



**Mungai v Kenya Power and Lighting Company & another (Civil Suit E865 of 2022) [2023] KEMC 69 (KLR) (13 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 69 (KLR)

**REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

**CIVIL SUIT E865 OF 2022**

**JP ADUKE, SRM**

**MARCH 13, 2023**

**BETWEEN**

**JOHN KAHARA MUNGAI ..... PLAINTIFF**

**AND**

**KENYA POWER AND LIGHTING COMPANY ..... 1<sup>ST</sup> DEFENDANT**

**DAVID MUIRURI MWANGI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 28<sup>th</sup> March 2020 in Nairobi. In the plaint dated 21<sup>st</sup> February 2022, the plaintiff avers his wife was driving motor vehicle registration number KCS XXXX when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCQ XXXC negligently and carelessly drove the said motor vehicle, caused it to lose control and hit KCS XXXX 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 7 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 failed to enter appearance. As a result, judgment in default was entered on 14<sup>th</sup> July 2022. The matter proceeded to formal proof hearing. At the hearing thereof, the plaintiff called three witnesses who testified and produced exhibits in support of the claim. Plaintiff filed written submissions on quantum. The issue for determination before this court is quantum, seeing as liability is settled by the default judgement on record.



## Quontum

5. The Plaintiff prays Special Damages, Costs of the Suit and any other relief. With respect to Special Damages, the Plaintiff prays for ksh 224 752.00/- as captured in para 10 of the Plaintiff. I have seen assessment and inspection reports on record, invoices. I have, however, not seen any copies of pay-out cheques in respect of the said invoices or cost estimates. I have seen a print out of a receipt for ksh 550/- in respect of Motor Vehicle Search. It is settled principle that special damages must be pleaded and proved (see *John Kibicho v Emmanuel P Mkoitiko* [2017] eKLR). I find that ksh 550/- has been pleaded and proved and award the same. In *Christine Mwigina Akonya v 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 v Abdikadir Adan Galgalo* [2016] eKLR and *African Line Transport Company v 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 ksh 550/-
2. Costs of the suit.
3. Interest on 2 above at court rates.

9. The Plaintiff shall have costs in this suit and interest at court rates as outlined above 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 13<sup>TH</sup> MARCH 2023  
IN THE ABSENCE OF THE PARTIES.**

In the presence of :

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff- .....

(Name, Signature, Date)

For the Defence: .....

(Name, Signature, Date)

