



REPUBLIC OF KENYA



**Sitati v Munyuoki & another (Civil Appeal E1229 of 2023)
[2025] KEHC 2093 (KLR) (Civ) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2093 (KLR)

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

CIVIL

CIVIL APPEAL E1229 OF 2023

H NAMISI, J

FEBRUARY 7, 2025

BETWEEN

RENSON WEMELA SITATI APPELLANT

AND

TEDDY MUSILI MUNYUOKI 1ST RESPONDENT

ALVAN GESAKA MOSOMI 2ND RESPONDENT

(Being an Appeal from Judgement of Hon. M. W. Murage, Senior Resident Magistrate delivered on 15 July 2022 in Nairobi CMCC No. E 12490 of 2021)

JUDGMENT

1. This appeal arises from a suit filed by the Appellant against the Respondents, jointly and severally, for:
 - i. General Damages
 - ii. Special Damages of Kshs 11,930/=;
 - iii. Loss of income of Kshs 2,000/= for 88 days (Kshs 176,000/=)
 - iv. Interest on (i), (ii) and (iii) at court rates; and
 - v. Costs of the suit.
2. The particulars of the suit are that on 9 July 2021, the Appellant was driving his motor vehicle registration number KCT 469G along Lower Kabete Road, when the 1st Respondent veered off the road and rammed into the Appellant's motor vehicle, causing an accident. The 1st Appellant was the driver and/or beneficial owner of motor vehicle registration number KCR 113T, whilst the 2nd Respondent was the actual and registered owner of the said motor vehicle.



3. The Appellant sustained injuries, which included blunt soft tissue head injuries, scalp hematoma on the right side, recurrent headaches and swollen and painful right side of the head. As a result, the Appellant incurred expenses for the medical report, online motor vehicle search as well as the medical expenses, all of which amounted to Kshs 11,930/=.
4. Additionally, the Appellant pleaded that the motor vehicle KCT 469R was registered on various taxi hailing applications including Uber, Little Cab and Bolt, from which he would derive a minimum daily income of Kshs 2,000/=. It took 88 working days to repair the motor vehicle, which had been extensively damaged in the accident.
5. The Respondents did not enter appearance nor file any defence. Interlocutory judgement was consequently entered against the Respondents and the matter proceeded to formal proof.
6. At the hearing, the Appellant adopted his witness statement dated 3 January 2021, which was a repetition of the Plaintiff. The Appellant also produced documents in support of his case, which included the Police Abstract, Treatment Notes from Mediheal Hospital and Ruaraka Uhai Neema Hospital, Medical Report prepared by Dr. Wokabi dated 28 July 2021, copy of motor vehicle records and receipts for Kshs 22,477/=. The Appellant also produced an extract of the uber fleet dashboard for diverse dates between April and July 2021, Little Cab dashboard between July and August 2021, Bolt Driver dashboard for the months of May and June 2021 and assorted invoices from the Bolt Application.
7. In its judgement, the trial court opined that there was nothing tendered in evidence to show that the Appellant was earning Kshs 2,000/= per day. The trial court entered judgement in favor of the Appellant as follows:
 - i. General damages in the sum of Kshs 150,000/=
 - ii. Special damages in the sum of Kshs 11,930/=
 - iii. Costs of the suit and interest
8. Aggrieved by the said judgement, the Appellant filed a Memorandum of Appeal dated 13 November 2023 on the following grounds:
 - i. That the learned trial Magistrate erred in law in dismissing the Appellant's claim for loss of income;
 - ii. That the learned trial Magistrate misapprehended facts when she determined that the Appellant did not tender any evidence to prove that he was earning Kshs 2,000/= per day;
 - iii. That the learned trial Magistrate erred in law and in fact in failing to consider the witness statement and documents availed by the Appellant to court in support of the loss of income claim;
 - iv. That the learned trial Magistrate misapprehended facts when it determined that the Plaintiff did not claim damages to the motor vehicle an issue that was not pleaded in the instant suit;
 - v. That the finding of the court regarding damages awarded is erroneous and the same ought to be set aside.
9. The Appeal was canvassed by way of written submissions. Just like in the trial court, the Respondents did not participate in these proceedings despite being served.



