



**Wahome v Kuria (Civil Appeal E1138 of 2023)
[2025] KEHC 7842 (KLR) (Civ) (4 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7842 (KLR)

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

CIVIL

CIVIL APPEAL E1138 OF 2023

WM MUSYOKA, J

JUNE 4, 2025

BETWEEN

JOSEPH NDIANGUI WAHOME APPELLANT

AND

JOHN NJOROGE KURIA RESPONDENT

*(Appeal from judgement and decree of Hon. BJ Ofisi, Senior Resident Magistrate,
SRM, in Nairobi SCCC No. E1226 of 2023, of 29th September 2023)*

JUDGMENT

1. The claim, at the primary court, had been filed by the appellant against the respondent. It was a material damage claim, arising from a motor traffic accident, which had allegedly occurred on 17th September 2022, involving vehicles belonging to both parties. The appellant claimed to have had incurred repair expenses, totalling Kshs. 393,250.00, on his vehicle. That amount was claimed as special damages.
2. The respondent reacted to that claim. It is not clear to me what the substance of the response was. It is standard form. The copy of the response filed herein is incomplete, for the page bearing items 4, 5, 6 and 7, of the response, is missing. The pages exhibited are not ticked at the relevant boxes.
3. The parties opted, on 3rd August 2023, to dispose of the matter by way of the procedure allowed under section 30 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya, that is to say by way of written submissions, founded on the pleadings, witness statements and documents filed by the parties. Judgment was delivered on 29th September 2023. Liability was assessed at 100%. The claim for special damages, of Kshs. 393,250.00, was dismissed, for there was failure, according to the trial court, to adduce evidence to support it.



4. The appellant was aggrieved, hence the appeal. The grounds, in the memorandum of appeal, dated 27th October 2023, being: failing to award the claim prayed for after finding the respondent 100% liable; not finding that the claim was proved to the required standard, after evidentiary documents had been availed; failing to consider the overwhelming evidence in support of the claim for special damages; and failing to award costs.
5. Directions were given on 8th August 2024, 9th July 2024 and 5th May 2025 for canvassing of the appeal by way of written submissions.
6. The only submissions I see on record are by the appellant. He raises only 2 issues, special damages and costs. He submits that he should have been awarded his claim of Kshs. 393,250.00. He adduces 2 grounds. One, that he provided adequate documentary evidence. Two, the respondent did not controvert his evidence as he did not file a witness statement. On costs, he cites section 27 of the [Civil Procedure Act](#), Cap 21, Laws of Kenya, and *Punchlines Limited vs. Joseph Mugo Kibaria & 10 Others* [2018] eKLR, for the argument that costs are at the discretion of the court, and follow the event.
7. On the award of special damages, the trial court, in the judgement of 29th September 2023, cited *David Bagine vs. Martin Bundi Civil Appeal No. 283 of 1996*, to effect that the report by the motor vehicle assessor is acceptable as evidence of the value of the material damage. Nevertheless, the court went on to find and hold that the appellant had not established his claim for special damages of Kshs. 393,250.00.
8. Did the trial court fall into error?
9. Special damages for material loss or damage, suffered consequent upon a motor traffic accident, can be claimed in two ways, depending on whether the damage has been repaired. Where no repair work has been done, the claimant can simply plead the value of the damage, as assessed by a motor vehicle assessor. The court would award special damages based on that report, without more. Where repairs have been effected, the claimant may claim the costs or expenses incurred towards that repair, instead of basing his claim on the report of the motor vehicle assessor. The court would award the claim based on proof of what the claimant spent towards that repair.
10. In the instant case, the claim was not founded on the assessment report of the motor vehicle assessor. It was a claim for the amount incurred for repair charges, plus loss and damage. The total amount claimed was Kshs. 393,250.00, broken down into: Kshs. 240,000.00 for the spare parts, Kshs. 47,000.00 for materials, Kshs. 29,000.00 for subcontract, Kshs. 13,000.00 for labour costs, Kshs. 7,000.00 for assessment, Kshs. 56,700.00 for loss of user, and Kshs. 550.00 for motor vehicle search. The material damage was assessed at Kshs. 329,000.00, by the motor valuer or loss assessor.
11. As the appellant did not plead the value of the damage, as assessed at Kshs. 329,000.00, the trial court could not consider making an award in that sum. What the court could consider was the cost of or expense on repairs as claimed in paragraph 46 of the undated statement of claim. That is what was considered by the trial court, which concluded that there was no supporting evidence. The appellant submits that he had lodged, in the record, documents to support his claim, which the court did not consider. Was that so?
12. The appellant had filed a list and bundle of documents. In the list of documents there is an invoice/job card; a satisfactory note; receipts, invoices and fiscal receipts. These would be relevant for the purpose of establishing the expenses incurred in repairs.
13. The vehicle was purportedly repaired at Munyish Autos. That entity purportedly issued an invoice/job card, on 4th October 2022, after the vehicle was fully repaired. The total, for the work done there, was Kshs. 329,000.00. It is broken down into Kshs. 180,000.00 for nose cut assy; Kshs. 60,000.00 for left



