



**Wanjiru v Mwangi & another (Civil Appeal E532 of 2023)
[2025] KEHC 1669 (KLR) (Civ) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1669 (KLR)

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

**CIVIL
CIVIL APPEAL E532 OF 2023**

AM MUTETI, J

FEBRUARY 12, 2025

BETWEEN

JACINTA WANJIRU APPELLANT

AND

JOHN MWANGI 1ST RESPONDENT

KAROI EMILY WAMBUI 2ND RESPONDENT

*(An appeal from the judgment of Hon D S. Aswani,
Adjudicator , delivered in Nairobi on 26th January 2023)*

JUDGMENT

Introduction

1. The 1st Respondent, John Mwangi had initially instituted his Claim as a Suit before the Nairobi Chief Magistrate Court. His claim against the Appellant and the 2nd Respondent was for Judgment for Kshs 475,620.00 in Damages costs and interest. His Suit was subsequently transferred to and determined by the Small Claims Court at Nairobi.
2. The cause of action in the 1st Respondent's Suit arose from a collision allegedly involving Motor Vehicle Registration Number KCN 524M and Motor Vehicle Registration Number KBQ 274V on 17th August, 2019.
3. The Appellant had duly entered Appearance and filed a Statement of Defence.
4. In the Judgment dated and rendered on 26th January, 2023, the Learned Adjudicator found the Appellant wholly liable and entered Judgment against her and the 2nd Respondent for Kshs 406,500, thereby precipitating this Appeal.



5. The appellant aggrieved by the said decision has appealed to this court on the following grounds
 - i. The Learned Magistrate erred in law and fact in finding that the 2nd Respondent was the registered and/or beneficial owner of Motor Vehicle Registration Number KBQ 274V as at 17th August, 2019.
 - ii. The Learned Magistrate erred in law and fact in finding that the 2nd Respondent was the registered and/or beneficial Owner of Motor Vehicle Registration Number KBQ 274V at the material time even though the Copy- of Records produced by the 1st Respondent as an exhibit was with regard to a date nine [9] months after the material date.
 - iii. The Learned Magistrate erred in law and fact by totally ignoring the Appellant's submissions on issues of law and fact on the ownership of Motor Vehicle Registration Number KBQ 274V at the time of the accident, thereby arriving at an erroneous decision.
 - iv. The Learned Magistrate erred in law and fact by totally ignoring the fact that no evidence was tendered to demonstrate that the 2nd Respondent was the registered and/or beneficial Owner of Motor Vehicle Registration Number KBQ 274V as at the date of the collision, 17th August, 2019.—
 - v. The Learned Magistrate erred in law and fact by totally ignoring the fact that no evidence was tendered to demonstrate that the Appellant was the Agent and /or Driver of the 2nd Respondent.
 - vi. The Learned Magistrate erred in law and fact by totally ignoring the fact that no evidence was tendered to demonstrate that the Appellant was driving Motor Vehicle Registration Number KBQ. 274V at the material time whilst under the direction of the 2nd Respondent.
 - vii. The Learned Magistrate showed extreme prejudice by totally ignoring the Appellant's submissions on issues of law and evidence and thereby made an erroneous finding on Special Damages.
 - viii. The Learned Magistrate erred in law and fact in finding that the 1st Respondent paid for the repairs to his Motor Vehicle even though the Receipt for repairs tendered as an exhibit showed that the repair charges were borne by African Alliance.
 - ix. The Learned Magistrate showed extreme prejudice by totally ignoring the Appellant's submissions on issues of law and evidence and thereby made an erroneous decision.

