



REPUBLIC OF KENYA



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**Kanyare v Magiri & another (Civil Appeal E194 of 2024)
[2025] KEHC 12554 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E194 OF 2024
RC RUTTO, J
SEPTEMBER 3, 2025**

BETWEEN

IBRAHIM MOHAMED KANYARE APPELLANT

AND

NEWTON KITHINJI MAGIRI 1ST RESPONDENT

DANIEL MUTHURI MBWIRIA 2ND RESPONDENT

(Being an Appeal from the Judgment of Hon. Joane Wambilyanga, Principal Magistrate in Thika CMCC No E402 of 2023 delivered on the 8th day of July, 2024)

JUDGMENT

1. This is an appeal on quantum against the judgment and decree of the Trial Magistrate delivered on 8th July 2024. The appellant was dissatisfied with the lower court's decision that awarded special and general damages and failed to award future medical expenses.
2. The facts of the case are contained in the Amended Plaintiff dated 18/09/2023. The appellant avers that on 19/9/2022, he was lawfully driving his motor vehicle registration number KBD 059U along the Thika- Matuu road at Kona Mbaya when the 2nd respondent being an employee, servant or agent of the 1st respondent so negligently, recklessly and carelessly drove motor vehicle registration number KAX 514E causing it to hit the appellant's motor vehicle. As a result, the appellant suffered the following injuries; Fracture of the right midshaft/Neck of femur, fracture of the right tibial plateau, lung contusion, mild head injury, bruises on the face, knees, externally rotated swollen thigh, severe chest pain, loss of consciousness and inability to use of the right lower limb.
3. As a result of the injuries the appellant sought for; damages, particularized as special damages and material damages for loss of Motor vehicle registration number KBD O59U and general damages for



- pain and suffering, general damages for loss of earning capacity, special damages at Kshs.2,072,978, Future Medical Expenses, Costs and interest from the date of judgment until payment in full.
4. In response to the claim, the Defendant filed a statement of defence dated 29/09/2023 denying the contents of the Plaint and stated that if the accident occurred, then it was materially contributed to by the Plaintiff. He urged that the suit be dismissed with costs.
 5. The matter proceeded for hearing with the Plaintiff calling 4 witnesses and the Defendant calling 1 witness. Upon considering their evidence, the trial court, on 08/7/2024, entered judgment in favour of the Appellant in the following terms:
 - a. Liability at 100% in favour of the Plaintiff against the Defendant
 - b. General damages for Pain and suffering Kshs.1,500,000/-
 - c. Special damages Kshs. 354,230/=
 - d. Costs and interest of the suit from date of judgment
 6. Being aggrieved by part of the Judgment, the Appellant filed a Memorandum of Appeal dated 31/07/2024 seeking the following orders;
 - a. The award of general damages for pain and suffering be upheld.
 - b. The award of special damages by the lower court on account of medical expenses be substituted with a sum of Kenya Shillings One Million and Fifteen Thousand, Five Hundred and Eighty Four (Kshs.1,015,584/-) to reflect the medical receipts tendered in evidence.
 - c. That an award of the sum of Five Hundred and Seven Thousand, Three hundred be made in favour of the Plaintiff on account of the material damage occasioned on the Plaintiff's Motor vehicle Registration Number KBD 059U
 - d. That an award of Kenya Shillings Three Hundred Thousand be made in favour of the Plaintiff on account of Future Medical Expenses.
 7. The grounds upon which the appeal is premised on are that the Learned Magistrate erred both in law and fact;
 - a. by failing to consider and evaluate the evidence on record, hence reaching an erroneous finding on the total amount of special damages awardable to the Plaintiff as pleaded and proved vide the medical receipts from Nairobi West Hospital.
 - b. In holding that the Plaintiff was not entitled to compensation for the material damage occasioned on his car as result of the subject accident on grounds that the figures presented were an estimate as the car had not been repaired to ascertain the actual repair costs, yet the evidence on record pointed out that the car was extensively damaged, declared a write-off and hence could not be repaired.
 - c. By failing to address herself on the issue of Future Medical Expenses throughout her judgment despite the same having been properly pleaded and proved in evidence.
 8. The appeal was canvassed by way of written submissions. The Appellant's submissions are dated 26/11/2024 while the Respondent's submissions are dated 12/11/2024.



