



**Ojenge v Gichuki & another (Civil Suit 6122 of 2015)
[2023] KEMC 87 (KLR) (20 February 2023) (Judgment)**

Neutral citation: [2023] KEMC 87 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 6122 OF 2015
JP ADUKE, SRM
FEBRUARY 20, 2023**

BETWEEN

KENNEDY ODHIAMBO OJENGE PLAINTIFF

AND

JANE WANGARI GICHUKI 1ST DEFENDANT

AMOS ODINDO 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 7th October 2012 in Nairobi. In the plaint filed on 6th October 2015, the plaintiff avers he was driving motor vehicle registration number KBQ 469Z when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KBJ 635K negligently and carelessly drove the said motor vehicle, caused it to lose control and hit KBQ 469Z causing damage to the plaintiff's car.
2. The Plaintiff blames the Defendants and their agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendants.
3. The particulars of damages occasioned to the Plaintiff's car are captured in para 6 of the Plaintiff while the particulars of alleged negligence are captured in para 5 of the Plaintiff. The Plaintiff prays for special damages, costs of the suit and interest at court rates.
4. Return of Service on Record shows that the defendants were served with the suit papers. The defendant entered appearance and filed pleadings. At the hearing thereof, parties recorded a consent on liability in favour of the Plaintiff in the ratio of 75.25 which was endorsed at the registry. At the hearing thereof, the defendant did not show up. The Plaintiff called two witnesses who testified on oath. Parties filed written submissions on quantum. The issue for determination before this court is quantum, seeing as liability is settled by the consent.



1. Quontum

5. The Plaintiff prays Special Damages, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for KES 405,529/- as captured in para 6 of the Plaintiff. I have seen assessment and inspection reports on record, invoices from Toyota Kenya for KES 339, 911, 19,134 and invoices from the motor assessors. I have, however, not seen any copies of pay-out cheques or payment receipts in respect of the said invoices or cost estimates. I have seen a receipt for KES 16,500 in respect of towing and issued by Rescue Towing Services Ltd. It is settled principle that special damages must be pleaded and proved (see John Kibicho vs Emmanuel P Mkoitiko [2017] eKLR) . I find that KES 16,500/- has been pleaded and proved and award the same. In Christine Mwigina Akonya vs Samuel Kairu Chege [2017] eKLR the court stated thus:

“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 the compensation will be granted.....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 profoma invoices sent to the party by a third party. Our courts have held that an invoice is not proof of payment and that only a receipt meets the test...”

6. I have relied on the above reasoning of the court in arriving at my findings in the present case.
7. I have considered all the submissions on record and the authorities annexed thereto. I have also considered all the exhibits on record. In particular, I have also relied on the reasoning of the court in Akamba Public Road Services vs Abdikadir Adan Galgalo [2016] Eklr and African Line Transport Company vs Swaleh Kitsao & Sylvester Keitany, Civil Appeal no 6 of 2017 where the court outlined the principles to be applied in awarding special damages under the doctrine of subrogation.
8. In conclusion, I enter judgement in favour of the plaintiff as follows:
1. Special damages KES 16,500/-
 2. Costs of the suit.
 3. Interest on 1 and 2 above at court rates.
9. The Plaintiff shall have costs in this suit and interests at court rates from the date of this judgement until payment in full.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH FEBRUARY 2023 IN THE ABSENCE OF THE PARTIES AT 11.40AM

In the presence of :

1. Court Assistant: Benjamin Kombe.
2. Counsel for the Plaintiff-

(Name, Signature, Date)

3. For the Defence:



(Name, Signature, Date)