Appellant's Case

Duty Of The Court On First Appeal

6. The appellant has submitted that it is an established principle of law in our jurisdiction that the duty of the Court sitting as the first Appellate Court is to review the evidence adduced before the Lower Court and satisfy itself that the decision of that Court was well-founded. This principle was enunciated in *Selle & Another -vs- Associated Motor Boat Co. Ltd & Others* [1968] EA 123.
7. It is the appellant's contention that the learned adjudicator erred in law by finding that the 1st respondent had proved his claim for kshs 394,500.00 in repair costs
8. According to the appellant , the legal position in Kenya regarding Special Damages is that Special Damages must be pleaded and specifically proved. In support of that submission, the appellant has



placed reliance on the case of; *Zacharia Waweru Thumbi -vs- Samuel Njoroge Thuku Nairobi HCCA No 445 of 2003* in which the court stated: -

“If I were to explain, or define, special damages to a layman, I would say “they are a reimbursement to the Plaintiff/Victim of the tort, for what he has actually spent as a consequence of the tortious act (s) complained of”. This point cannot be overstressed: that the claimant of special damages must not only plead the claim, but also go further and strictly prove, usually by documentary evidence, that he has actually spent the sum claimed. In medical claims the claimant must produce receipts to support his claim for special damages. In my view, given the requirement of strict proof, I would further hold that an invoice would not suffice. Only a receipt, for the payment, will meet the test. [emphasis added]

9. Further, the appellant relied on the High Court Judgment in Kiambu HCCC No 12 of 2016; Christine Mwigina Akonya -vs- Samuel Kairu Chege in which the court stated:-

Our decisional law is quite clear now that one consequence of this general principle is that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before compensation will be permitted. A natural corollary of this has been that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party. In this regard, our Courts have held that an invoice is not proof of payment and that only a receipt meets the test. See Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited [2015] eKLR; Zacharia Waweru Thumbi v Samuel Njoroge Thuku [2006] eKLR; Sanya Hassan v Soma Properties Ltd. [emphasis added]

10. The appellant maintained that the 1st Respondent was not only legally obligated to specifically set out the amounts which he claimed, but also legally obligated to provide admissible documentary evidence demonstrating that he actually spent the sums claimed.
11. The appellant urged this court to find that the 1st Respondent did not specify in the Complaint or Witness Statement how the sum of Kshs 475,620.00, which was the subject of his Claim was arrived at. Further, the appellant urged the court to find that the Respondents specifically denied the 1st Respondent's claim for Special Damages in their statement of defence.
12. From the Assessment Report and the post-repair Inspection, it is clear that the 1st Respondent's Motor Vehicle was damaged and repaired.
13. The appellant contends that the 1st respondent's Witness Statement states that he personally paid for the repairs to the Motor Vehicle, even though he does not specifically state how much he spent.
14. The appellant has urged the court to consider the receipt tendered by the 1st respondent as proof of payment of the repair costs issued by Pistonheads E A. The receipt is in respect of repairs to Motor Vehicle Registration Number KCN 524M. It shows that the Owner of that Motor Vehicle is "Mwangi", presumably, the 1st respondent, John Mwangi.
15. According to the appellant the entity which paid the Bill is African Alliance not the 1st respondent herein. The 1st respondent tendered no evidence whatsoever of a cheque or any excerpt from an electronic form of money-transfer platform demonstrating that he personally paid Kshs 457,620.00 to M/s Pistonheads EA or at all in respect of repair costs. However, the court found that the 1st Respondent had proved a claim for Kshs 394,500.00 in repair costs.



16. The appellant therefore, urges this Court to find that the 1st respondent did not provide admissible documentary evidence demonstrating that he actually spent the sums claimed in repair costs to warrant the award of damages on that head.
17. The appellant thus concluded his submissions by urging the Court to find that save for the claim for the sums expended in paying the Motor Assessor and Towing, the 1st Respondent failed to tender any evidence demonstrating he paid the for amounts pleaded in the Plaintiff.
18. The appellant thus pleaded with the court that the court considers making an award of Kshs 18,000.00 which the appellant conceded was adequately proved.

