

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E030 OF 2025

ERICK ONYISO.....
APPELLANT

=VERSUS=

JOHN EGESA.....
.....RESPONDENT

**(Being an appeal from the Judgment of Hon. Steven Musili
(Adjudicator/RM) in Taita Taveta Small Claims Court Case
No. E042 of 2024 delivered on 16th May 2025)**

JUDGMENT

1. The Respondent in this appeal was the Claimant in Taita Taveta SCCC No. E042 of 2024 where he was seeking special damages amounting to Kshs. 490,000/= plus costs and interest for damages to the Respondent motor vehicle registration No. KBX 688N which was damaged when the Appellant had borrowed it.

2. The Respondent's evidence was that the motor vehicle was damaged while the Appellant was using it.
3. The Respondent purchased an engine and incurred other costs amounting to Kshs. 490,000/=.
4. The Respondent produced assessment reports dated 13th April 2023 and 22nd April 2023.
5. The Appellant partially admitted the claim. He said while using the motor vehicle, the gasket was damaged and he sent Kshs. 23,000/= for repair of the same.
6. The trial court found that the receipt for the engine was dated 22nd May 2022 yet the vehicle was borrowed on 23rd November 2022. The court also found that the Respondent produced a receipt for Kshs. 140,000/= dated 13th April 2023.
7. The trial court found that it was not in dispute that the Appellant paid the Respondent Kshs. 23,000/= for repair of the gasket.

8. The trial court found that the Respondent proved special damages of Kshs. 140,000/= as per receipt from Mogen Motors Ltd dated 13th April 2023.
9. Judgment was entered in favour of the Respondent in the sum of Kshs. 140,000/= (less Kshs. 23,000/=) less Kshs. 117,000/= with costs and interest.
10. The Appellant has appealed against the said judgment on the following grounds:-
 - (i) THAT the learned Honorable Magistrate erred in law and facts in totally ignoring and/or failing to take into accounts the oral evidence and documentary evidence by the Appellant.**
 - (ii) THAT the learned Honorable Magistrate erred in law and facts by entering judgement in favor of the Respondent by relying on a receipt that was not produced as evidence in court and the Respondent actually disowned it.**
 - (iii) THAT the Honorable learned Magistrate erred in law and facts by failing to appreciate that no evidence was furnished by the Respondent to**

prove that actually the subject motor vehicle has a new engine and that at the time of lending it to the Appellant it had a different engine.

(iv) THAT the Honorable Magistrate erred in law and facts by abandoning his seat and boarding the Respondent's wagon and displaying open bias against the Appellant eventually entering judgement that was totally bad in law.

(v) THAT the Honorable learned Magistrate erred in law and facts and misdirected himself by acting on wrong and unsound principles, case law and provisions of the law.

11. The parties filed written submissions as follows; the Appellant submits that the judgement of the lower court should be set aside in its entirety.

12. Further, that the main issue this appeal is that the Learned Magistrate fundamentally erred in both law and fact by entering a judgement that was not supported by the evidence on record, displayed bias, and misapplied legal principles.

13. The Appellant contends that the Respondent failed to discharge the legal burden of proof required in a civil case.
14. Despite this, the trial court ignored the Appellant's evidence, which demonstrated that the motor vehicle was given as a favor and broke down due to a pre-existing mechanical issue, for which the Appellant nevertheless contributed repair costs.
15. The appellant submitted that the court relied on a receipt that was not only disowned by the Respondent but also contained a discrepant registration number, thereby basing its decision on an inadmissible and contested document.
16. Furthermore, the Respondent's claim concerning the installation of a new engine was entirely unsubstantiated. No credible evidence, such as proof of a tape lift, photographs, or a professional valuation report, was furnished to prove that a new engine was ever fitted or to verify its value.
17. The Magistrate failed to appreciate these fatal evidential gaps and instead made a blanket award without a proper analysis of each element of the claim.

