



**Aftah Petroleum (K) Limited v Kuke (Civil Appeal E087 of 2022)
[2024] KEHC 1610 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1610 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E087 OF 2022
KW KIARIE, J
FEBRUARY 22, 2024**

BETWEEN

AFTAH PETROLEUM (K) LIMITED APPELLANT

AND

HELLEN ADOYO KUKE RESPONDENT

(Being an Appeal from the judgment and decree in Oyugis Senior Principal Magistrate's SPMCC No. 238 of 2017 by Hon. B.O. Omwansa–Principal Magistrate)

JUDGMENT

1. Aftah Petroleum (K) Limited, the appellant herein, was the plaintiff in Oyugis Principal Magistrate's SPMCC No. 238 of 2017. This claim arose from a traffic accident involving motor vehicle registration number KCA 220R Tipper, which rammed into the appellant's petrol station. The appellant claimed Kshs.2,558,500.00 and compensation for loss of repair for the period the repair works were undertaken. The claim was dismissed with no orders to costs.
2. The appellant was aggrieved by the judgment and filed this appeal through Odhiambo Ouma & Company Advocates. The following grounds of appeal were raised:
 - a. The trial magistrate erred in law and fact in determining that the appellant did not demonstrate and prove the extent of the quantum suffered as damages when the appellant adduced and placed before the court the unchallenged evidence that sufficiently demonstrated the same and, therefore, occasioned a travesty of justice.
 - b. That trial magistrate erred in law and fact in ignoring the probative value of the evidence and material placed before him to demonstrate and prove the extent of the quantum suffered as damages and proceeded to determine the same based on the degree of proof that is entirely not applicable in civil proceedings.



- c. The trial magistrate erred in law and fact in failing to correctly apprehend, understand and apply the law and facts placed before him as to singularly and improperly consider the evidence placed before him inadequate merely because a person did not adduce it without the requisite skill or expertise when the said evidence was unchallenged, was coherent and lawfully demonstrated and proved the aspect of the extent of the quantum suffered as damages having found that the respondent was fully liable for the loss and damage suffered by the appellant.
 - d. The trial judge occasioned a travesty of justice by misapprehending the law and facts placed before him and failing to consider the submissions placed before him by the appellant and factored in issues not placed before him by any of the parties as to have occasioned travesty of justice.
3. The respondent opposed the appeal through the firm of J.V. Obat & Company Advocates. She raised the following grounds of opposition:
 - a. The lower court made the correct decision based on facts and law.
 - b. That the appeal lacks merit.
4. This Court is the first appellate court. I am aware of my duty to evaluate all the evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
5. It is undisputed that there was an accident involving the motor vehicle with registration number KCA 220R Tipper and the appellant's petrol station. The appellant filed a claim seeking compensation for the value of his damaged property, amounting to Kshs. 2,558,500/=, as well as for the loss of business during the period the petrol station was under repair due to damage occasioned by the accident.
6. The law is settled on the issue of special damages. They must be both pleaded and proved before the court can award them. The Court of Appeal pronounced this in the case *Hahn vs Singh* [1985] KLR 716, at P. 717 and 721, as follows:

Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.

In the instant case, I will analyze the evidence on record to establish whether the appellant strictly proved his claim.
7. Donald Kisanya Momanyi (PW4) introduced himself as a land economist. His evidence was that he was the one who valued the property after the complaint of an accident. During cross-examination, he said he had the qualification but was not a registered valuer. The *Valuers Act*, CAP 532 laws of Kenya, provides for the registration in section 12. Section 21 outlaws any unregistered person to practice as a valuer. It states:
 - (1) After the expiration of six months from the commencement of this Act or such further period as the Cabinet Secretary may, by notice in the *Gazette*, allow either generally or in respect of any particular person or class of persons—
 - (a) no individual shall carry on business as a practising valuer unless he is a registered valuer;



- (b) no partnership shall carry on business as practising valuers unless all the partners whose activities include the doing of acts by way of such practice are registered valuers;
 - (c) no body corporate shall carry on business as valuers unless the directors thereof whose duties include the preparation of valuations in respect of any type of movable or immovable property are registered valuers.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

The evidence by PW4 was, therefore, inadmissible. This was the evidence the appellant relied on to prove the special damages he was claiming.

8. Whereas the accident complained of occurred, it was incumbent upon the appellant to prove the special damages he had pleaded. The law requires that they be strictly proved. Since this was not done, the appeal is, as a result of this, dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF FEBRUARY 2024.

KIARIE WAWERU KIARIE

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

