



**Githinji v Kagwi & another (Civil Appeal E040 of 2024)  
[2025] KEHC 2130 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2130 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E040 OF 2024  
RC RUTTO, J  
FEBRUARY 14, 2025**

**BETWEEN**

**JOHN NGUMI GITHINJI ..... APPELLANT**

**AND**

**BONFACE NDEGWA KAGWI ..... 1<sup>ST</sup> RESPONDENT**

**ROSE WAIRIMU MURIU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Small Claims Court of Kenya at Ruiru delivered by the Hon. Resident Magistrate J.K Tawai, on the 27th February 2024 in SCC NO. E034 OF 2023)*

**JUDGMENT**

1. This appeal arises from a judgment and decree entered in Ruiru SCC NO E034 OF 2023. In the said suit, the Appellant herein sued the Respondents seeking special damages, of Kshs 377, 224/= costs and interest.
2. The genesis of this dispute as stated in the Statement of Claim was that on 25<sup>th</sup> September 2023 the Appellant was lawfully driving Motor Vehicle Registration Number KCR 464B Honda Stream, at 14 area along Kimbo- Kiganjo Road when the Respondent or his agent recklessly drove Motor Vehicle Registration Number KBU 946K causing it to lose control and hit the Appellant's motor vehicle occasioning damage on the Appellant's Motor Vehicle.
3. The Respondents filed their Response dated 26<sup>th</sup> January 2024 they denied the allegations of negligence and stated that the damage was contributed to by the Appellant.
4. Both parties testified and upon considering their evidence, the trial court on 27<sup>th</sup> February, 2024 entered judgment in favor of the Appellant herein as follows: -



- i. Judgment on liability entered at 100% in the Claimant's favour against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally.
  - ii. Judgment is entered for the Claimant against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for Kshs 29, 930/=.
  - iii. Interest on (b) above at court rates from the date of filing claim until the date of payment.
  - iv. Costs of this claim shall be for the Claimant.
5. The Appellant being aggrieved with the entire judgment, lodged this appeal on 4<sup>th</sup> March 2024. The appeal sets out the following summarized grounds; the adjudicator erred in law and fact by denying the Appellant special damages of Kshs 377, 224/=; misdirected herself and based her findings of special damages on wrong considerations; erred and misdirected herself in fact and law by awarding general damages lower than what was pleaded thus failed to appreciate the principles applicable in the award of damages; erred in fact and in law by failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
6. The Appellant prayed that the appeal be allowed with costs. Additionally, that the judgment be set aside and the court be pleased to reassess the special damages payable.
7. The appeal was canvassed by way of written submissions. The Appellant's submissions are dated 16<sup>th</sup> July, 2024 while the Respondent's submissions are dated 2<sup>nd</sup> August, 2024.

#### **Appellant's submissions**

8. The Appellant set out the mandate of the High Court as a first appellate court, as set out in Rule 29(1) of the Court's Rules, which is to reappraise the evidence and draw inferences of fact. He relied on the cases of *Selle & Another v Associated Motor Boat Co. Limited* [1986] EA 123 and *Treadsetters Tyres Limited v John Wekesa Wepukhulu* [2010] eKLR.
9. The Appellant submitted that he had proven his case. He referred to the testimony of CW2, who stated that he had prepared an assessment report in which he charged Kshs 6,380/= and assessed the total repair costs at Kshs 377,224/=. He relied on the cases of *Eliud Maniafu Gabuni v Kenya Commercial Bank* [2002], *Nkuene Dairy Farmers Cooperative Society & Another v Ngacha Ndeiya* [2010] eKLR, and *David Bagine v Martin Bundi* [1997] eKLR to argue that a motor assessor's report constitutes acceptable evidence for proving the value of material damage to a motor vehicle. The Appellant further submitted that the failure to provide receipts for repairs carried out was not fatal to the claim.
10. The Appellant additionally submitted that the trial Magistrate, in her judgment, acknowledged that liability against the Respondents had been assessed at 100%, yet quantum was only partially awarded.
11. In conclusion, the Court was urged to allow the appeal and set aside the decision of the learned adjudicator.

#### **Respondent's submissions**

12. The Respondents submitted that CW2 allegedly conducted a re-inspection of the Appellant's motor vehicle on 5th December 2023 and prepared a report on 7th December 2023. They contend that the Claimant claimed to have had receipts for the repair parts and costs during the trial but did not file the same with the court. The Respondents submit that these receipts must have been in the Claimant's possession at the time of the re-inspection. The Respondents place reliance on the cases of *David Bagine v Martin Bundi* [1997] eKLR and *Jackson Mwabili v Peterson Matiri*, HCCA No. 29 of 2019 (Kajiado).