18. The conduct of the trial magistrate also gives rise to a legitimate apprehension of bias.
19. By ignoring the deficiencies in the Respondent's case and framing issues outside the scope of the pleadings, the Magistrate effectively abandoned the judicial role of an impartial arbiter.
20. This contravenes the foundational principles of judicial conduct and the constitutional duty to ensure justice is not only done but seen to be done.
21. In conclusion, the judgement was founded on unsound principles, a misdirection on the law, and a failure to properly evaluate the evidence.
22. Consequently, the Appellant prays that this Court allows the appeal, sets aside the decree of the lower court, dismisses the Respondent's claim, and awards costs to the Appellant in both forums.
23. The Respondent did not file any submissions in this appeal.
- 24. The issues for determination in this appeal are as follows;**

- (i) Whether the trial magistrate erred in law and fact by entering judgment for the Respondent based on evidence that was allegedly insufficient, contradictory, or inadmissible;**
- (ii) Whether the conduct of the trial magistrate demonstrated bias against the Appellant, thereby occasioning a miscarriage of justice.**

25. Upon a careful evaluation of the record and the submissions, the court finds that the trial court's decision was soundly based on the evidence adduced and the applicable principles of law governing special damages and the burden of proof in civil cases.

26. On the first issue, the Appellant contends that the Respondent failed to discharge the legal burden of proof.

27. The law in Kenya is settled that in civil cases, the burden of proof is on a balance of probabilities, and he who alleges must prove.

28. The burden always remains with the plaintiff to prove his case on a balance of probabilities, and it never shifts.

29. In the instant case, the trial magistrate correctly identified that the Respondent's claim was for special damages.

30. It is trite law that special damages must not only be specifically pleaded but also strictly proved.
31. The record indicates that the Respondent produced assessment reports and a receipt from Mogen Motors Ltd dated 13th April 2023 for Kshs. 140,000.
32. The trial magistrate, in his judicial duty, meticulously scrutinized the evidence and correctly rejected the claim for Kshs. 490,000, noting discrepancies such as the engine receipt predating the borrowing of the vehicle.
33. He instead allowed only the amount corroborated by the receipt of 13th April 2023, which was produced in evidence.
34. The Appellant's argument that this receipt was "disowned" is not borne out by the record.
35. The trial court's finding that the Respondent proved special damages to the tune of Kshs. 140,000 was therefore a proper evaluation of evidence and an application of the correct legal standard.
36. An appellate court will not lightly interfere with such findings of fact.
37. As held in **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123**, an appellate court will not

normally interfere with a finding of fact by the trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the trial court is shown demonstrably to have acted on wrong principles.

38. Regarding the allegation of bias, the Appellant has not demonstrated any actual bias or circumstances giving rise to a legitimate apprehension of bias.
39. The mere fact that a court rules against a party does not constitute bias.
40. The duty of a court is to analyze the evidence presented by both sides and reach a conclusion.
41. The trial magistrate's analysis, which involved rejecting parts of the Respondent's claim while accepting another part supported by evidence, is the hallmark of impartial adjudication, not bias.
42. For bias to be established, it must be shown that a reasonable and fair-minded person sitting in court and knowing all the relevant facts would have a reasonable suspicion that a fair trial was not possible.

43. No such facts have been presented here. The magistrate's conduct, as reflected in the judgment, was within the bounds of normal judicial evaluation.
44. However, the court notes a minor arithmetical error in the decree of the lower court.
45. The judgment was for Kshs. 140,000 less the admitted payment of Kshs. 23,000.
46. The correct balance is Kshs. 117,000. The lower court's decree stating "less Kshs. 117,000/= with costs and interest" is ambiguous and appears to be a clerical slip.
47. The clear intention was to award a net sum of Kshs. 117,000. This error does not vitiate the judgment but shall be rectified under the slip rule.
48. Consequently, the appeal is dismissed save for the correction of the said clerical error.
49. The judgment in Taita Taveta Small Claims Court Case No. E042 of 2024 delivered on 16th May 2025 is hereby upheld, subject to the clarification.
50. Judgment is entered for the Claimant/Respondent against the Defendant/Appellant in the sum of Kenya Shillings One Hundred and Seventeen Thousand (Kshs. 117,000) only,

together with costs and interest as awarded by the trial court.

51. Each party to bear its own costs of the appeal.

Dated, signed and delivered this 29th January 2026 virtually via Microsoft Teams at Voi.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

..... **for the Appellant**

..... **for the Respondent**