

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E194 OF 2024

GEORGE WILLIAM OMOSO.....
APPELLANT

VERSUS

BENEDICT KASIMBI.....
.....RESPONDENT

***(Being an Appeal against the Judgement of the Honourable B Luova
(SRM) in Machakos Scccomm no. E200 of 2024 delivered on
04/07/2024)***

JUDGMENT

- 1.This appeal challenges the order of dismissal of the Appellants material damage claim by the court below.
2. Briefly, the appellant's case was that on or about the 6th March 2022 at 0900 hrs along Namanga road at Savanna area the appellant's motor vehicle Reg. No. KDB 568E was hit by a motor vehicle Reg. No.KBU 042N belonging to the respondent and as a result the appellant's motor vehicle was damaged.
- 3.After considering the evidence and submissions by both sides the Adjudicator dismissed the claim for reason that negligence was not proved.

4. Aggrieved by the Judgment, the Appellant lodged this appeal on grounds that: -

- “a. The learned trial magistrate erred in fact and in law by dismissing the Claimant’s claim against the preponderance of evidence placed before the court.***
- b. The learned trial magistrate erred in law and in fact by holding that the claimant had not particularized negligence when the circumstances giving rise to negligence were clearly set out in paragraph 4 of the statement of Claim and supported by the evidence of the Police abstract.***
- c. The learned trial magistrate failed to appreciate the fact that the small Claims court forms as presented under the small claims court rules provide for particulars of permitted causes of action sufficient enough to inform the respondent of the wrong complained of and do not therefore require further particularization of negligence***
- d. The learned trial magistrate erred in fact and in law by dismissing the claimant’s suit on the technicality of particularization of negligence despite admitting that the claimant had otherwise proved his case on a balance of probabilities.***
- e. That the learned trial magistrate erred in fact and in law by requiring the claimant to prove his case beyond the required standard of proof when the claimant had in fact proved his case on a balance of probabilities***
- f. The learned trial magistrate erred in fact and in law by ignoring the claimant’s pleadings,***

witness statement and written submissions in reaching her decision hence arriving at an erroneous judgement

g. The learned trial magistrate erred in fact and in law by dismissing the claimant's claim based on a drafting and or procedural technicality contrary to the Constitution, the principles of natural justice and the overriding objective of the Small Claims Court Act.

h. The learned trial Magistrate erred in fact and in law by dismissing the claimant's claim despite there being overwhelming evidence in support of the said claim."

5.The appeal was canvassed by way of written submissions.

Submissions

6.Learned Counsel for the Appellant submitted that the trial court misapprehended the law and in doing so placed undue barriers to the appellant's case and required the appellant to prove its case beyond the threshold required for civil matters before the small claims court. Counsel placed reliance on the case of **Chino General merchants Xtream Ltd vs Chen Zhebit & Another [2022] eKLR.**

7. It was further submitted that the Appellant pleaded and proved his case on a preponderance of evidence and that the evidence was not controverted by the Respondent as he did not file any evidence or even call a witness at the hearing.

8.Counsel urged this court to allow the appeal.

9. For the Respondent, it was submitted that the Appellant did not discharge the burden of proof as required under **Section 107 and 109 of the Evidence Act**. Counsel for the Respondent relied on the case of **Ogwari vs Hersi [2023] KEHC 20111** and **David Mwangi Kariuki & Another vs Stephen Mwangi & Anor (2017)**.

10. Counsel also submitted that the appellant's claim was dismissed on account of failure to plead and prove negligence. Counsel urged this court to dismiss the appeal with costs.

Analysis and determination

11. This being a first appeal the court is under a duty to delve into the evidence in the court below, analyse it, evaluate it and arrive at its own independent conclusions, but always bearing in mind that it did not hear or see the witnesses.

12. An appeal from Small Claims Court lies to this court is on issues of law only. This is pursuant to **Section 38 of the Small Claims Court Act** which provides as follows:

"38.(1) 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. (2) An appeal from any decision or order referred to in subsection (1) shall be final."

13. What constitutes points of law, was considered by the Court of Appeal in the case of **Peter Gichuki King'ara v IEBC & 2 Others, Nyeri Civil Appeal No. 31 of 2013** where the Court stated as follows:

“It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law of evidence with the caveat that the appeal court did not see the witness demeanor- is an issue of law”

14. The issue for determination herein is whether the Adjudicator called for a higher standard of proof than is expected in claims before the Small Claims Court. Whether a claimant in the Small Claims Court is required to plead the particulars of negligence as in other civil cases and whether the claim herein was sufficiently as pleaded.

15. I have carefully considered the issues raised in this appeal. As correctly submitted by Counsel for the Appellant, the Small Claims Court is not an ordinary civil court. From the Small Claims Court Act one can discern that it was designed to have less restrictive procedures aimed at the expeditious disposal

of small claims whose value does not exceed Kshs.1,000,000/-. Its rules of procedure were simplified and the Adjudicators given discretion on the procedure to be adopted.

16.The nature of the claims that are heard in the small claims court are set out in **Section 11(1) of the Act**. Among them is – ***“liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property...”***

17.The Appellant’s claim arose from damage to his vehicle and is hence covered under **Section 11(1) (c) of the Small Claims Court Act**. It is trite that in material damage claims there can be no liability without fault. The claimant must first prove liability before they can be awarded the damages sought. It is also trite that the party alleging the liability of the other must first plead the particulars of negligence so as not to take the other party by surprise. The claimant in the small claims court is also bound by the law and accordingly the omission to plead the particulars of negligence was fatal to the claim.

18.I am not persuaded that this appeal has merit and the same is dismissed with costs to the Respondent.

Orders accordingly.

Judgment signed, dated and delivered virtually on this 27th day of November, 2025.

E. N. MAINA

JUDGE

IN THE PRESENCE OF:

Mr. Ngolya for Respondent

Mr. Ajwang for Appellant

Court Assistant/Interpreter: Geoffrey

ORIGINAL