



**Mutembei & another v Muchua (Civil Appeal 32 of 2024)
[2025] KEHC 15714 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL 32 OF 2024
RC RUTTO, J
NOVEMBER 3, 2025**

BETWEEN

JOHN MUTEMBEI 1ST APPELLANT

SAMUEL KIMANI WAIGANJO 2ND APPELLANT

AND

CAROLINE WANJIKU MUCHUA RESPONDENT

(An appeal from the judgment and decree of the Small Claim Court at Ruiru (J.K. Tawai, Adjudicator/RM.) delivered on 4th March 2024 in SCCC No. E049 of 2023)

JUDGMENT

1. The Appellant aggrieved by the judgment of the Small Claims Court in SCCC No E049 of 2023 lodged this appeal seeking to set aside the trial courts award and substituting with an order dismissing the Respondent's claim. The dispute arises from a claim by the Respondent, seeking compensation for material damage to her motor vehicle, registration number KBW 528J. The damage resulted from a road traffic accident involving both the Appellants' and Respondents motor vehicle.
2. In a Statement of Claim dated 4th December 2023, the Respondent sought special damages amounting to Kshs.1,000,000.00, along with the costs of the suit. After hearing both parties, the trial court found the Appellants fully liable for the accident. Consequently, the court awarded the Respondent special damages of Kshs.878,500/= and party-party costs of Kshs.77,600/=.
3. Dissatisfied with both the finding on liability and the quantum of damages awarded, the Appellants filed this appeal seeking to set aside the trial court's judgment and replaced with an order dismissing the claim in its entirety. The appellants further prayed for costs of this appeal together with the costs at trial
4. In the Memorandum of Appeal dated 15th March 2024, the Appellants raised the following four grounds: that the learned magistrate erred in law and misdirected herself when she failed to consider



the appellant submission on both points of law and facts; the learned magistrate erred in law and fact by awarding the Respondent special damages of Kshs.878,500/- which amount was neither specifically pleaded nor proven by the respondent; the learned magistrate erred in law and in fact by failing to find that the claimant evidence was not consistent and could not be relied on to establish any liability whatsoever against the respondent as required by law; the learned magistrate judgment was unjust, against the weight of evidence and was based on misguided points of facts and wrong principles of law and has occasioned a miscarriage of justice.

5. The appeal was canvassed by way parties' submissions.

Appellants Submissions

6. In their written submissions dated 22nd October 2024, the Appellants argued that the trial court did not adequately consider their submissions, particularly those pointing out inconsistencies in the Respondent's evidence. They maintained that had these inconsistencies been properly evaluated, the court would have found the evidence insufficient to meet the threshold of proof on a balance of probabilities. As a result, the Appellants asserted that the finding of 100% liability against them was erroneous⁷.
7. Regarding the quantum of damages, the Appellants argued that the special damages award of Kshs.878,500.00 was flawed. They claimed that the special damages were neither specifically pleaded nor strictly proved to the required legal standard. To support their position, they cited the well-established principle that special damages must be specifically pleaded and proved, while referencing the cases of; *Vishva Stone Suppliers Company Limited vs. RSR Stone 2006 Limited* [2018] eKLR; *Eldama Ravine Distributors Limited v. Samson Kipruto Chebon* (CA Civil Appeal No. 22 of 1991) and *Kosgei vs. Mutisya* [2024] KEHC 156 (KLR). Accordingly, they prayed for the appeal to be allowed and the Respondent's claim dismissed in its entirety.

Respondent's Submissions

8. The Respondent's set out two key issues for determination namely: whether liability as apportioned by the trial court was manifestly erroneous, and whether the special damages awarded were excessive.
9. On liability, the Respondent argued that the Appellants had failed to demonstrate any manifest error in the trial court's findings. The Appellants' objections to the evidence, including claims that the evidence was hearsay and inadmissible were dismissed as baseless and lacking probative value. Reference was made to the *Embu Public Road Services Ltd vs Riimi* (1968) EA 22 as quoted in the case of *PN M & another* (the legal personal Representative of estate of *L M M v Telkom Kenya Limited & 2 others* [2015]).
10. On special damages, the Respondent maintained that the damages were specifically pleaded. Reference was made to Paragraph 5 of the Statement of Claim, which sought judgment in the amount of Kshs.1,000,000.00. The Respondent emphasized that the claim was one seeking compensation for material damage which was substantiated by documentary evidence, including an Assessment Report and receipts totalling to Kshs.878,500/-. Citing *Nkuene Dairy Farmers Cooperative Society & Another v. Ngacha Ndeiya* (2010) eKLR, the Respondent argued that they met the threshold of strict proof by pleading for special damages, produced receipts of the expenses incurred in repairing the motor vehicle. Further that the production of the receipts was neither objected to nor rebutted by the appellants during trial. They also relied on the case *Savana Saw Mills Ltd v Gorge Mwale Mudomo* (2005) eKLR.



11. Consequently, the Respondent urged the court to dismiss the appeal with costs and uphold the judgment rendered by the Adjudicator.

