



REPUBLIC OF KENYA



**Murimi v Macharia & 3 others (Civil Appeal E1196 of 2023)
[2025] KEHC 9831 (KLR) (Civ) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9831 (KLR)

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

CIVIL

CIVIL APPEAL E1196 OF 2023

LP KASSAN, J

JULY 9, 2025

BETWEEN

THOMAS GICHAGA MURIMI APPELLANT

AND

STANLEY MUCHIRI MACHARIA 1ST RESPONDENT

NATIONAL INDUSTRIAL CREDIT BANK LIMITED 2ND RESPONDENT

JULIUS WACUMA KARIUKI 3RD RESPONDENT

MICHAEL GATHII WAMBUGU 4TH RESPONDENT

(Being an appeal from the judgment and decree of Hon. D.M. Kivuti (Mr) (PM) delivered on 21st October 2022 in Nairobi Milimani Commercial CMCC No. 126 of 2019)

JUDGMENT

1. The Appellant filed suit seeking special damages of Kshs 2,072,050/= for motor vehicle repairs arising from a road traffic accident that occurred on 17.10.2018 along Kariokor road about involving motor vehicles registration number KCJ 657A belonging to the Appellant and KBQ 011Z driven by the 1st Respondent.
2. The Trial Magistrate dismissed the claim having found the appellant didn't avail documentary evidence of the expenses incurred in allegedly repairing his motor vehicle.
3. It is the aforesaid award that has precipitated this appeal. The grounds of appeal are set out in the memorandum of appeal dated 07.11.2023. In summary, the grounds are that
 - i. The trial court erred in law and fact in dismissing the suit.



- ii. The trial court erred in law and fact in considering extraneous matter not in the pleadings and evidence thus arriving at the wrong decision.
 - iii. The trial court failed to apply the law accordingly, where there is interlocutory judgment thus arriving at the wrong decision.
4. Based on these grounds, the Appellant prays for:
 - a. The setting aside of the trial court judgement.
 - b. The substitution of the trial court judgement with a judgement entered for the Plaintiff against the Defendant as prayed.
 - c. The provision of the Costs of the Appeal.
5. The Appellant submits that the original suit concerned damages to his motor vehicle. While the trial court found the Respondents liable, it erroneously dismissed the suit on the grounds that the quantum of damages was not proven. The Appellant submits that the trial court erred in law and fact by dismissing the suit, by considering extraneous matters not present in the pleadings and evidence, and by failing to apply the law correctly in the presence of an interlocutory judgment which had been entered against the 4th Defendant/Respondent who failed to appear.
6. The Appellant argues that the Trial Court improperly went "on a frolic" by introducing and considering unpleaded issues such as "anomaly," "unreasonableness," or "fault on the music system," which were outside the pleadings and evidence presented. The Appellant contends that parties are bound by their pleadings, and courts should not base decisions on matters not pleaded or proved. Furthermore, the Appellant asserts that the trial court failed to recognize the effect of the interlocutory judgment against the 4th Defendant/Respondent, where the Appellant was required only to produce documents in support of the claim for judgment to be entered. The Appellant, therefore, prays for the High Court to set aside the trial court's judgment and substitute it with a judgment entered for the Appellant as prayed, along with the costs of the appeal.
7. The Respondents didn't enter an appearance.
8. The issues raised in this appeal are:
 - i. Whether the Trial Magistrate's finding the Appellant did not prove special damages was erroneous?
 - ii. Who is to bear the costs?
9. The court has considered the submissions and the record of the court below. In *Selle v Associated Motor Boat Co.* [1968] EA 123, the Court of Appeal for East Africa laid down the principles guiding the exercise of the jurisdiction of the first appellate court. The court stated:

“An appeal to this Court from the trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial Judges findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities or materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the



evidence in the case generally (*Abdul Hamid Saif v. Ali Mohamed Sholan* [1955] 22 EACA 270).” See also *Peters v Sunday Post Limited* (1958) EA 424; *Williams Diamonds Limited v Brown* (1970) EA. 1.

10. The Court of Appeal in *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) IKAR 278 stated that:

“A Court of Appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have altered on wrong principles in reaching the findings he did”

11. In considering the issue of special damages, the Trial Magistrate held as follows:

“The nature of damages required strict proof. It is the claimant case that the assessor did quantify the amount used to repair the motor vehicle. There is an anomaly in this claim for the following reasons. The amount assessed at repair costs looks exaggerated. The assessor did not give the pre-accident value of the motor.

Moreover, the repair costs seem to have exceeded the value of the vehicle in any event. The receipts from Wamuru Open Air Body Builders receipt No. 990 and 995 issued on 27.10.2018 and 15.11.2018 presupposed that for a period of more than half a month only (5) receipts were issued. Going by the difference in numbering I do not find the reasonable unless by way of manufacturing receipts more still there was no ETR support of the billing.”