13. The Respondents further submitted that the Claimant's evidence indicated that, by the date of preparing the statement of claim, the actual costs of the repairs had been ascertained through the receipts he had obtained, if indeed the re-inspection had been carried out as alleged on 5th December 2023. They argue that the Appellant's failure to present these receipts can only be interpreted as evidence of a variance between the assessment estimates and the actual costs.
14. The Respondents concluded their submissions by relying on the Court of Appeal decision in *Nkuene Dairy Farmers Co-op Society Limited & Another v Ngacha Ndeiya* [2010] eKLR.

### **Analysis and Determination**

15. To begin with, the duty of this court as the appellate court is described under Section 38 of the *Small Claims Court Act* which restricts the jurisdiction of the High Court on appeals from the Small Claims Court to matters of law only. It provides that:
  38.
    - (1) A person aggrieved by the decision or an order Appeals. 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.”
16. What constitutes, points of law, has been settled. In the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, where the court stated as follows: -

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).
17. A thorough examination of the grounds of appeal as it appears in the Memorandum of Appeal is premised on the grounds that the adjudicator erred in “law and in fact” and it calls upon the court to reassess the issues of fact. The Appellant's submissions, from the outset, construe this court as the first appellate court empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. They failed to acknowledge Section 38 of the *Small Claims Court Act* which limits the jurisdiction to issues of law only.
18. Consequently, this court will limit itself from delving into the issues of facts and address the only issue of law arising which is; Whether the Appellant proved its claim for material damage to the required standard/as required by law?
19. As stated earlier the claim is one for special damage arising out of a material damage. To prove its case the appellant relied on the motor vehicle assessment report which provided for the itemized cost of repairs all totaling to kshs 356,294.
20. The adjudicator while relying on the authorities of *Richard Okuku Oloo vs South Nyanza Sugar Co Ltd* (2013) eKLR and *Christine Mwigina Akonya v Samuel Kairu Chege* (2017) eKLR emphasized that special damages must be specifically pleaded and proven with a degree of certainty and must depend on the circumstances and nature of act complained off. The adjudicator, then proceeded to hold that the claimant(appellant) produced an assessment report as CExpt 6 however on cross-examination, he conceded that no receipts were filed in court to show that the repair parts were



purchased, further no re-inspection report were filed nor post repair photos to show that indeed the motor vehicle were repaired. The claimant did not convince this court that the repairs were indeed carried out....

21. In the grounds of appeal set out the Appellant's contends that the motor vehicle assessor's report was sufficient to prove the particulars of special damages pleaded in the statement of claim and thus faults the adjudicator for finding otherwise. To buttress this argument, the appellant relies on the case of Nkuene Dairy Farmers Co-operative Society & Another v Ngacha Ndeiya (2010)eKLR and David Bagine v Martin Bundi (1997) eKLR.
22. This courts notes that indeed there is contention as to the occurrence of the accident between the appellant's and the respondents motor vehicle and that the respondent and/or his driver were to blame for the accident. The contentious issue is whether there was sufficient proof to prove the special damages sought.
23. In the instant case, the Appellant claimed that, based on the assessment report produced by the assessor, the cost of repairs was estimated at Kshs 356,294/=. The Respondents did not present any evidence to the contrary. During cross-examination, the Respondents did not delve into the details of the report. They only inquired about a further report that was not before the court.
24. In the case of Nkuene Dairy Farmers Co-operative Society & Another v Ngacha Ndeiya (2010) eKLR the Court of Appeal held:-

In our view special damages in a material damage claim need not be shown to have actually incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item to as near as possible the condition it was in before the damage complained of. An accident assessor gave details of the parts of the respondent's vehicle which were damaged. Against each item he assigned a value. We think the particulars of damage and the value of the repairs were given with some degree of certainty.

25. Also in the David Bagine v Martin Bundi (1996) eKLR the Court of Appeal in asserting the probative value of an assessor's report stated that:-the assessor's report was sufficient proof and the failure to provide receipts for any repairs done was not fatal to the respondent's claim.
26. Guided by the above precedent and the principle that in civil cases the burden of proof on the appellant is always based on a balance of probability. The assessors report prepared by an expert, constitutes sufficient proof of the loss incurred. Therefore, the appellant only needs to demonstrate the extent of the damage to his motor vehicle and the estimated costs of repairs, without necessarily proving that the repairs were carried out or paid for.
27. In view of the foregoing, this court is convinced that the adjudicator erred in finding that the Appellant is entitled only to a total amount of Kshs 29, 930/= as the Appellant discharged his burden of proof.
28. Consequently, based on the above this court makes the following orders: -
  - i. The appeal is allowed and the Judgment by the adjudicator made on 27/2/2024 in Ruiru SCC No. E034 of 2023 granting the appellant a sum of kshs 29,930.00 is set aside.
  - ii. Judgment is hereby entered in favour of the Appellant for the total sum of Kshs 377, 224/= as prayed in the Statement of Claim dated 14<sup>th</sup> December 2023
  - iii. Each party to bear their own costs of the Appeal.

Orders accordingly.



**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025**

For Appellants:

For Respondent:

Court Assistant:

