



**Koech v Izwof Limited (Civil Appeal E144 of 2024)
[2025] KEHC 12536 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E144 OF 2024
RC RUTTO, J
SEPTEMBER 3, 2025**

BETWEEN

JOSEPHAT KIPRONO KOECH APPELLANT

AND

IZWOF LIMITED RESPONDENT

*(Being an Appeal from the Judgment of Hon. J.K. Tawai, Resident Magistrate
in Ruiru SCC No E207 of 2024 delivered on the 18th day of June, 2024)*

JUDGMENT

1. This is an appeal against the judgment and decree of the Trial Magistrate/Adjudicator delivered on 18th June 2024. The appellant filed a claim for material loss arising from a road traffic accident. The claim was founded on the right of subrogation against the respondent.
2. The appellant avers that on or about 27/7/2023, he was lawfully driving his motor vehicle registration number KBK 058V along the Nairobi–Maai Mahiu road while the Respondent was driving motor vehicle KDK 264K / ZC7276 negligently and recklessly that he caused it to hit the appellant’s motor vehicle extensively damaging it. The appellant claimed Kshs.757,130/- being the cash in lieu of repairs, assessment fees, motor vehicle search fees, towing fees, lifting of truck and re-inspection fees.
3. The respondent filed a response to the Statement of claim dated 09/05/2024 denying all allegations of negligence. The matter proceeded for hearing with the appellant calling five witnesses. The respondent did not call any witness.
4. By a judgment dated 18th June 2024 the adjudicator dismissed the claim against the respondent. The trial court held that the appellant had proved his claim of Kshs.757,130/- but failed to prove his case against the respondent on a balance of probability.



5. Being dissatisfied by the Judgment, the appellant filed a Memorandum of Appeal on the following grounds; that the learned Trial Magistrate erred in law and in fact in denying the Appellant special damages of Kshs.757,130, based her findings of special damages on wrong considerations, by awarding special damages to the Appellant that was manifestly lower than what was pleaded for in the circumstances and thus failed to appreciate the principles applicable in the award of damages and lastly by failing to consider the Appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.
6. The appeal was canvassed by way of written submissions. In its written submissions filed on 15/11/2024, the appellant reiterated the contents of its Memorandum Appeal and stated that the respondent did not call any witness and the appellant's case remains uncontroverted. As such, he should be awarded the award of special damages. They urged the court to re-appraise the evidence and find that special damages were sufficiently proven at trial.
7. As regards quantum, it was submitted that CW5 who was the principal assessor with Xenon Assessors and a motor assessor by profession indicated that he charged Kshs.10,208 for preparing the assessment report which receipt he produced and the estimated total repair costs came to Kshs.773,600. Reliance was placed on the cases of *Selle & Another vs Associated Motor Boat Co Limited* [1986] EA 123, *Treadsetters Tyres Limited vs John Wekesa Wepukhulu* [2010] eKLR; *Lake Flowers vs Cila Franklyn and Another* [2008] eKLR and *Eliud Maniafu Sabuni vs Kenya Commercial Bank* [2002] eKLR, *Nkuene Dairy Farmers Co-operative Society & Another vs Ngacha Ndeiya* [2010] eKLR and *David Bagine vs Martin Bundi* [1997] eKLR.
8. The respondent in its submissions dated 29th November 2024 challenged the jurisdiction of the court arguing that the appeal is on quantum and as such does not constitute a matter of law as provided for under section 38(1) of the *Small Claims Court Act*. Reliance was placed on the case of *Wachira v Mwai* (Civil Appeal E022 of 2023) [2024] KEHC 3173 (KLR).
9. They urged that the statement of claim was fatally defective and untenable in law for failing to plead particulars of negligence. The respondent relied to the case of *Ogwari v Hersi* (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR).

Analysis and Determination

10. To begin with, the duty of this court as an appellate court is well prescribed under Section 38 of the *Small Claims Court Act* which limits the jurisdiction of this Court to matters of law only. It provides that:

“ 38.

- (1) A person aggrieved by the decision or an order Appeals of the Court may appeal against that decision or order to the High Court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final.”



