



**Kuria v Mbataru (Civil Appeal E040 of 2024)
[2025] KEHC 11722 (KLR) (Civ) (4 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E040 OF 2024

WM MUSYOKA, J

AUGUST 4, 2025

BETWEEN

FRANCIS GITAU KURIA APPELLANT

AND

CAROLINE KAGENDO MBATARU RESPONDENT

(Appeal from judgement and decree of Hon. Jackinda Renna Aketch, Resident Magistrate and Adjudicator, of 18th December 2023, in Nairobi SCCC No. E5046 of 2023)

JUDGMENT

1. The suit, at the Small Claims Court, was by the respondent, against the appellant. It was in respect of recovery of compensation, being special damages, suffered by the respondent, following damage to her car, after it was in collusion with a vehicle belonging to the appellant. She attributed negligence on the appellant or his driver. The appellant resisted the claim. He averred that the claim by the respondent was exaggerated.
2. A trial was conducted. 4 witnesses testified for the respondent. The record of appeal is incomplete, with regard to the proceedings, but it would appear that the appellant testified, but the record does not have his testimony, as paragraphs 9 and 10 of the typed proceedings are missing, but I see a complete set of the proceedings in the handwritten trial notes. I cannot tell if the appellant called a witness. Judgement was delivered, on 18th February 2023. The claim by the respondent was allowed.
3. The appellant was aggrieved; hence he brought the instant appeal. He avers that the judgment was against the weight of the evidence; the respondent’s driver neither filed a witness statement nor testified at the hearing; extraneous matters were considered; there was failure to find the evidence of the appellant uncontroverted; the decision was based on wrong principles; among others.



4. The appeal was not placed before a Judge for directions, contrary to what is required by Order 42 rule 13(1) of the Civil Procedure Rules. Both sides, nevertheless, filed written submissions. I have read through them, and noted the arguments made.
5. The principal issue is whether the appeal herein is merited. The suit, at the trial court, was for material damage. The respondent led evidence on that damage, which amounted to Kshs. 129,840.00. Documents were produced, which supported the claim. That evidence was not controverted by the appellant.
6. The suit was predicated on negligence. So, before the appellant could be called upon to pay the amount claimed, the respondent needed to establish negligence on the part of the appellant. The accident was caused by a collision of 2 motor vehicles. One belonging to the appellant, and the other to the respondent. Liability had to be determined, on the basis of who bore greater blameworthiness over the collision. The appellant testified. He was the driver of his vehicle. The respondent did not call her driver to testify and instead relied on the evidence of a police officer, who produced a police abstract. That police witness did not investigate the matter; he was only called to produce a police abstract. The police records apparently blamed the appellant.
7. The eyewitness account came from the appellant. The evidence led by the respondent could not provide basis for assessing liability at 100%, given that none of the witnesses of the respondent were eyewitnesses to the accident. They could not provide first-hand evidence of how the accident happened. The appellant was there, he saw what happened. The police witness said the appellant was blamed for the accident, but he did not provide a background for that. He did not produce any sketches of the accident scene. He did not visit the scene. He never saw the vehicles at the scene.
8. The evidence by the respondent was second hand, hearsay, as opposed to the eyewitness account of the appellant. The trial court had no basis for holding the appellant 100% liable. The respondents did not establish negligence against him. Greater weight ought to have been given to the first-hand account of the appellant. Liability should have been assessed at 80% against the respondents, and 20% against the appellant, at best, and equally between the 2 drivers, at worst. However, as the appellant gave superior testimony on the occurrence of the accident, which was not challenged by the third-rate evidence from the respondents, assessment should have been at 20% in his favour, and 80% against the respondent.
9. There is an issue that the parties have not addressed, and this is on whether the judgement was valid, in view of section 34(1) of the *Small Claims Court Act*, Cap 10A, Laws of Kenya. That provision vests a 60-day jurisdiction on the Small Claims Court, from the date of filing, to determine the matter. The Small Claims Court enjoys jurisdiction for only 60 days. After 60 days, jurisdiction is lost, and any determination outside that 60-day period would be a nullity.
10. The matter was filed on 4th October 2023, at 04:52:57 PM. The 60 days began to run from that time. The 60-day period should have expired on or about 4th December 2023. That is the period within which the trial court had jurisdiction. After 4th December 2023, there was no jurisdiction, and a determination rendered outside that 60 days period would be invalid and a nullity. Judgement was delivered on 18th December 2023. By then jurisdiction had expired, and that determination was null and void. The appeal herein is founded on an invalid judgement. It is incompetent. I have not jurisdiction to determine it.
11. If there was no jurisdiction, I would have allowed the appeal on merits, on the basis that the trial court failed to appreciate that the appellant was an eyewitness to the subject accident, while none of the witnesses presented by the respondents were. I would have assessed liability at 20% against the



appellant and 80% against the respondent, and subjected to sum of Kshs. 129,840.00, awarded to the contribution 80% by the respondent.

12. As the judgment was invalid, and as this appeal is incompetent on that account, I do hereby dismiss the same. The respondent is not entitled to costs, as she had obtained a null judgment.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 4TH DAY OF AUGUST 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Mshindi, instructed by Kinuthia Wandaka & Company, Advocates for the appellant.

Ms. Nekesa, instructed by W&M & Company, Advocates for the respondents.

