



Gaitirira v Muhari (Civil Case 389 of 2023) [2025] KEMC 251 (KLR) (3 June 2025) (Judgment)

Neutral citation: [2025] KEMC 251 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE 389 OF 2023
PA NDEGE, SPM
JUNE 3, 2025**

BETWEEN

JOHN NGACHA GAITIRIRA PLAINTIFF

AND

STEPHEN MWANGI MUHARI DEFENDANT

JUDGMENT

1. The plaintiff herein, John Ngacha Gaitirira, is praying for judgement against the defendant, Stephen Mwangi Muhari, for compensation in the sum of Ksh 741,402/=, costs and interest, following an accident which he holds the defendant liable, in which his vehicle was extensively damaged and could not therefore be used in his matatu business for a period of 45 days. He brought the suit vide a plaint dated 16.06.2023 and filed on 14.07.2023.
2. The plaintiff's case is that his motor vehicle registration number KCC 576T Toyota Hiace Matatu was being lawfully driven along Gilgil-Nakuru road whereupon at Karura area, the defendant's lawful driver carelessly and recklessly drove motor vehicle registration number KCU 778V Toyota Rumio, belonging to the defendant, which violently collided with his motor vehicle thereby causing extensive damage on his motor vehicle. The plaintiff particularized his claims for special damages paragraphs 5 of the plaint respectively.
3. The plaintiff particularized his claim of negligence on the defendant or his lawful driver at paragraph 4 of his plaint as follows:
 - a. Driving at an excessive high speed under the circumstances
 - b. Failing to notice the presence and movement of motor vehicle registration no KCC 576T Toyota Matatu
 - c. Failing to give way to the plaintiff's motor vehicle.
 - d. Losing control of motor vehicle for no apparent reason



- e. Failing to slow down brake swerve, stop and or in any other prudent manner manage the motor vehicle to avoid the accident
 - f. Failing to take reasonable care for other road users particularly motor vehicle registration No KCC 576T Toyota Matatu.
4. The defendant filed his statement of defence, through the firm of Khisa & Co Advocates LLP on 27.10.2023, wherein he mainly disavowed the alleged negligence, special damages, occurrence of the accident, that motor vehicle registration KCC 576T was a dully licensed public vehicle with a net daily income of Kshs 5,000 and the fact that the motor vehicle spent 45 days to be repaired hence the plaintiff lost Ksh 225,000 as his earnings and ownership of motor vehicle registration No KCU 778V. Furthermore, the defendant attributed the accident to the negligence of the plaintiff and the driver of the motor vehicle registration KCC 576T Toyota Hiace Matatu and particularized the same in Paragraph 6 of its statement of defence.
5. The plaintiff side presented two witnesses. PW1 being the plaintiff himself and PW2, Joseph Maina Ndirangu, his driver. The plaintiff further produced several documentary evidence which include Police Abstract, Log book for KCC 576T, copy of record for KCU 778V, Motor vehicle assessors report dated 17.09.23, receipt for purchase of nose cut, receipts for repair costs, receipt for towing fees, receipt for copy of record, 2NK Sacco monthly statement for KCC 576T Toyota Matatu for the month of August 2022, demand and statutory notices and receipt for motor vehicle assessors fee. The defendant, on the other hand, closed his defence without calling any evidence. At the close of hearing and submissions, two issue emerge for determination:
- a. Whether the defendant is wholly liable for the accident?
 - b. Whether the plaintiff is entitled to the relief sought?
- Basically, it is a determination on liability and quantum.
6. The Defendants did not call any witness to testify in Court. I am alive to the fact that even without the Defendant's testimony, the Plaintiff is obliged to prove his case on a balance of probabilities. In the case of *Kerai Ghanshyam v James Wambua Muendo* [2021] eKLR, the court stated as follows: -
14. I am alive to the Court of Appeal's position in *Daniel Toroitich Arap Moi –vs- Mwangi Stephen Muriithi & Another* [2014] eKLR that espouses the correct legal position that:
- “It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of rebuttal by the other side.”
7. In the above case, the court held that submissions and pleadings alone do not amount to evidence. The appellants in the lower court failed to tender evidence and hence the respondent's evidence remained uncontroverted. However, in the case of *Janet Kaphiphe Ouma & Another –vs- Maries Stopes International (Kenya)*, Kisumu HCCC No. 68 of 2007, Ali Aroni, J citing the decision in



Edward Muriga through Stanley Muriga –vs- Nathaniel D. Schulter, Civil Appeal No. 23 of 1997 stated that:

In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence.