1st Respondent's Case

19. The 1st respondent in answer to the appellant's appeal, submitted that the Appellant did not participate in the proceedings before the trial court at all, more so did not attend court for hearing despite being duly served with a Hearing Notice as evidenced by the court proceedings. The Appellant only filed submissions after the hearing.
20. According to the 1st respondent, the Appellant set out nine grounds of appeal, but in their submission appear to have abandoned many of the grounds and have only submitted on the award of the special damages. It is therefore the 1st respondent's position that by dint of the submissions by the appellant the appellant has conceded the occurrence of the accident, the material damage and to an extent the sum payable to the 1st respondent.
21. The brief facts of the case are that an accident occurred on 17th August 2019 involving three motor vehicles including the 1st and 2nd Respondents' Motor Vehicles in which the Appellant was the driver of the 2nd Respondent's Motor Vehicle. The 1st respondent proved the occurrence of the accident by way of the police abstract.
22. A motor vehicle search showed that the 2nd Respondent was the registered proprietor of the motor vehicle registration number KBQ 274V. The ownership of the motor vehicle was further confirmed by a letter from the 2nd Respondent's insurer by way of a letter which confirmed that the 2nd Respondent was their insured with the insurance policy having been issued for the period between 15th March 2019 and 14th March 2020 during which period the accident occurred.
23. At the hearing of the suit before the trial court, no witness was called by the Appellant nor was any document produced in support of her defence thus the 1st Respondent's case remained uncontroverted.
24. The ownership of the motor vehicle was not contested by the 2nd Respondent.
25. The police abstract clearly showed that the Appellant was the one driving the motor vehicle KBQ 274V and was actually blamed for the occurrence of the accident. The appellant did not tender any to controvert the 1st respondent's case.
26. According to the 1st respondent, the trial court was right in finding that an accident occurred and the appellant and the 2nd respondent were liable for the same with the Appellant being the driver of the said motor vehicle KBQ 274V and the 2nd Respondent as the registered owner.
27. The 1st Respondent was able to proof his case without challenge by the appellant and the 2nd respondent. The two therefore cannot avoid liability jointly or severally.



28. Although, the Appellant claims that the 1st Respondent did not prove his case on special damages, the trial court awarded the 1st Respondent the sum of Kes. 406,500/- against the amount claimed of 475,620/-.
29. The 1st Respondent produced a copy of logbook showing that he is the registered proprietor of motor vehicle Number KCN 524M. He also produced the motor vehicle assessment report together with the estimated costs of repair.
30. The 1st respondent also produced the post-accident assessment report after the motor vehicle had been repaired which report clearly indicated the name of the 1st Respondent, make of motor vehicle and the place where the motor vehicle was repaired, that is at Piston heads garage galleria. The 1st respondent produced photographs of the repaired motor vehicle displaying the registration number.
31. At page 26, is the receipt for the cost of repairs of the motor vehicle and the receipt shows the name of the 1st Respondent and the registration number of the motor vehicle which belongs to the 1st Respondent. The Appellant claims that the 1st Respondent did not tender any evidence to show that he is the one who personally paid the sum of Kes. 457,620/- to Pistonheads EA. The 1st Respondent, during the hearing was never cross-examined on the payment of the repair costs.
32. The 1st respondent further submitted that he produced a receipt clearly showing that it was a cash repair. According to the 1st respondent nothing barred him from making a cash payment thus the learned Honorable magistrate was correct in finding that the 1st respondent had incurred the costs.
33. The receipt as per the law is sufficient proof that costs were incurred to repair the 1st Respondent's motor vehicle.
34. The respondent cited the case of Swalleh C. Kariuki & another v Viloet Owiso Okuyu [2021] eKLR, where the court on special damages held that:

“In regard to special damages the law is quite clear on the head of damages called special damages. Special Damages must be both pleaded and proved, before they can be awarded by the Court. Suffice it to quote from the decision of the Court of Appeal in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal -

Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

35. The 1st respondent further submitted that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party.
36. The Courts have held that an invoice is not proof of payment and that only a receipt meets the test. (See Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited Limited v Janevams Limited [2015] eKLR; Zacharia Waweru Thumbi v Samuel Njoroge Thuku [2006] eKLR; Sanya Hassan v o Properties Ltd.)”



