



**Express Connections Limited v Laibuni (Civil Appeal E1180 of 2023)
[2024] KEHC 7339 (KLR) (Civ) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7339 (KLR)

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

CIVIL

CIVIL APPEAL E1180 OF 2023

JM OMIDO, J

JUNE 20, 2024

BETWEEN

EXPRESS CONNECTIONS LIMITED APPELLANT

AND

IMMACULATE KARAMBU LAIBUNI RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. Irene Ruguru, Senior Principal Magistrate delivered on 6th October, 2023 in Milimani Commercial Courts CMCC No. E11279 of 2021)

JUDGMENT

1. This appeal emanates from the judgement and decree of Hon. Irene Ruguru, Senior Principal Magistrate delivered on 6th October, 2023 in Milimani Commercial Courts CMCC no E11279 of 2021.
2. The grounds of appeal presented by the Appellants vide the Memorandum of Appeal 10th June, 2022, upon which they seek to upset the judgement and decree of the lower court are as follows:
 - i. The Learned Magistrate erred and misdirected herself when she failed to consider the Appellant's/Applicant's submissions on points of law and fact.
 - ii. The Learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - iii. The Learned Magistrate erred in fact and law in finding that the Respondent was entitled to a Judgement/Decretal award of ksh 2,503,550/-.



- iv. The Learned Magistrate erred in fact and in law making an inordinate award of liability 80% against the Appellant, general damages: ksh 2,500,000/-, and special damages ksh 3,550/-.
 - v. The Learned Magistrate erred in law and fact by failing to judiciously analyze the evidence on record and the Appellant's/Applicant's submissions and authorities thereby arriving at a finding on quantum that was manifestly high, erroneous, untenable, unfair and unjust to the Appellant.
 - vi. The Learned Magistrate failed to consider conventional awards made in respect of cases of similar injuries thereby arriving at an excessive award.
 - vii. The Learned Magistrate erred in fact and in law in failing to appreciate the nature of injuries sustained by the Respondent and in so being arrived at an erroneous assessment of damages.
3. The Court directed that the appeal proceeds by way of written submissions and gave the parties herein timelines for filing their respective submissions. The Respondent duly complied and filed her submissions. The Appellant did not file submissions. No reasons are on record as to why the Appellant failed to comply with the orders of the court.
4. I will borrow from case law where the court (Mwangi Njoroge, J.) in the case of *Stephen Muthamia Marete & 2 others v Mary Naitore Kinyua (enjoined as the legal representative of the Estate of Patrick Kinyua Iringo)* [2018] eKLR, faced with a similar situation where an Appellant failed to file submissions in support of an appeal, observed and held as follows:
- “In my view, when an Appellant has been ordered to file written submissions and he fails to do so as the Appellants have done in this case, the court should find, as it does in this case, that the appellant has failed to prosecute his appeal, or is no longer interested in pursuing it.”
5. The court concluded as follows:
- “I find that the Appellants have failed to prosecute their appeal. I hereby dismiss the appeal with costs for want of prosecution.”
6. In the obtaining situation, I have no doubt that the Appellants has failed to prosecute its appeal and the only available avenue, in the circumstances, is to dismiss the same for want of prosecution, which I hereby do, with costs to the Respondent.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 20TH DAY OF JUNE, 2024.

J.M. OMIDO.

JUDGE

For Appellant:

For Respondent:

Court Assistant:

