



**Mathuku v Wambui & another (Civil Case E030 of 2025)
[2025] SCC 10 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] SCC 10 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E030 OF 2025
FM MULAMA, RM
JULY 18, 2025**

BETWEEN

JAMES NGONYI MATHUKU CLAIMANT

AND

SEBASTIAN MUTUKU WAMBUI 1ST RESPONDENT

JONERICS CARGO FORWARDERS LIMITED 2ND RESPONDENT

JUDGMENT

1. The claimant avers that at all material times, the Claimant was the registered and insured owner of motor vehicle registration number KCU 077L while the Respondents are the registered, insured and or beneficial owners of the motor vehicle registration number KCQ 453T.
2. On the 4th day of November, 2023, the Claimant's driver was lawfully driving motor vehicle registration number KCU 077L along the Nairobi - Mombasa Highway traveling from Taveta towards Mombasa. Upon approaching Maungu Town the Claimant's driver slowed down as there were rumble strips and a speed bump ahead. The Respondent's driver drove motor vehicle registration number KCQ 453T so recklessly and negligently at an excessive speed that he caused it to ram into the Claimant's vehicle from the rear causing the Claimant's vehicle extensive damage.
3. The claimant pleaded particulars of negligence and placed reliance on the *Traffic Act*, Highway Code and the doctrine of res ipsa loquitor.
4. The claimant avers that as a result of the accident the claimant's motor vehicle was extensively damaged and now seeks compensation for the repairs and all incidental expenses thereto.
5. The claim against the 1st Respondent was withdrawn and as such the matter proceeds as against the 2nd respondent.



6. The matter proceeded by way of viva voce evidence and parties thereafter proposed to file submissions which submissions have been considered save for the respondent's one which were not filed as of 17th July 2025 at 1520hours.

ISSUE FOR DETERMINATION.

- a. Whether the Respondent is liable for the accident.
- b. What is the quantum of damages awardable if any.
- c. Who bears costs of the claim.

ANALYSIS AND DETERMINATION.

a. Whether the respondent is liable for the accident.

7. Liability was agreed upon by consent in the ratio of 85:15 in favour of the claimant as against the respondent. The same be and is hereby adopted as the judgment of the court on the issue of liability.

b. What is the quantum of damages awardable if any.

8. As regards material damage claims, it need not be proved that the expenses were actually incurred but a mere demonstration of the extent of the damages/loss incurred and how much it would cost to return the thing complained of to its position prior to the accident.
9. In *Nkunene Diary farmers co-op society Ltd & another v Ngacha Ndeyiya* [2010] eKLR cited in the case of *Haulage Services Ltd v Complast Industries Ltd & another* [2015] eKLR the court of appeal held as follows;

“in our view special damages in a material damage claim need not be shown to have actually been 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 condition it was in before the damage complained of. An accident assessor gave details of the part 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.”

10. From the decision above it is clear to me that all the claimant needs to do is to show the extent of the damage and what it would cost to restore the damage to its original position. This is addition to the now cliché that special damages must not only be specifically pleaded but also strictly proved.
11. The claimant has pleaded with specificity and particularity what it wants the court to award as compensation. He has thus pleaded Kshs.434,050/= as the total amount that would return him to a position he was in before the accident. This according to the claimant's submissions is in compliance with section 12[1][c] of the SCC Act.
12. An issue was raised in cross as to the variance of the costs and number of days the vehicle was for repairs in the report and what has been pleaded. What I gathered the claimant to say in response is that those were mere approximations and not the actual turn of events. He stated that he paid Kshs.214,500/= as pleaded for the actual repairs and/or spare parts and produced in evidence a receipt dated 22/11/2023 and further that the vehicle despite being approximated to take days, it ended up taking 18 days.
13. I agree with the explanation given by the claimant. The assessor merely gave what was in his view the approximate cost of each of the parts that were damaged and the number of days that it would take to



repair the vehicle. The said assessor never purchased the said parts nor repaired the motor vehicle and as such all he did was an approximation.

14. If the respondent is opposed to the costs of those parts, I expected him to file in court a parallel report and/or list of the said parts and their respective costs for purposes of comparison. This was not done and as such the court is left with what the claimant has produced in evidence.
15. Of the total amount claimed Kshs.180,000/= is for loss of user to which I will delve into shortly. The other expenses amounting to Kshs.254,050/= went towards repairs, assessment report, towing and motor vehicle copy of records.
16. In support of the expenses as pleaded at paragraph f[i] to [iv] I have perused the record and the said expenses have been proved vide receipts dated 22/11/2023,8/11/2023,6/11/2023 and 12/3/2025 respectively save to state that with regards to the assessment report, what was pleaded was Kshs.7,000/= but proved was Kshs.5,000/= and that is the amount this court shall award.
17. Taking cue for the case of Nkunene Dairy farmers co-op society Ltd[*supra*] I am required to only satisfy myself that the claimant's motor vehicle was damaged and to what extent and what it would cost him to repair the vehicle. On a balance of probabilities, the same have been proved and are hereby allowed as prayed save for Kshs.2,000/= deducted from the costs of obtaining the assessment report.
18. On the issue of loss of user, it is the claimant's averment that the suit motor vehicle operated as a matatu under Naekana sacco and used to generate Kshs. 10,000/= on average. In support of this he has attached various receipts to prove this. It is not disputed that the said motor vehicle was in matatu business and definitely makes an income and the claimant has attempted to prove such incomes less daily expenses as indicated in the worksheets.
19. The respondent in a bid to challenge the authenticity of the said worksheets observed and that was indeed confirmed by the claimant that the worksheets had no stamps and the name of the sacco. While that is true on a cursory look of the said worksheets, no other worksheets have been produced to rebut the ones on record and also the said sacco has not denied such work tickets as emanating from their sacco and as such I am convinced that the said worksheets belong to the sacco
20. It is not lost on me that an award for loss of user is a discretionary award. In the case of Samuel Kariuki Nyangoti v Johaan Distelberger [2017] eKLR the court of appeal stated that;

“in personal injury cases the loss of business profits and loss of future earning capacity are usually in the nature of general damages. The loss of use of a profit making chattel such as a lorry or matatu through an accident is similarly a claim in general damages. The standard of proof in such claims is on a balance of probabilities and principle of restitutio in integrum is applied in such cases”
21. The claimant has pleaded that it took 18 days to repair the vehicle and in the intervening period incurred a loss of Kshs.10,000/= in each of those days and now seeks compensation.
22. Given the nature of damage on the suit motor vehicle, I found that 18 days were reasonable enough to repair the vehicle. The average amount of earnings per day have been satisfactorily proved by way of the receipts/work tickets produced in evidence.
23. In the end I do find that the expense of loss of user has been proved to the required standards and the amount claimed is awarded.



c. Who bears costs of the claim?

24. The claimant having been successful in the matter and that costs follow events he is awarded costs of the claim.

CONCLUSION AND DISPOSITION.

25. The upshot of the foregoing I make the following final orders;

a. The claim contained in the statement of claim dated 8th May 2025 is allowed in the following terms.

Liability 85:15

Special damages Kshs.432,050/=

Less liability 15% Kshs.64,807.50

TOTAL Kshs.367,242.50/=

b. The claimant is awarded costs and interests from the date of filing until payment in full.

c. Let the file be closed forthwith.

26. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT THIS
18TH DAY OF JULY 2025**

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Fathiya Loo.

Ms.Wanja HB for Mugo for the Claimant

Mr. Kiwinda for the Respondent.