37. Further, the 1st respondent submitted, that not only did he produce an assessment report for the costs of repair of the motor vehicle, but also went further to produce a receipt for the repairs and a post-assessment report to show that the repairs were actually done and costs incurred.
38. The 1st respondent contended that the pre-assessment report, post-assessment report and the receipt all confirmed the repairs that were carried out on the motor vehicle.
39. In the case of *Silas Mutua Mberia v Muthoni Njue Veronica* [2021] eKLR, the court held that:
11. In *Nkuene Dairy Farmers Co-operative Society & Anor 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 been 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.”
40. 12. The court of Appeal likewise in *David Bagine v Martin Bundi* (1996) eKLR, in asserting the probative value of an assessor’s report reiterated 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”
41. In conclusion the 1st respondent submitted that the Appellant’s Appeal lacks merit and the same should be dismissed with costs to the 1st Respondent.

Analysis And Determination

42. The instant appeal raises one issue as can be gleaned from the submissions of the parties. The appellant despite raising so many grounds of appeal ended up arguing the single issue of whether the 1st respondent proved his claim for special damages to the required standard for the court to have found in his favor.
43. The 1st respondent specifically pleaded under paragraph 5 of the plaint that he suffered loss and damage in costs of repairs and other charges such as towing charges that amounted to Ksh . 475,620/-.
44. The 1st respondent therefore met the first important requirement in law in relation to a claim for special damages.
- a. The Court of Appeal in *Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd* [1992] KLR 177 stated that: pleaded.”(emphasis mine).
- “The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically



45. The appellant has not denied the fact that the amount was actually spent in repairs but has strongly argued that the 1st respondent did not tender sufficient evidence to prove that he actually paid for the repair costs. It is however important to point out that the appellant has conceded to the claim for Ksh 18000/- which he maintains was the only figure the 1st respondent was able to prove.
46. It follows therefore that the issue of liability by the appellant and the 2nd respondent was adequately proved thus the concession by the appellant in his submission in respect of the Ksh 18000/-.
47. The requirement of the law in a case where a party seeks special damages is that the claimant should not only plead the damages but also specifically prove them. The 1st respondent was therefore under obligation to tender evidence in the Small claims court to prove his claim.
48. In *Eldama Ravine Distributors Limited and another v Chebon* civil appeal number 22 of 1991 (UR), the issue of special damages was dealt with as hereunder; -“It has time and again been held by the courts in Kenya that a claim for each particular type of special damage must be pleaded.”
49. In *Ouma v Nairobi City Council* [1976] KR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J quoted in support the following passage from Bowen LJ’s judgment at 532-533 in *Ratcliffe v Evans* [1892] QB 524, an English leading case of pleading and proof of damage. On both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”
- “The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted
50. The 1st respondent in the tendered a receipt from Pistonheads E.A for the sum of Ksh. 457,620/-. The receipt was not challenged in any way all that the 1st respondent failed to produce was an ETR receipt. The adjudicator in the final award took that into account leading to the reduced award of Ksh 406,500/-. The purpose of the Electronic Tax Register is to assist the tax collector in tracking the payment of VAT by those that collect the same. The fact that one has not produced an ETR receipt cannot be taken to mean that the person presenting the receipt did not incur cost.
51. It can only mean that there was no proof of payment of tax. In any event the repair costs were assessed and the report thereof produced. I find no difficulty in holding that the learned adjudicator was correct in her decision to award the KSh 406,500 plus costs and interests.
52. The appeal is therefore without merit and is hereby dismissed with costs to the 1st respondent.
53. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF FEBRUARY 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo



Eboso for the Appellants absent

Chege for the Respondent

