



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirimi v Ali (Civil Appeal E004 of 2024)**  
**[2024] KEHC 13943 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13943 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MARSABIT**  
**CIVIL APPEAL E004 OF 2024**

**JN NJAGI, J**

**OCTOBER 3, 2024**

**BETWEEN**

**EDWIN GITONGA KIRIMI ..... APPELLANT**

**AND**

**HASSAN GOLICHA ALI ..... RESPONDENT**

*(Being an appeal from the original judgment and Decree of the trial court by Hon. C.M Wekesa SPM in Marsabit SPMCC No.E26 of 2021 dated and delivered on 05th December, 2023)*

**JUDGMENT**

1. The respondent herein brought suit against the appellant after the appellant's motor vehicle registration No.KBP 650E lorry veered off the road along Isiolo - Marsabit highway and damaged the respondent's property that were pleaded as follows:
  - i. Destroyed grevielia trees Kshs.34,481/=
  - ii. Posho mill
  - iii. Farm tractor Kshs.82,400/=
  - iv. NTSA search Kshs. 1,000/=Total Kshs. 117,881/=
2. The parties entered consent on liability in the ratio of 80:20 in favour of the respondent. The trial court proceeded to assess the damages and awarded the respondent Ksh.272,986/= in general damages for the damaged posho mill. The appellant was aggrieved by the said award and lodged the instant appeal.
3. The grounds of appeal are that:



1. That the learned trial Magistrate erred in law and fact by awarding general damages in the sum of Kshs.272,986 whereas the respondent's claim was purely a special damages claim.
2. That the learned trial magistrate erred in law and fact by converting a special damage claim of Kshs.272,986 to a general damage claim and allowed the amount as general damages and thereby erred by allowing a special damage claim that was not strictly pleaded and proved through the backdoor.
3. That the award of the learned trial magistrate on general damages is against the law.
4. The appeal was disposed of by way of written submissions of the advocates appearing for the parties.

### **Appellant's Submission**

5. The appellant submitted that the trial Court erred in awarding general damages in the sum of Kshs.272,986/= whereas the respondent's claim was purely a special damage claim and that the sum of Kshs.272,986/= was not strictly pleaded and proved. It was submitted that the figure of Kshs.272,986 was not pleaded and therefore the said sum was irregularly awarded.
6. It was submitted that the trial court fell into error by treating a special damages claim as a general damages claim. That the two are separate and distinct. The appellant in this respect relied on the decision in the case of Kenya Wildlife Service V Goloro (2023) KEHC 19192 (KLR) where the court held that:

“General damages are basically damages that are at large and are not quantifiable at the time of filing suit. They have to await to be assessed by the court at the time of hearing. Where the damages are quantifiable they are claimed as special damages”.
7. The appellant urged the court to allow the appeal and set aside the award of Ksh.272,986/= with costs.

### **Respondents Submission**

8. The respondent submitted that the trial court was right in finding that the general damages were pleaded. It was submitted that the respondent availed a Bill of Quantities amounting to Ksh.279,986/=.

### **Analysis and Determination**

9. This being a first appeal, the duty of the court is to re-examine the evidence adduced at the lower court and draw its own independent conclusion while bearing in mind that the trial court had the advantage of hearing and seeing witnesses testify.
10. The difference between general damages and special damages is that general damages are damages at large that are not quantifiable at the time of filing suit and have to be assessed by the court at the time of hearing, while special damages are quantifiable and have to be pleaded and quantified as the time of filing suit. The law is that special damages must be specifically pleaded and specifically proved.
11. A claim for damage to a Posho mill is a special damage claim as the damages are quantifiable at the time of filing suit. It must therefore be pleaded. The trial court fell into error in converting a claim for special damages to a general damages claim. A claim for special damages cannot be awarded where it is not pleaded. In the case of Macharia Waiguru –V- Muranga Municipal Council & another (2014) eKLR the Court of Appeal dismissed a claim for special damages where it was stated in the plaint that the



particulars of special damages would be provided at the hearing. The Court upheld the dismissal of the claim partly on the ground that the particulars of special damages were not pleaded and no evidence was tendered to prove the claim.

12. I have looked at the copy of the plaint dated 3<sup>rd</sup> December 2021. Though the respondent mentioned, particulars of special damages to include damages to the posho mill, no particular sum of damages were pleaded. The respondent in his evidence produced a Bill of Quantities for the damaged posho mill house in the sum of Kshs.272,986/=. In view of the act that the said sum was not pleaded there was no basis of awarding the same.
13. The upshot in the trial court was in error in awarding the claim for special damages as general damages. I thereby find merit in the appeal. Consequently, the award of Kshs.272,986/= in general damages is set aside. The appellant to have the costs of the appeal.

**DELIVERED, DATED AND SIGNED AT MARSABIT THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024.**

**J. N. NJAGI**

**JUDGE**

In the presence of:

Mr. Kariuki for Appellant

Mr. Nyenyire for Respondent

Respondent present

Appellant absent

Court Asst – Jarso

30 days Right of Appeal

