



Kagiri v Kibui (Civil Appeal E341 of 2023) [2024] KEHC 9046 (KLR) (24 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E341 OF 2023
BM MUSYOKI, J
JULY 24, 2024**

BETWEEN

BENSON KIBE KING'ORI KAGIRI APPELLANT

AND

ANTONY KIBUI RESPONDENT

(An appeal from judgment and decree of the Small Claims Court at Thika (Hon. O.J Muthoni RM/Adjudicator) dated 17-08-2023 in her civil claim number E294 of 2023)

JUDGMENT

1. The appellant brought this appeal challenging part of the judgement and decree of the adjudicator in Thika Small Claims Court dated 17-08-2023. Although the introductory part of his memorandum of appeal the appellant indicates that he was appealing the whole of the decree, the ground enumerated therein and his submissions dated 28th May 2024 show otherwise. The ten grounds of appeal can be summarized or consolidated to two. That is, appellant is challenging the adjudicator's finding on liability and award of Kshs 135,500.00 being costs of repairs. The grounds of appeal and submissions do not raise any objection to the following awards
2.
 - a. Kshs 6,000.00 awarded for assessment services;
 - b. Kshs 6,000.00 awarded for boot repairs; and
 - c. Kshs 6,000,00 for towing charges.
5. The respondent filed the claim before the lower court claiming special damages as compensation for damage caused to his motor vehicle registration number KDA 243Q which was involved in an accident with the appellant's motor vehicle registration number KDH 238Y. The respondent was claiming a total of Kshs 274,050.00 which he tabulated as below



- a. Repair costs 133,500.00.
 - b. Boot repair kshs 6,000.00.
 - c. towing charges 6,000.00.
 - d. assessment fees 6,000.00.
 - e. storage fees 200 per day for 2 months 12,000.00.
 - f. of user/daily earnings 90,000.00.
 - g. Demand letter by advocates 20,000.00.
 - h. Copy of records 550.00.
6. The appellant defended the claim and upon hearing, the adjudicator awarded a sum of Kshs 153,500.00 as indicated in the opening paragraph of this judgment. She dismissed the rest of the claims for lack of proof. The Honourable adjudicator found that the respondent had produced enough evidence to prove his claim.
7. As said above, the summary of the appeal is against the finding on liability and award of repair costs of 135,500.00. However, at the end of his submissions the appellant has clearly abandoned his appeal on liability. He ends that part of his submissions by saying that, ‘However should the court have a different view upon considering the appellant’s submissions at the lower court, we shall stand guided by the court’s decision on the same’. If in his own words the appellant has ‘since reflected on the same and his humble view is that the circumstances of the cases which he relied on at the trial court were not similar to his case’, this court has no business considering those submissions or furthering his appeal on the same issue. I refuse that invitation to consider a ground the appellant has abandoned. Even if I were to find it fit to consider the submissions on liability filed in the trial court as proposed by the appellant, there is still the issue of jurisdiction which I will address hereunder together with the appeal on the damages awarded for costs of repairs.
8. I have carefully read the submissions by the parties herein and authorities cited therein. The respondent has raised the issue of jurisdiction. He argues that this court lacks jurisdiction to entertain this appeal in view of Section 38 (1) of the [Small Claims Court Act](#). This Section ousts jurisdiction of this court on appeals from the small claims courts on issues of facts. It has been held that jurisdiction is everything and if the court were to find that it does not have the requisite jurisdiction, it should down its tools instantly. There would be no need to go to the merits of the appeal. In that regard I will address this issue first.
9. It is not disputed that Section 38(1) of the Small Claims Court limits appeals to issues of law. The only issue remaining for determination in this appeal is the award of Kshs 135,500.00 being the costs of repairs. The question I should answer at this stage is whether the matters raised in respect of the award are matters of law or of facts.
10. The appellant has raised two aspects touching on issue of the contested award. The first one is that they were not pleaded. He has framed three issues for determination which I agree cover the appeal. The 2nd issue framed by the appellant in his submissions reads; ‘whether the learned trial magistrate erred in law in allowing the respondent’s claim and awarding the respondent special damages of Kshs 135,500.00 for repair costs when the same was not specifically pleaded’. It is discernable from this that the issue raised is that the damages were not specifically pleaded.



11. Although the appellant has framed the issue in a manner to show that is purely an issue of law, one cannot escape the fact that, an award follows proof by use of evidence. In my considered view this issue is twofold. There is an issue of law to the extent that it questions whether the repair costs were specifically pleaded. That question is an issue of law because the manner in which pleadings should be drawn and their contents is an issue of law.
12. There is also an aspect of facts which is embodied in the proof of the costs of repair. Whether one has sufficiently proved what is pleaded in a claim is a matter of fact which calls for production and adduction of evidence. No doubt for one to prove costs of repair, he would have to produce evidence. It is therefore my finding that the issues of whether the cost of repairs were proved or not is an issue of fact. The respondent may or may not have produced enough factual evidence to prove the costs of repairs but my hands are tied by the law. Where the court is divested of jurisdiction, it cannot interrogate issues in the matter in issue irrespective of how strong or weak the available evidence is. In the circumstances, I decline to reconsider that part of the decision and hold that I have no jurisdiction to wade into the evidence produced before the adjudicator in proof of the award.
13. The last issue for determination is whether the costs of repairs were specifically pleaded in the statement of claim. Paragraph 4(a) of the statement of claim is clear that the costs of repairs were pleaded. If I understand the appellant well, he argues that the respondent was supposed in addition of pleading the costs, to enumerate or list the parts of his motor vehicle which were damaged and repaired. I find it difficult to agree with that view. It is trite law that pleadings should not consist of evidence. Parties are supposed to plead facts in a summary and brief manner. It is not a requirement of law that the parties enumerate specific items in their pleadings. It was enough for the respondent to plead the total costs of repairs in lumpsum. The specific parts damaged and repaired at what costs is matter to be proved through evidence.
14. I have already indicated that I will not delve into the issue of the evidential proof. I therefore find that the costs of repairs were specifically pleaded in such a manner to give notice to the appellant on what claim was being launched against him. No prejudice was occasioned to him by the pleading of the costs of repairs in lumpsum as long as the same were proved through production of evidence.
15. The totality of the above is that I find no merits in this appeal and same is hereby dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