and right doors; Kshs. 15,000.00 for wiring; Kshs. 5,000.00 for mechanic; Kshs. 9,000.00 for welding; Kshs. 47,000.00 for repainting and paints; Kshs. 10,000.00 for panel beating and fitting; and Kshs. 13,000.00 for labour. Munyish Autos issued a satisfaction note, dated 4th October 2022. It also issued receipts, dated 20th September 2022 for Kshs. 200,000.00, and another, dated 4th October 2022, for Kshs. 129,000.00. There is an invoice and fiscal receipt from Nipsan Motors Spares Ltd, dated 23rd September 2022 and 23rd June 2022, respectively.

14. The trial court did not mention these documents in the judgement. There is no telling whether the documents had been filed, as at the time of the judgement writing, and then the court ignored them, or whether they were not at all on record, hence the blanket silence on them. If they were on record, the trial court did not analyse them, before thereafter dismissing them. All what was said was that there was no evidence to support the expenses.
15. What should I make of the documents presented?
16. The principal damage appears to have been at the front of the vehicle, hence the need for a nose cut assy and the two front doors, whose total cost purportedly came to Kshs. 240,000.00. The other expenses appeared to be ancillary to that. That is the wiring, mechanics, gas welding, spray painting, panel beating and fitting, and labour. They supported the fitting of the nose cut assy and the two doors. The spare parts, costing Kshs. 240,000.00, according to the statement of claim, were the said nose cut assy and the two doors. The appellant claimed to have spent Kshs. 240,000.00 on that, and he had an invoice and a fiscal receipt to support the claim.
17. The problem that there was with the expense of Kshs. 240,000.00 was that the fiscal receipt was issued on 23rd June 2022. The accident allegedly happened on 17th September 2022. The vehicle was presented to Munyish Autos, for repairs on 20th September 2022. The fiscal receipt for Kshs. 240,000.00, it would appear, was issued some two months before the accident occurred. The cash sale receipt dated 23rd September 2022 does not tally with the fiscal receipt dated 23rd June 2022. The fiscal receipt is the Kenya Revenue Authority (KRA) electronic transmitted receipt (ETR), and, therefore, it is the more authentic of the documents presented. That, no doubt, should have naturally created a doubt in the mind of the court, on the genuineness or authenticity of the rest of the documents placed on record.
18. Based on that, I would not be persuaded that the trial court erred in finding that there was no evidence to support the claim.
19. On costs, I note that the trial court ordered the parties to bear their respective burdens on costs. The principal claim, in the suit, was recovery of the purported repair costs or expenses incurred. The finding on liability was a pyrrhic victory, without the monetary award. For all practical purposes, the suit was as good as lost. The finding on liability translated to no material gain to the appellant. The trial court properly exercised discretion, in not awarding costs to the appellant.
20. In view of the above, I find no merit in the appeal, and I hereby dismiss the same. The respondent did not participate in the appeal. No costs shall be awarded. It is so ordered.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 4TH DAY OF JUNE 2025.

W.M* MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Caroline Oyusu, Court Assistant, Milimani, Nairobi.



Advocates

Mr. Wahome, instructed by Mwangi Wahome & Company, Advocates for the appellant.

