



**Attorney General (On Behalf of the Ministry of Information
Communication and Technology) v Mashline Agencies (K) Limited (Civil
Case 69 of 2018) [2025] KEMC 66 (KLR) (14 April 2025) (Judgment)**

Neutral citation: [2025] KEMC 66 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 69 OF 2018
YA SHIKANDA, SPM
APRIL 14, 2025**

BETWEEN

**THE HON ATTORNEY GENERAL PLAINTIFF
ON BEHALF OF THE MINISTRY OF INFORMATION COMMUNICATION
AND TECHNOLOGY**

AND

MASHLINE AGENCIES (K) LIMITED DEFENDANT

JUDGMENT

The Claim

1. The Hon. Attorney General (hereinafter referred to as the plaintiff) filed this suit on 27/3/2018 vide a plaint dated 26/3/2018. He sued Mashline Agencies (K) Limited (hereinafter referred to as the defendant) on account of a road traffic accident that allegedly occurred on 29/3/2015 near Salama area along Nairobi-Mombasa road. The plaintiff averred that on the material day, the plaintiff's motor vehicle registration number GKB 770F was carefully and lawfully being driven along the aforementioned road when the defendant's motor vehicle registration number KBJ 830Z/ZD 2624 was so carelessly and negligently driven by the defendant's driver onto the lane of motor vehicle registration number GKB 770F, causing the container to roll over onto the latter motor vehicle thereby causing extensive damage to the plaintiff's motor vehicle.
2. The defendant was sued as the registered owner of motor vehicle registration number KBJ 830Z/ZD 2624 at the material time. The plaintiff relied on the doctrine of Res ipsa loquitur, the Highway Code and the *Traffic Act* and averred that he suffered loss and damage. The plaintiff pleaded several particulars of negligence against the defendant. I will not reproduce the particulars of negligence since the parties entered into a consent on liability. The plaintiff thus prays for judgment against the defendant for:



- a. Special damages of Ksh. 2,723,292/=;
- b. General damages;
- c. Costs of this suit;
- d. Interest on the above from the date of filing suit till full payment;
- e. Any other or further relief which this Honourable court may deem fit and just to grant.

The Defence

3. The defendant entered appearance on 6/4/2018 and filed a statement of defence on the same day in which it denied the plaintiff's claim in toto. The defendant denied that the plaintiff was the registered owner of motor vehicle registration number GKB 770F, denied that it was the registered owner of motor vehicle registration number KBJ 830Z/ZD 2624, denied that the latter motor vehicle was driven carelessly and negligently, denied the occurrence of the accident and denied that the plaintiff's motor vehicle was extensively damaged. The defendant further denied the particulars of negligence pleaded by the plaintiff and averred in the alternative that if the accident occurred, which was denied, then the same was solely or substantially contributed to by the negligence of the plaintiff's driver. The defendant pleaded several particulars of negligence as against the plaintiff's driver but I will not reproduce them for the reason already given hereinabove. The defendant prayed that the plaintiff's suit be dismissed with costs.

Consent On Liability And Evidence

41. On 27/7/2023 the parties through their respective Advocates filed a consent on liability in which they agreed that the plaintiff would shoulder 20% and the defendant to shoulder 80%. The consent was adopted as an order of the court on 31/7/2023 thereby settling the issue of liability. Further, on 11/11/2024, the parties recorded a consent in which they agreed that the plaintiff's supporting documents filed on record be produced in evidence without calling the makers. The consent was also adopted as an order of the court. The parties further agreed to file submissions on quantum of damages.

The Evidence

5. The only evidence on record is in the form of documents that were filed by the plaintiff. The documents include:
 1. Inspection report for repairs for motor vehicle registration number GKB 770F;
 2. Copy of records for motor vehicle registration number KBJ 830Z;
 3. Vehicle valuation and inspection report for motor vehicle registration number GKB 770F;
 4. Copy of registration certificate for GKB 770F;
 5. Proforma invoice;
 6. Police abstract on road accident; and
 7. Work ticket.

Main Issues For Determination

6. In my opinion, the main issues for determination are as follows:



- i. Whether the plaintiff suffered loss and damage as a result of the alleged accident;
- ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- iii. Who should bear the costs of this suit?