Appellant's submissions

9. The Appellant, while relying on the cases of *Selle & Another v Associated Motor Boat Co. Limited* [1986] EA 123, *Trundell vs EWK (Minor Suing through the mother and next friend WK 2023 [KEHC] 25275 KLR*, *Nabuobwa vs Wekesa (Suing as the Legal Administrator of the estate of Sebastian Wekesa Milimo [2024] KEELC 13393 (KLR)* and *South Nyanza Sugar Company Limited vs Leonard O. Arera [2020] eKLR* submitted on the jurisdiction of the court as a first appellate court.
10. The appellant submitted that he was entitled to medical expenses of Kshs.1,015,584/- instead of Kshs.354,230 as some receipts were disregarded by the Trial Court. The Appellant contended that he produced a patient service bill/ invoice from Nairobi West Hospital for Kshs.1,512,470/- and NHIF defrayed Kshs.521,100 leaving a balance of Kshs.991,370/- which he paid from his pocket in two instalments; Kshs.350,000/- vide a receipt dated 12/10/2023 and Kshs.641,370/- vide a receipt dated 13/10/2023. In addition, he incurred further medical expenses evidenced by receipts bringing the total to Kshs.1,015,584/-.
11. Secondly, it was submitted that according to the assessment report produced by PW3, a motor vehicle assessor, the motor vehicle had a pre accident value of Kshs.700,000/- and repairing it would cost Kshs.471,250/- which amount exceeded 50% of the pre accident value thus was literally and reasonably declared a write off. To buttress this point, reliance was placed on the case of *Nkuene Dairy Farmers Co-operative Society Limited vs Ngacha Ndeiya [2010] eKLR* and *Concord Insurance Company Limited vs David Otieno Alinyo & Another [2005] e KLR*.
12. Lastly, it was his submission that he is entitled to future medical expenses as PW1, Dr. Gichine Gikenye stated that the source of the Appellant's pain during cold weather was the metallic implants placed inside the right limb after the accident and surgery to remove them would cost Kshs.300,000/-. Reliance was placed on the case of *Mbaaru & Another vs Kenya Bus Services Limited (Stage Coach Bus International) and Another [2024] KECA 432*.
13. The Appellant urged the court to allow the appeal and award costs.

Respondent's submissions

14. The Respondent submitted that the Appellant is only entitled to special damages proven by receipts as special damages must be pleaded and proven as was stated in the case of *Swalleh C Kariuki & Another vs Violet Owiso Okuyu [2021] eKLR* and *Wakim Soda Limited vs Sammy Aritos [2017] eKLR*.
15. It was submitted that the assessment report gave repair estimates and the vehicle was not written off as alleged by the Appellant. That the Appellant ought to have produced receipts for repairs done. It was contended that the Appellant did not specifically plead future medical expenses. The court was urged to dismiss the Appeal with costs.

Analysis & Determination

16. I have considered the trial court's record, the Memorandum of Appeal and the submissions of parties and find that the issues for determination are;
 - a. Whether the Appellant is entitled to special damages of Kshs.1,015,584/- as medical expenses;
 - b. Whether the Appellant is entitled to an award of material damages;
 - c. Whether the Appellant is entitled to an award of Future medical expenses;



- d. Who should bear the costs of the Appeal
17. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. The foregoing duty was succinctly stated by the Court of Appeal in the case of *Selle v Associated Motor Boat Company Ltd* (1968) EA 123 and *Peters v Sunday Post Limited* (1985) EA 424.
18. The first issue for determination is whether the appellant is entitled to special damages of Kshs.1,015,584/- as medical expenses. It is trite law that special damages in form of medical expenses must be pleaded and proven, I am guided by the finding of the Court of Appeal in *Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd* [1992] KLR 177 where it stated that;
- “...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 pleaded.”
19. The appellant in its amended plaint pleaded Kshs.1,512,470/- as bill expense. On record is a bill summary from the Nairobi West Hospital dated 12/10/2022 indicating the total bill as Kshs.1,512,470/-. The appellant’s submission provides a detailed breakdown of the expenses. NHIF defrayed Kshs.521,100/- leaving a balance of Kshs.991,370/- which the appellant paid with a receipt dated 13th October 2024 and another dated 12th October 2023 issued. The appellant further details other medical payments bringing the total claim to Kshs.1,015,584/-.
20. The respondents oppose this ground by citing the well established principle that special damages must not only be specifically pleaded but strictly proven.
21. I have seen receipts dated 12/10/2022 and 13/10/2022 for Kshs.350,000/- and Kshs.641,370/- respectively. There are seven additional receipts that have been produced from the same hospital on various dates between 24th October 2022 and 27th February 2023 amounting to Kshs.24,212/- which have been pleaded as part of other medical costs amounting to Kshs.47,658/-. The court can only award that which is proven and as such, only Kshs.24,212/-. This court therefore finds that this limb was proven to the extent that the Appellant was entitled to Kshs.991,370 and Kshs.24,212/- totaling Kshs.1,015,582/-.
22. The second ground of appeal is whether the trial court erred in law and fact by failing to award compensation for material damage to his motor vehicle KBD 059U. The appellant urges the Court to consider the assessment report produced as evidence and award the value of the motor vehicle which according to him was written off. I have looked at the assessment report. The concluding section of the assessment report dated 07/06/2023 states as follows;
- “We M/s Motor Care Ltd-nairobi have accepted to undertake repairs on the basis of this estimate and further agreed to inform the assessor immediately should any latent damage be revealed during repairs. The repairs are NOT authorized, Kindly notify the Assessor 48 hours prior to the due re- inspection date, if any.”
23. A reading of the above does not show or indicate that the motor vehicle was a write off. However, it was the evidence of PW3 that the cost of repairs were estimates.



24. This court is guided by the finding of the court in the case of *Murage v Equity Bank Limited* (Civil Appeal 125 of 2023) [2024] KEHC 325 (KLR) (25 January 2024) where the court rendered itself thus;

“ Thus the bone of contention is whether the failure to produce receipts or payment vouchers in respect of costs of repairs would affect the claim for special damages. 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. In *Ratcliffe v Evans* (1892) 2 QB 524 Bowen LJ said:-The character of the acts themselves which produce damage, and the circumstances under which these acts are done, must regulate the degree of certainty, and particularity with which the damage done ought to be stated and proved. As much particularity and certainty must be insisted 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.

16. The Court of Appeal 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.
17. In another case of the Court of Appeal Nairobi Civil Appeal No.154 of 2005, *Bosire J.A, Onyango Otieno J.A. and Nyamu J.A.* found that the motor vehicle assessment report was sufficient to prove a material damage claim without repair receipts and dismissed the appeal. The High Court judge had set aside the judgment of the magistrate who had denied the owner of the vehicle his claim special damages of KSh.16,800 for failure to produce receipts for repair. The court observed that the assessors report was made after obtaining cost of spare in the motor spare shops and as such production of repair receipts was unnecessary.
18. It is therefore clear that the appellant only needed to prove the extent of the damage to his motor vehicle and what it would cost to repair it without necessarily proving that the repairs were actually done and paid for. In civil cases, the burden of proof on the appellant is at all times on a balance of probabilities and not beyond reasonable doubt.”
25. Based on the decisions cited above, I do note that in this instance the applicant in his evidence as tendered by PW3 confirmed the extent of the damage of the appellant’s motor vehicle as consistent with the accident. The trial court’s insistence on production of repair receipts was a misapplication of the law. The established principle is that an assessment report is sufficient to prove the extent of the damage and the cost to restore the vehicle to its pre accident condition. I am satisfied that the claim of material damage was sufficiently proven. I am however not persuaded that the appellant’s vehicle was written off as to entitle him to the cost of the vehicle as argued by him. I therefore find that the trial court erred by failing to award compensation for material damage claim. I award Kshs.471,250/- being the repair costs of the subject motor vehicle.



26. Thirdly, as regard future medical expenses, the Appellant prays for an award of Kshs.300,000/- based on the testimony of the medical doctor and the medical report dated 19/04/2024. The case for future medical expense although well founded was neither addressed by the trial court nor controverted by the respondent in this appeal. In the amended Plaint the appellant exclusively pleaded for future medical expense. The evidence provided indicated that the appellant will incur a future medical expense at the cost of kshs.300,000/- Going by this, I find that the award was pleaded and proven. I therefore award future medical expenses of kshs.300,000/ as stated in the medical report adduced in evidence.
27. Seeing as the Appeal has partly succeeded, each party shall bear its own costs of this Appeal.
28. In the end, the award of the trial court is partly set aside and I award as follows;
- a. Liability at 100% in favour of the Plaintiff as against the Defendant
 - b. General Damages Kshs 1,500,000
 - c. Special Damages Kshs 1,486,832
 - d. Future medical expense kshs 300,000
 - e. Costs and interest at court rates from the date of the lower court judgment
 - f. Each party to bear their costs of the Appeal.
29. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