8. Guided by the above cases, I find that the statements in the defence filed on 14th September 2023 remain mere allegations having not been substantiated orally in court by the Defendant to controvert the Plaintiff's testimony. The Defence in this case consequently contains mere allegations that were not substantiated in evidence, and I so find.
9. On liability, the plaintiff's counsel has submitted that the evidence of PW2, the plaintiff's driver and hence an eye witness to the accident herein was simple, clear and very consistent even in cross-examination. I do agree with that. I find the evidence not to have been controverted in any way. Furthermore, the plaintiff proved on record that the defendant is the registered owner of motor vehicle KCU 778V relying on the NTSA motor vehicle copy of records. I thus find the defendant herein 100% liable.
10. Having established the defendant's liability, the next issue is whether the plaintiff is entitled to the relief sought and if so the appropriate quantum. The plaintiff prayed for payment of Kshs 741, 402/- without specifying the nature of the payment, whether they are for special damages or for any other kind of damage. The damages that are envisioned in the Plaintiff however appear to be in the nature of special damages. It is trite law that special damages must be pleaded and proved. See Mohammed Ali & another v Sagoo Radiators Limited [2013] eKLR (Civil Appeal No. 231 of 2005) wherein the Court adopted the holding of the High Court in Hahn vs Singh [1985] KLR 716 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.
11. The plaintiff did not contain the prayer for specific damages. The damages forming part of the claim herein have however been sufficiently and concisely particularized in paragraphs 5 and 6 of the Plaintiff. In the circumstances therefore, this could have been a prayer for special damages as particularized in Paragraph 5 of the plaintiff. Further, lost earnings as particularized in paragraph 6, have been held to form part of special damages.
12. It was however desirable for the plaintiff to comply with the rules under order 4 rule 6 of the civil procedure Act, which provide that the plaintiff must state specifically the relief, which he claims either specifically or in the alternative and it shall not be necessary to ask for cost, interest or any other general relief given as the court may deem fit and just to grant.
13. Having found that the claim herein is for payment of a liquidated amount, I do find that the plaintiff claims for special damages for the loss as per paragraphs 5 and 6 of the plaintiff being: -
 - i. Costs of repair of motor vehicle – Kshs. 298, 353/=
 - ii. Motor vehicle assessors fees – Kshs. 7,500/=
 - iii. Purchase of a Nose cut – Kshs. 160,000/-



- iv. Fees for copy of record for KCU 778V –Kshs. 550/-
 - v. Towing fees – Kshs. 50,000/=
 - vi. Lost income – Kshs. 225,000/=
14. I find that for the loss occasioned by the repair of the motor vehicle due to the extensive damage suffered due to the accident the plaintiff produced receipts to prove the following: -
- a. Cost of repair of motor vehicle-----Ksh 298,352/=
 - b. Motor vehicle assessors fees-----Ksh 6,000/=
 - c. Purchase of a nose cut-----Ksh 160,000/=
 - d. Fees for copy of record for KCU 778V----Ksh 550/=
 - e. Towing fees-----Ksh 50,000/=
- Total-----Ksh 514,902/=

It is trite law that special damages must be specifically pleaded and strictly proved. The plaintiff has met this threshold, and the court therefore awards him Kshs 514,902/= as special damages.

15. As for lost earnings, the plaintiff did adduce a 2NK monthly statement for the month of August 2022. It is at this point I note that the highest income made that month was Kshs 4,300 on 6.08.2022. I find that an award of Kshs. 2,866.67 is sufficient for the net daily income thus the same when multiplied by the 45 lost days amounts to Kshs 129000/15.
16. In conclusion judgement is hereby entered in favour of the plaintiff against the defendant for Kshs. 643,902/15, costs and interest at court's rates

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 03RD DAY OF JUNE 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff Counsel: Naliaka h/b Kiama

Defence Counsel: Mwongela

Plaintiff: n/a

Defendant: n/a

Mwongela: 30 days stay of execution

Naliaka: No objection.

CT: 30 days stay granted.