The Plaintiff's Submissions

7. The plaintiff relied on his evidence on record and submitted that based on the vehicle valuation and inspection report, the court ought to award the plaintiff the pre-accident value of his motor vehicle which was assessed at Ksh. 2,723,292/= as special loss and damage. The plaintiff urged the court to grant the award subject to 20% contribution by the plaintiff. The plaintiff also prayed for costs of the suit and interest.

The Defendant's Submissions

8. The defendant argued that from the vehicle valuation and inspection report, the present value ought to be deducted from the pre-accident value. According to the defendant, the damages awardable to the plaintiff ought to work out as follows;
$$2,723,292 - 12,300 = 2,710,992/=$$
9. That the award should also be subjected to 20% contribution by the plaintiff. The defendant relied on the following authorities:
 - a. Macharia Waiguru v Murang'a Municipal Council & another [2012] eKLR;
 - b. Francis Muchee Nthiga v David N. Waweru [2014] eKLR.

Analysis And Determination

10. I have carefully considered the evidence on record. In his plaint, the plaintiff sought general damages. It is not clear what the nature of the general damages is that the plaintiff is seeking. No evidence was adduced to show that the plaintiff suffered any injury apart from the damage on his motor vehicle for which he seeks general damages. I find that the claim for general damages has no basis. The same is dismissed.
11. The plaintiff pleaded special damages as follows:
 - a. Pre-accident value of motor vehicle registration number GKA 770F.....Ksh. 2,723,292.
12. The plaintiff produced an inspection report which clearly shows that his motor vehicle was damaged as a result of the accident. I am satisfied that the plaintiff suffered loss and is thus entitled to damages as against the defendant. The plaintiff's claim is basically one for special damages. It is trite law that special damages must be specifically pleaded and strictly proved. In Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd the court said:

“It has time and again been held by the Courts in Kenya that a claim for each particular type of special damage must be pleaded”
13. In Ouma v Nairobi City Council [1976] KLR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following



passage from Bowen L.J's Judgment on page 532 and 533 in *Ratcliffe v Evans* [1832] 2Q.B. 524 an English leading case on pleading and proof of damage:

“The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of certainty and particularity 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.”

14. Similarly, in the case of *Hahn v Singh* [1985] KLR 716, it was held that:

“... special damages which must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the act themselves.”

15. In the case of *Christine Mwigina Akonya v Samuel Kairu Chege* [2017] KEHC 1484 (KLR), Joel Ngugi J (as he then was) held that:

“Our decisional law is quite clear now that one consequence of this general principle is that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before compensation will be permitted. A natural corollary of this has been that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party. In this regard, our Courts have held that an invoice is not proof of payment and that only a receipt meets the test. See *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] eKLR; *Zacharia Waweru Thumbi v Samuel Njoroge Thuku* [2006] eKLR; *Sanya Hassan v Soma Properties Ltd*. Consequently, our case law seems quite clear that a party must produce actual receipts in order to meet the test of specifically proving special damages and that a pro forma invoice will not suffice.”

16. In *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] KECA 822 (KLR), the Court of Appeal held:

“A proforma invoice is considered a commitment to purchase goods at a specified price. It is not a receipt, and as such cannot attest to the existence of or the acquisition of goods. We consider that a proforma invoice was not satisfactory proof of the respondent's loss, or the replacement value of the respondent's equipment, and the learned judge misdirected himself in finding that the proforma invoices were sufficient proof of special damages for the respondent's equipment supposedly withheld by the appellant.”

17. In the authority of *Jonathan Njenga v Hassan Faraj About* [1987] KECA 17 (KLR), the Court of Appeal (per Platt JA) was of the view that in cases of material damage, the victim would be entitled to compensation for depreciation of his motor vehicle. The compensation is arrived at by getting the pre-



accident value of the car less the scrap value. Similarly, in *Herbert Hahn v Amrik Singh* [1985] KECA 68 (KLR), the Court of Appeal observed:

“The appellant was, nevertheless, entitled to the depreciation in the value of his vehicle resulting from the accident. That depreciation is calculated by deducting the post-accident estimated market value from the estimated pre-accident market value of the motor vehicle and getting the difference, if any, which represents the loss the plaintiff will suffer at the time of resale of his vehicle and which is recoverable. But this loss has to be proved by evidence and is not automatic.”