10. In his submissions, the Appellant contended that the loss of income had been strictly pleaded and proved and that the same ought to have been awarded. The Appellant relied on the case of *Auren -vs- Director General of Police & Another* (Civil Case No. 274 of 2016) [2023] KEHC 2931 (KLR) in which the Court held thus:

“Loss of earnings or income is a special damage claim, and it is trite law that special damages must be pleaded and strictly proved. Where there is no evidence regarding special damages, the Court will not act in a vacuum or whimsically. In *S.J -vs- Francesco Di Nello & Another* [2015] eKLR the Court of Appeal held that: “Claims under the heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real actual loss is loss of future earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. ON the other hand, loss of earning capacity is compensated by an award of general damages, once proved.”

Analysis and Determination

11. This being the first appeal, it is this court’s duty under Section 78 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, to re-evaluate the evidence tendered before the trial court and come to its own independent conclusion, taking into account the fact that it did not have the advantage of seeing and hearing the witnesses as they testified. This principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123.
12. I have keenly reviewed the Record of Appeal and the submissions by the Appellant. The issue for determination herein is whether the Appellant pleaded and proved the loss of income.
13. In the *SJ -vs- Francesco Di Nello & Another* [2015] eKLR the Court of Appeal held that:

“Claims under the leads of loss of future earning capacity are discretionary different. Loss of income which may be defined as real actual loss is loss of future earnings. Loss of earning capacity may be defined as domination in earning capacity in earnings capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence.

On the other hand, loss of earning capacity is compensated by an award in general damages, once proved”
14. This was the position enunciated in *Fairley v John Thomson Ltd* [1973] 2 Lloyd’s Law Reports 40 wherein Lord Denning M. R. said as follows:

“It is important to realize that there is a difference between an award for loss of earning as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution in earning capacity is awarded as part of general damages.”
15. Based on the foregoing cases, the damages under the two limbs are distinguishable. Whereas future loss of income is uncertain and has to be estimated, loss of income is calculated up to the date of trial and conclusion of the suit. In this instance, for loss of income, the Appellant argued that the duration was 88 working days when the motor vehicle was undergoing repairs.
16. To prove his claim, the Appellant produced a Police Abstract confirming the accident that occurred on 9 July 2021. Photographs of the two motor vehicles at the scene of the accident were also produced.



Correspondence from Resolution Insurance indicates that the motor vehicle was held at Ruaraka Auto Garage for repairs until a Release Letter dated 15 October 2021 was issued by the Insurer. In my calculation, the number of calendar days between 9 July and 15 October 2021 was 98.

17. Further, to prove his daily income, the Appellant provided extracts of the driver's dashboard from the various taxi hailing applications, his taxi licence issued by the National Transport and Safety Authority and documentation from Little Cab indicating that he is one of the drivers. In my considered view, the Appellant proved his case to the requisite standard.
18. Having found that the Appellant's claim was proved, the next question is whether this warrants interference by this Court with the judgement of the trial court. My answer is in the affirmative. I, therefore, find that the appeal is meritorious and the same succeeds. The judgement of the trial court delivered on 15 July 2022 is hereby set aside and substituted with judgement in favour of the Plaintiff as follows:
 - i. Liability – 100%
 - ii. General Damages in the sum of Kshs 150,000/=;
 - iii. Loss of income in the sum of Kshs 176,000/=;
 - iv. Special Damages in the sum of Ksh 11,930/=
 - v. Costs of the suit and interest at court rates from the date of judgement until payment in full.
19. The Appellant is awarded costs of this appeal assessed at Kshs 40,000/=.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF FEBRUARY 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Anyango h/b Mr. Onyango..... for the Appellant

N/A for the Respondent

Libertine AchiengCourt Assistant