Analysis and determination

12. This Court has carefully considered the grounds of appeal, the record of appeal, and the parties submissions it is evident that the Appellant raises both factual and legal issues. The grounds of appeal allege errors in law and fact, and the submissions are similarly framed to support both dimensions.
13. As an appellate court exercising jurisdiction under the Small Claims Court framework, its mandate is governed by Section 38 of the *Small Claims Court Act*. This provision expressly limits the jurisdiction of the High Court in appeals arising from the Small Claims Court to matters of law only. The scope of what constitutes a “point of law” has been well defined see the case of Peter Gichuki King’ara v IEBC & 2 Others, Nyeri Civil Appeal No. 31 of 2013 (Court of Appeal) (Visram, Koome & Odek, JJA).
14. Therefore, in line with the above authority and the statutory limitation under Section 38 of the *Small Claims Court Act*, this Court will refrain from addressing factual disputes and will confine its analysis strictly to matters of law. The restriction to points of law serves as a statutory safeguard against transforming the High Court into a forum for factual retrials, which would undermine the *Small Claims Court Act*.
15. Upon careful examination of the Memorandum of Appeal, it is evident that Grounds 1, 3, and 4 of the appeal essentially invite this Court to undertake a fresh evaluation of the evidence presented before the trial court.
16. In Ground 3, the Appellants challenge the Adjudicator’s finding on liability, asserting that the Respondent’s evidence was inconsistent and therefore unreliable. Ground 4 similarly contends that the judgment was against the weight of the evidence and unjust. These argument hinge on the re-assessment of witness credibility, the evidence adduced and the inferences drawn from the evidence. This are inherently factual matters outside the mandate of this court. Again, by urging this Court to find that the Respondent failed to prove negligence on a balance of probabilities, the Appellants are effectively seeking a re-assessment of the facts. This exceeds the appellate jurisdiction conferred by Section 38 of the *Small Claims Court Act*.
17. This court therefore finds that the Appellants have not demonstrated that the trial court’s findings were so unreasonable or unsupported as to constitute an error of law. Their submissions reflect mere disagreement with the factual conclusions reached. Accordingly, Grounds 1, 3, and 4 of the appeal fails.
18. On Ground 2 the legal issue arising is whether special damages was specifically pleaded and proven. It is trite law that special damages must be specifically pleaded in the statement of claim and thereafter strictly proved before they can be recovered. The recovery of special damages is contingent upon the satisfaction of these two sequential requirements. This strict adherence is necessary because special damages represent tangible, calculable, and quantifiable losses such as costs for repair, medical bills, or specific out-of-pocket expenses.
19. This mandatory requirement was highlighted by the Court of Appeal in *Equity Bank Limited v Gerald Wang’ombe Thuni* (2015) eKLR, which held that “special damages ”must indeed be specifically pleaded and proved with a degree of certainty and particularity”. The requirement for pleading specifically is thus a fundamental prerequisite for entertaining the claim under special damages. Also see the cases of *Eldama Ravine Distributors Ltd & another V Samson Kipruto Chebon C.A Civil Appeal No 22 of 1991*; *Vishva Stone Supplies Company Limited vs RSR Stone 2006 Limited* (2018); *Mochama v Ogoti* (Civil Appeal E083 of 2023) [2025] KEHC 1468 (KLR) (26 February 2025)



20. The Appellants contended that the Respondent failed to specifically plead the special damages, pointing specifically to Paragraph 5 of the Statement of Claim. This paragraph, detailing the remedies sought, contained checkboxes, and the Appellants asserted that the required boxes were not appropriately marked or explained, leading to ambiguity regarding the specific claims made. The Appellants' submission, therefore, challenged the legal sufficiency of the pleading itself the first step of the two-step requirement.
21. Upon review of the Record of Appeal, it is evident that the Adjudicator failed to acknowledge the Appellants' argument that special damages was not pleaded and did not address herself to this argument. As a result, the Adjudicator did not proceed to determine this critical legal argument. Instead, the Adjudicator noted that special damages must be strictly pleaded and proven but then bypassed the first mandatory step of ensuring whether it had been pleaded before proceeded to assess the receipts provided and determine the quantum at Kshs.878,500.00.
22. The trial court's failure to determine whether the special damages was pleaded was an error on the part of the adjudicator. Bypassing this first mandatory step and moving directly to assess the quantum of damages resulted in an error of law on the part of the trial court.
23. Given that the error identified is a failure by the trial court to apply established procedural law to the documents before it, this Appellate Court cannot make the determination in the first instance. To decide de novo whether the claim for special damages was pleaded would require this Court to evaluate the record and make a determination without the benefit of the Adjudicator's initial finding on the issue.
24. In view of the foregoing, this Court makes the following final orders:
 - a. The appeal partially succeeds.
 - b. The judgment and decree of the Small Claims Court at Ruiru (SCCC No. E049 of 2023) delivered on 4th March 2024, insofar as it awarded Kshs.878,500/= in special damages and Kshs.77,600/- in party-party costs, is hereby set aside.
 - c. The matter is hereby remitted back to the Small Claims Court at Ruiru for the Adjudicator to determine, as a preliminary point of law, whether the Respondent's claim for special damages was specifically pleaded in accordance with the established legal requirements.
 - d. If the Adjudicator determines the claim was specifically pleaded, the previous determination on liability shall stand, and the Adjudicator shall re-affirm the quantum award if satisfied with the proof. If the Adjudicator determines the claim was not specifically pleaded, the quantum claim shall stand dismissed.
 - e. The Appellant is awarded costs of this appeal. The costs of the suit in SCCC No. E049 of 2023 shall abide the final determination of the remitted issue by the Small Claims Court.

It so ordered

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF NOVEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant



.....Respondent

Selina Court Assistant