18. The position was also alluded to in the authority of *DAVID BAGINE v MARTIN BUNDI* [1997] KECA 54 (KLR) in which the court of Appeal held:

“We come now to the issue of special damages award for Kshs. 277,750/= for repair costs. Counsel for the appellant argued that the respondent could properly only have claimed such sum as he actually spent towards repair of his lorry and that he could not have claimed on the basis of an estimate of costs of parts to be replaced.....No evidence by any expert was called to prove the exact repair costs. Nor was there any evidence to show what was the pre-accident value of the lorry and the salvage value (if the lorry was indeed a wreck). There was nothing to show if the sum of Kshs. 277,750 could have properly been spent to put the lorry back on the road.....The best evidence in this respect could have been supplied by an automobile assessor.”

19. The foregoing reveals that there are two ways in which a claimant may be compensated for damages for material damage;

- a. Where the property is repaired and repair costs are proven. In this case, the claimant must prove loss incurred in terms of repair costs by production of receipts for payment of the costs;
- b. Where the property is beyond repair and written off, the claimant may be paid the pre-accident value thereof. If the property can be salvaged, compensation is reached by deducting the salvage value from the pre-accident value.

20. In this case, the valuation and inspection report indicates the pre-accident value as 2,723,292/=. The value at the time of assessment was assessed at Ksh. 12,300/=. The report further indicates that there were no salvage components since the damage was quite extensive. There is no contrary evidence. The indication is that the motor vehicle could not be salvaged. It was totally written off. In the circumstances, I do not think it would be prudent to deduct the value at the time of assessment from the pre-accident value. My view is buttressed by the authority of *Summer Limited Meru V Moses Kithinji Nkanata* [2006] KEHC 2159 (KLR), wherein Lenaola J (as he then was) while faced with similar circumstances held that where the motor vehicle is a total wreck, the damage must still be the whole of the pre-accident value.

Disposition

21. In summary, I hold that the plaintiff has proven his case on a balance of probability as against the defendant. Consequently, I make the following awards:

1. Special damages..... Ksh. 2,723,292/=
- Less 20% contribution.....Ksh. 544,658.40/=
- Balance due to the plaintiff.....Ksh. 2,178,633.60/=



22. The plaintiff is also awarded costs of the suit and interest. The plaintiff prays for interest from the date of filing suit until payment in full. The guiding principles in respect of interest are set out in section 26 of the *Civil Procedure Act* which provides that:

“(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

23. In the case of *Jane Wanjiku Wambui v Anthony Kigamba Hato & 3 others* [2018] eKLR, the court stated that:

First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.

24. Second, Under Section 26(1) of the *Civil Procedure Act*, the Court has discretion to award and fix the rate of interests to cover two stages namely:

“a. The period from the date the suit is filed to the date when the Court gives its judgment; and

b. The period from the date of the judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion fix.”

25. Odoki, Ag. JSC, writing for the majority of the Supreme Court in the Ugandan case of *Omunyokol Akol Johnson v Attorney General* (CIVIL APPEAL NO.6 of 2012, UGSC 4 (8th April 2015) stated in part, as follows:

“It is well settled that the award of interest is in the discretion of the court. The determination of the rate of interest is also in the discretion of the court. I think it is also trite law that for special damages the interest is awarded from the date of the loss, and interest on general damages is to be awarded from the date of judgment.....Therefore, the trial judge should have awarded the appellant interest on general damages at the court rate from the date of judgment.” (Emphasis supplied)

26. From the foregoing expositions of the law on this point, it is clear that much as the award of interest is discretionary, interest rates on special damages should be with effect from the date of the loss till payment in full while with regard to general damages this should be from the date of judgement as it is



only ascertained in the judgement-see Jane Ovuyanzi Raphael (Suing as Legal Representative of Estate of Japheth Amaayi v Salina Transporters [2020] KEHC 618 (KLR).

27. Consequently, interest on the special damages awarded shall accrue from the date of filing suit to the date of judgment/decree.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 14TH DAY OF APRIL, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