12. The Appellant in his plaint dated 28.09.2019 had particularized the special damages as:

- a. Assessment Fees Kshs 8,000/=
 - b. Cost of towing Kshs 6,500/=
 - c. Motor vehicle repair Kshs 1,508,000/=
 - d. Loss of business Kshs 549,000/=
- Total Kshs 2,072,050/=

13. The Appellant’s vehicle was repaired by Wamuru Open Air Body Builders and Panel Beaters and raised an invoice dated 19.10.2018 for Kshs 1,508,000/= following a report dated 18.10.2018 which gave the cost of repairs at Kshs 1,493,000/=. The receipts produced are as follows:

- i. Wamuru dated 19.10.2018 Kshs 600,000/=
- ii. Wamuru dated 15.11.2018 Kshs 200,000/=
- iii. Wamuru dated 19.12.2018 Kshs 308,000/=
- iv. Wamuru dated 27.10.2018 Kshs 400,000/=
- v. Max Breakdown Services dated 17.10.2018 Kshs 6,500/=

14. In the case of *Joram Njoga Ngeruro-vs-Peter Nyakiri Mokaya* [2017] eKLR, the court held:

“9. It should be pointed out, from the outset, that a demand note, a fee note and an invoice are not documents that evidence payment, for they are merely notes making demands for payment. Payment is evidenced or established by a receipt, or some other document evidencing acknowledgement of payment.



Indeed, in *Great Lakes Transport Co. (U) Ltd vs. Kenya Revenue Authority* [2009] eKLR (Waki, Onyango Otieno & Visram, JJA), the court asserted that invoices were not receipts, unless they carried an endorsement that the goods, or services for that matter, for which the invoice was raised, had been paid for.”

15. I associate myself entirely with the findings of Musyoka J. in the *Joram case supra* and will liberally replicate the sentiments of Muteti J in the case of *Kioko v Karagu* (Civil Appeal E848 of 2022) [2025] KEHC 2072 (KLR) (Civ) (5 February 2025) (Judgment). The learned Judge observed that:

“ 50. An Electronic Tax Register is an online cash register that keeps records of all business between a supplier and buyer and is used to record sales and provide ETR Receipts to customers. The system links the customer to the tax man and is meant to avoid Tax Frauds on the part of business people and entities who are under duty to collect tax such as Value Added Tax. It follows therefore an ETR Receipt is issued upon payment as evidence that the businessman providing a service or providing a good has sold the service or good and in return thereof received payment inclusive of tax.”

16. Also Muteti J. in the case of *Wanjiru v Mwangi & another* (Civil Appeal E532 of 2023) [2025] KEHC 1669 (KLR) (Civ) (12 February 2025) (Judgment) held that:

“ 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 many 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.”

17. It is trite law that special damages must be specifically pleaded and strictly proved. The lack of ETR receipts does not automatically disqualify a claim for special damages, were the receipts appear legitimate, the amounts are not excessive or exaggerated, and most importantly, the defendant does not bring any evidence to the contrary.

18. On 27.07.2021, the trial court entered judgment in default against the 4th Defendant, and the suit against the 2nd Defendant was struck off. The suit thus proceeded against the 1st, 3rd and 4th Defendants who didn't tender any evidence during the defence.

19. The trial court found the 1st, 3rd and 4th Defendants 100% liable. Although the receipts produced by the Plaintiff were not contested, each bearing a stamp, the trial court found them exaggerated. The trial court observed that the serial numbers on the receipts were non-sequential and lacked accompanying ETR receipts, concluding that the documents may have been manufactured.

20. I find that the trial court erred in making such a conclusion. Having been duly served, the Defendants bore the evidential burden of challenging the accuracy or authenticity of the receipts. In the absence



of any such challenge, and without expert analysis, the court had no basis to determine that the receipts were exaggerated or manufactured. The trial court therefore, misdirected itself in reaching that conclusion.

21. On the issue of the music system, the Defendants did not challenge either its existence in the motor vehicle or the alleged damage thereto. In the absence of any evidence to the contrary, the trial court could not reasonably conclude that the music system was not part of the vehicle at the time of the incident. Furthermore, since the National Environment Management Authority (NEMA) was not a party to the suit, the Trial Magistrate could not rely on or apply NEMA Regulations to determine the admissibility or legality of the music system.
22. Loss of earnings constitutes a claim for special damages, which must be specifically pleaded and strictly proved. Although the Plaintiff pleaded a sum of Kshs. 549,000/= under this head, no documentary evidence was produced to support the claim. The trial court was therefore correct in finding that the claim was unmerited and dismissing it for want of proof.
23. Accordingly, I make the following orders:
 - i. The judgment delivered on 02.09.2022 is set aside.
 - ii. The special damages are awarded at Kshs 1,514,500/=.
 - iii. The costs of this appeal to the Appellants.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF JULY 2025.

LINUS P. KASSAN

JUDGE

In the presence of:-

Njiraini for Appellant

No appearance for Respondent

Carol – Court Assistant

