



**Maina v Kmamadi & another (Civil Appeal E025 of 2024)
[2025] KEHC 745 (KLR) (Commercial and Tax) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E025 OF 2024
BM MUSYOKI, J
JANUARY 31, 2025**

BETWEEN

RAY MAINA APPELLANT

AND

INDWASI KMAMADI 1ST RESPONDENT

TRIDENT INSURANCE COMPANY LIMITED 2ND RESPONDENT

*(Being an appeal from judgment and decree of the Small Claims Court at
Milimani (V.K. Momanyi) in her claim number E1109 of 2024 dated 5-04- 2024)*

JUDGMENT

1. This appeal arises from judgment of the small claim court at milimani in its claim number E1109 of 2024 in which the appellant had sued the respondents for compensation for damages on his motor vehicle registration number KBN 555R resulting from an accident involving the said motor vehicle and motor vehicle registration number KCY 608M on 24th August 2023. The 1st respondent was said to be the owner and driver of motor vehicle registration number KCY 608M. The respondents did not enter appearance or defend the claim and upon consideration of the claim, the honourable dismissed the claim for failure by the appellant to prove the extent of the damage to his motor vehicle hence this appeal.
2. This is a first appeal which in law calls upon this court to re-examine, re-evaluate and re-analyse the evidence in the case afresh and make its own independent conclusion noting that the court did not take evidence first hand or observe the demeanour of the witnesses and therefore give due allowance for the same. The trial court decided the case without hearing viva voce evidence of the parties which is allowed under Section 30 of the *Small Claims Court Act*.



3. The appellant has raised the following grounds of appeal;
 1. The learned adjudicator erred in law and fact in holding that the evidence adduced by the claimant in this regard was inadequate to strictly prove the claim.
 2. The learned adjudicator erred in law and fact in holding that an assessment from the insurance company and invoice adduced could not establish the extent damage.
 3. The learned adjudicator erred in law and in fact by finding that the quotation being the estimated cost of repair was not sufficient to establish the extent of damage occasioned to his motor vehicle contrary to rule 5(1) of the Small Claims Rules 2019.
 4. The learned adjudicator erred in law and in fact in finding that the claim had not been proved to the required standard and thereby dismissing it.
4. In his submissions, the appellant has collapsed the above grounds to one which is whether the learned adjudicator erred in law and in fact in finding that the quotation being the estimated cost of repairs was not sufficient to establish the extent of the damage occasioned to his motor vehicle contrary to Rule 5(1) of the Small Claims Court Rules 2019.
5. In his statement of claim, the appellant at paragraph 4D listed the following documents to be part of his evidence
 - i. Demand letter dated 6th October 2023;
 - ii. Assessment report dated;
 - iii. The Kenya police abstract dated;
 - iv. Statutory Notice;
 - v. Bill of costs;
 - vi. Receipts and quotations from spare parts dealers;
 - vii. Receipts in respect to car towing service and transport;
 - viii. Proof of insurance;
 - ix. Certificate of examination and inspection by the National Transport and Safety Authority.
 - x. A valid driving license;
 - xi. Insurance certificate;
 - xii. PIN certificate; and
 - xiii. Log book.
6. It is obvious from the above list that the appellant's pleadings were done in a casual manner. Either the appellant did not have the documents in his hands at the time of drawing the pleadings or the same were done with the least of attentions. This can be seen from the descriptions and lack of dates in some of the documents and the fact that the list of documents which appears on pages 12 of the record of appeal does not match what is on the statement of claim. The said list of documents listed following;
 1. Demand letter dated 6th October 2023;
 2. Assessment report dated;



3. The Kenya police abstract;
 4. Statutory notice;
 5. Bill of costs;
 6. Receipts and quotations from spare parts dealers;
 7. Receipts in respect to car towing service and transport;
 8. Certificate of examination and inspection by the National Transport and Safety Authority;
 9. A valid driving license;
 10. Insurance certificate;
 11. Others to be produced with leave of court.
7. Further, in the actual bundle of documents appearing on pages 13 to 22 of the record of appeal, the appellant produced the following documents;
1. Demand letter dated 6th October 2023 to the 2nd respondent;
 2. A receipt for Kshs 9,500.00 towing charges dated 31-08-2023;
 3. Certificate of examination and inspection by the National Transport and Safety Authority dated 24-08-2023;
 4. Certificate of insurance for motor vehicle registration number KCY 608M;
 5. Unsigned quotation dated 12-09-2023 from Ves Customz;
 6. Police abstract dated 29-08-2023;
 7. Log book for motor vehicle registration number KBN 555R;
 8. The appellant's KRA PIN certificate.
8. It is not clear to this court why the 1st respondent was sued as it was neither the owner of the offending motor vehicle neither is it alleged that the vehicle was under its control or possession. It is actually mentioned nowhere in the statement of claim other than the description part. The only connection the 1st respondent had to the motor vehicle was that it was the insurer. In my view, an insurance company becomes liable for damages after judgement is passed against its insured. It was therefore an error to join the 1st respondent in the suit.
9. From the submissions of the appellant and the memorandum of appeal, it is clear to this court that the complaint by appellant is that the trial court dismissed his quotation which was his exhibit 5. I have analyzed this document which the appellant claims was sufficient enough as provided in Rule 5(1) of the Small Claims Court Rules. The Rule states that;
- ‘A person claiming compensation under section 12(1)(c) of the Act in respect of a motor vehicle which has been damaged in a road traffic accident or other accident shall attach to the Statement of Claim an itemized estimate of the cost of repair prepared by a licenced mechanic or certified motor vehicle assessor.’
10. If I understand the appellant, he is claiming that the trial court should have found the document sufficient to prove the extent of damage to the motor vehicle. Although the small claims court should



not be bound by strict rules of evidence, it does not mean that the courts should not apply the law while analysing evidence. The fact that a document is admitted in evidence just as the court admitted the quotation does not mean that the same is enough to prove an issue before the court. There is a difference between admission of evidence and the probative value of the admitted evidence.

11. The quotation produced by the appellant shows the prices of the several motor vehicle parts and labour. It does not state which parts of the vehicle were damaged neither are there photographs to show the damage on the motor vehicle. The quotation does not even bear the signature of the person who prepared it other than stating that it was created by one Mr. Wasonga. The aforesaid Rule allows production of an estimate from a licensed mechanic or a certified vehicle assessor and that does not preclude the claimants from proving their cases.
12. In my considered view, the quotation the appellant relied on did not meet the standard of proof required for him to succeed in his claim. The person named as Wasonga who is said to have created the quotation does not indicate whether he was a certified assessor or a licenced mechanic. The Ves Customz on whose credentials the quotation was done appears to me, as it did to the adjudicator, to be a motor vehicle parts shop. The Wasonga said to have created the documents may as well have been a shop attendant in the said shop.
13. In view of the above, I do not see any reason to justify disturbing the judgment of the adjudicator and I proceed to dismiss this appeal with no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Ochieng for the appellant and in absence of the respondent.

