



REPUBLIC OF KENYA



KENYA LAW
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**Wakhusama v Platinum Credit Limited (Civil Appeal 45 of 2021)
[2023] KEHC 18298 (KLR) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 45 OF 2021
WM MUSYOKA, J
JUNE 2, 2023**

BETWEEN

JACKTONE INDAKWA WAKHUSAMA APPELLANT

AND

PLATINUM CREDIT LIMITED RESPONDENT

*(Appeal from judgment and decree of Hon. F Makoyo, Principal
Magistrate, PM, in Butere PMCCC No. 79 of 2017, of 27th August 2021)*

JUDGMENT

1. The appellant had sued the respondent, at the primary court, for a declaration that his motor vehicle had been repossessed illegally by the respondent, an order that the respondent be compelled to cause the appellant to be deregistered as a loan defaulter, damages for loss of user and allied damages, cancellation of a finance agreement between the parties, general damages and costs. The respondent filed a defence, denying everything pleaded in the plaint. The respondent counter-claimed for a sum of Kshs. 577, 750.90, plus interests, penalties and charges.
2. A trial was conducted. Both sides called 1 witness each. In the end, the trial court held that the repossession of the motor-vehicle was wrongful, for no notice had been given, the appellant was in default, loss and special damage had not been proved, and general damages were not available for breach of contract. The counterclaim was allowed, for Kshs. 577, 750.90.
3. The appellant was aggrieved, hence the instant appeal. The appeal has faulted the trial court on several grounds: for not awarding general and special damages, having found that the repossession of the vehicle was wrongful; for holding that the appellant was a defaulter; and overlooking the evidence by the appellant and relying on the evidence of the respondent. The appellant asks that the judgment be quashed.



4. On June 13, 2022, directions were given, for canvassing of the appeal by way of written submissions. The appellant submits that the respondent frustrated repayment of the loan by repossessing the motor vehicle. It cites *Lucy Njeri Njoroge v Kaiyabe Njoroge* [2016] eKLR (Nambuye, Musinga & Murgor, JJA) and *Carol Construction Engineers Limited & another vs. National Bank of Kenya Limited* [2021] eKLR (J. Ngugi, J). The respondent submits, citing *Capital Fish Kenya Limited v Kenya Power & Lighting Company Limited* [2016] eKLR (Makhandia, Ouko & M’Inoti, JJA) and *Kenya Tourist Development Corporation v Sundowner Lodge Limited* [2018] eKLR (Ouko, Kiage & Murgor, JJA), that general damages were not recoverable for breach of contract, that the appellant did not prove his case, and the appellant was still indebted to the respondent as at the date the repossession was effected. Authorities are cited to support these contentions.
5. The issues are whether special and general damages should have been awarded, whether the appellant was a defaulter, and whether the case by the appellant was considered.
6. On general damages, the case for the appellant was premised on a breach of contract, that upon the appellant falling in arrears, the respondent repossessed the motor-vehicle without being sensitive to the terms of the contract. There is ample caselaw establishing that general damages are not awardable for breach of contract. See *Capital Fish Kenya Limited v Kenya Power & Lighting Company Limited* [2016] eKLR (Makhandia, Ouko & M’Inoti, JJA) and *Kenya Tourist Development Corporation v Sundowner Lodge Limited* [2018] eKLR (Ouko, Kiage & Murgor, JJA).
7. The appropriate remedy for breach of contract is an award of special damages, to recoup the losses flowing from the alleged breach of contract. The principle governing special damages is that the same must be specifically pleaded, and specifically proved. The trial court found that the appellant did not adduce evidence to support his claim that he suffered loss and damage on account of the breach. Special damages are granted where there is specific loss or damage, so evidence must be led on that specific loss or damage. It is specific because it should be quantifiable in monetary terms. A person claiming such must come to court with concrete evidence of the damage suffered, supported by a quantification, with appropriate documentation. The decision cited by the court was spot on, *Nicholas Angwenyi Siro t/a Riverside Continental Resort v Finlay Kirui & another* [2019] eKLR (Ougo, J). I have looked at the record, the appellant did not provide any proof of a special loss or damage of Kshs. 765, 000.00. He produced no books of accounts or similar records, showing how much he was making from the use of the vehicle, which he lost when it was repossessed.
8. Was the appellant a defaulter? He asserted that he was not in arrears, but conceded that he had not cleared the loan. He did not produce a statement of account to show how much he had paid, and demonstrate that he was not in arrears. He conceded that he only paid 3 installments, out of a total of 12, which tallied with the evidence tendered for the respondent. He was clearly in default, and the trial court did not err in coming to that conclusion.
9. On whether his evidence was considered in the judgment, I have gone through the record, and noted that the trial court concentrated the greater part of the judgment analyzing the evidence tendered by the appellant. It was on the basis of the analysis of the evidence of the appellant that the notice was found to have been wrongful and that special damage had not been proved. 2½ pages were devoted to the appellant’s case and evidence, while only ½ page was dedicated to the respondent’s case.
10. Overall, I find no merit in the appeal herein, and I hereby disallow it. The final orders made in the judgment of the trial court, on August 27, 2021, in Butere PMCCC No. 79 of 2017, are upheld. The appeal is hereby dismissed. Each party shall bear their own costs. Orders accordingly.



DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 2ND DAY OF JUNE, 2023

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Jacktone Indakwa Wakhusama, the appellant, in person.

Mr. Abok, instructed by Abok Odhiambo & Company, Advocates for the respondent.

