once more. Section 38 of the [Small Claims Court Act](#) provides for filing of only appeals on matters of law.
22. The appellant is aggrieved that the learned adjudicator allowed the respondent to file additional documents after parties' closed their cases and disregarding the appellant's evidence by denying them a chance to file submissions. On perusal of the court record, the matter proceeded for hearing on 15th May 2024 whereby the respondent gave his oral testimony and the appellant called a witness. Upon the close of the appellant's case, the court directed that the appellant file the account details and statement for pay bill number 4096573 and any application forms linking the pay bill to any account noting that the documents are in their possession and the respondent to file account details and testament they possess for pay bill number 4096573 within 14 days. The matter came up for mention on 4th June 2024 and both parties informed the court that they complied by filing the statement of accounts. The trial court then slated the matter for judgment on 11th June 2024. Thus it is evident from the record that both parties were given a fair hearing before the court. They were accorded the opportunity to file their respective statements and no party objected to the court scheduling the mater for judgment without putting in submissions.
23. It was not necessary or even a requirement of the law for the respondent to specifically plead damages as would happen in the Chief Magistrate Court or the High Court. The statement of claim as worded was sufficient to state the claim under the [Small Claims Court Act](#) provides for a simplified procedure in filing matters, in hearing cases and shall not apply rules of evidence or apply the strict rules of Civil Procedure.
24. The magistrate cited the [Data Protection Act, 2019](#) in expressing itself that a data controller must respect personal data, ensure its accuracy and promptly correct any inaccuracies. This was in order in that the matter before the court related to personal data as handed by Safaricom PCL, the respondent.
25. I have perused the judgment and do not find any evidence of the magistrate considering extraneous matters.
26. The issue of contributory negligence is a matter of evidence which is contrary to Section 38 of the Act.
27. I find that his appeal has failed to comply with the provisions of Section 38 of the Act. It is incompetent and is hereby struck out with costs to the respondent.
28. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31ST DAY OF JULY 2025.

F. MUCHEMI

JUDGE