11. This position was buttressed in the case of Wachira vs. Mwai [2024] KEHC 3173 (KLR), where the court, while discussing the appellate jurisdiction of the Small Claims Courts held as follows:
 - “ 4. The jurisdiction of the Small Claims Court is set out in the *Small Claims Court Act*. Ipso facto, there is only one chance of Appeal to this court. It is an Appeal on points of law.”
12. The Appellant in its memorandum of appeal has raised matters of law and fact against the provisions of the *Small Claims Court Act*. This court can therefore only address matters of law. Thus, the sole issue of law arising for determination is; whether the appellant proved its case on a balance of probability.
13. The respondent’s argument is that the claim was fatally defective for failing to provide particulars of negligence. Looking at the statement of claim, the appellant stated that “the respondent his authorized agent, driver and or servant so negligently and recklessly drove/controlled and or managed the motor vehicle registration number KDK 264 K /ZC 7276 that it caused it to hit motor vehicle registration number KBK 058 V thereby extensively damaging it. The appellant did not specifically plead the particulars of negligence.
14. In support of its claim the appellant witnesses testified as follows; CW-1, Julius Yegon stated that they were hit by the respondent’s driver who lost control, veered into his lane and hit them. That he swerved to avoid a head on collision. According to the preliminary investigation the driver of KBK 058V was blamed and charged in court. CW-2, PCGodrey Kirui who visited the scene produced the police abstract dated 29/5/2023 under OB 15/27/5/2023 where the driver of motor vehicle KBK 058V was injured and the other driver Robert Bott sustained a slight injury. CW-3, Josephat Kiprono Koech stated that he was called and went to the scene of the accident and the motor vehicle cabin was damaged. He blamed the driver of KDK 264 Q for the accident. He also indicated that he repaired the motor vehicle and the insurance paid for the repairs. He indicated that he was given money by the insurance company and signed a discharge voucher for cash in lieu of repairs.
15. CW-4 , Karani Jason, the legal officer of Pioneer Insurance confirmed that the Appellant was paid Kshs.639,042 to repair his motor vehicle being 75% and provided a receipt for 25% to be paid. He stated they did re inspection but did not do a satisfaction note as they compensated the insured. CW-5, Kennedy Kyalo told the court that he did the assessment and produced the report and indicated that they raised invoices for Kshs.10,208, Kshs.2,320 and Kshs.5,000 for court attendance. The appellant’s evidence remained unrebutted as the respondent did not adduce any evidence to the contrary.
16. The trial court, in arriving at its decision, noted that the claim was founded on negligence and negligence had not been pleaded and proven. The court observed that “the claimant did not plead any particulars of negligence as against the respondent. In as much as section 34 of the *small claims court act* relaxed the strict rules of evidence, the Act in no way did it oust the duty of discharging the burden of proof. Where a claim is founded on negligence the negligence has to be pleaded and proven and as such a claim of negligence short of this is fatally defective and untenable in law.
17. In arriving at this decision, the trial court was guided by the decision in the case of Ogwari v Hersi (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR) where the court held and found as follows;
 - “The adjudicator had no jurisdiction to proceed on a case for personal injury that had no particulars of negligence. Negligence must first be pleaded before being proved.

.....



The purpose of the act is to handle simple matters and not complicated cases where strict proof is necessary. That does not however, leave the Respondent with a duty to modify the form to fit their claim.

25. The Act under the long title is meant: -“to provide for the jurisdiction and procedures of the Small claims Court and for connected purposes.”
 26. The claim to that was being dealt with clearly beyond scope of the small claims court. I therefore hold that such matters involving negligence and injuries arising from road traffic accidents, should be filed in the Chief Magistrate’s Court.
 27. If for any reason, they have already been filed in small claims court, the particulars of negligence must be pleaded. The nature of the form used for the claim introduces a mongrel of strict liability and negligence, which is, untenable.....
18. While the adjudicator relied on the case of *Ogwari v Hersi* (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR) this court takes note of the different views by courts of concurrent jurisprudence with regard to specifically pleading the particulars of negligence. The court draws inspiration from the case of *Kenyatta National Hospital vs. Dorcas Odongo & another* [2021] eKLR which held that particulars of negligence were not mandatory, so long as the allegation of negligence was made in the pleadings. The court rendered itself as follows;
- “The objective of particulars is to reduce or eliminate surprises and give fair notice of the case the opposing party has to meet and thereby save on costs, define the scope of the evidence and define the likely scope of discovery. In any event any party to a proceeding has a right to apply to the court for an order requesting for further and better particulars of the opposite party’s pleading. If indeed the appellant was not satisfied with the particulars given by the respondents it should have requested for more particulars. This was never done.”
19. This court is inclined to follow the decision in *Kenyatta National Hospital vs. Dorcas Odongo & another* [2021] eKLR over the decision in the *Ogwari* (supra). The former case suggests a more pragmatic and less formalistic approach, prioritizing substantive justice over strict procedural compliance particularly where the rules have been relaxed by the Act. The Act seeks to simplify the legal processes for claimants. Thus, this court’s decision to reject the respondent’s assertion that the claim is fatally defective aligns with the legislative intent of the Small Claims Court.
 20. Being a liquidated claim, it was not necessary to particularize the allegation of negligence in which case the court would be expected to assess the damages prior to awarding them. At any rate, the respondent did not raise any objection to the failure to include particulars and it was only the trial court, in the judgment that noted and raised this issue. In such an adversarial system, the courts have to be cautious taking up litigation on behalf of one of the litigants.
 21. This court also notes that this is a claim under the right of subrogation. The purpose of the claim was to restore the appellant to his position before the tort was committed and the proven loss is the amount the insurance company actually paid to its client. The appellant contends that he is entitled to special damages which amounts to Kshs 757,130/- the cash in lieu of repairs, assessment fees, motor vehicle search fees, towing fees, lifting of truck and re-inspection fees. He admits that he was paid Kshs.757,130 being cash in lieu of repairs by Pioneer General Insurance Company Limited, the appellant’s insurance.



It was the evidence of the insurance company's legal officer that the appellant was paid Kshs.639,042 which is what is indicated in the payment vouchers that the Appellants rely on.

22. I also note that the court was satisfied that the appellant had proved the special damages as claimed and that the same would have been awarded under subrogation save that the claim of negligence was not proven. It is on this basis that the claim against the respondent was disallowed.
23. The upshot of the above is that the appeal succeeds. The judgment of the trial court on liability is set aside and the appellant is awarded special damages of kshs.757,130/- as proved. The cost of the appeal is awarded to the appellant and capped at kshs.30,000/-.
24. 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

