



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. E229 OF 2024

RAHA EXPRESS COMPANY.....
.....APPELLANT

VERSUS

DORIS KAGWIRIA MURURU.....
.....RESPONDENT

(An appeal from the Judgment/Decree of Hon. Habrovinah Nyamweya (R.M) in Meru Small Claims Court Cause No. E053 of 2024 delivered on 9/10/2024)

JUDGMENT

1. This Appeal arises from the Judgment of the learned Resident Magistrate Hon. Habrovinah Nyamweya (R.M) delivered on 9.10.2024 in Meru Small Claims Court Cause No. E053 of 2024, wherein the trial court entered judgment in favour of the Respondent herein at the sum of Ksh. 7,000, general damages of Ksh. 142,800 and disbursements of Ksh. 2,600.
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 2nd November, 2024;

1. The learned Resident Magistrate erred in law and fact in holding that general damages sought by the respondent generally flow from the breach of contract, whereas it is trite that general damages cannot be awarded for breach of contract.
2. The learned Resident Magistrate erred in law and fact in awarding the respondent general damages Kshs. 142,800/= for breach of contract whereas the respondent did not specifically plead and prove the loss she suffered for the alleged breach of contract.
3. The learned Resident Magistrate erred in law and fact in failing to find that general damages for breach contract (even if they were claimed by the respondent but which she did not specifically plead, claim or prove) cannot be awarded on a claim anchored on breach of contract.
4. The learned Resident Magistrate erred in law and fact in failing to find that as to general rule, general damages are not recoverable in cases of breach of contract.
5. The learned Resident Magistrate erred in law and fact in failing to find that as a general principle, the purpose of damages for breach of contract is subject to the mitigation of loss and not damages at large or general damages and are in nature of special damages which the respondent ought to have specifically pleaded and proved.
6. The learned Resident Magistrate erred in law and fact in failing to find that in view that the respondent's claim was

grounded on breach of contract, she was duty bound to plead special damages and prove the same, which she did not.

7. The learned Resident Magistrate erred in law and fact in failing to find that in a contract of performance of specific duty or obligation on which the respondent's claim was based, if breached (but which the appellant contends it was not breached), it would lead to compensation for specific loss suffered as a result of the breach and not general damages.
8. The learned Resident Magistrate erred in law and fact in failing to find that the respondent was not entitled to damages for breach of contractual obligation (if any but which was vehemently denied by the respondent).
9. The learned Resident Magistrate/Adjudicator misapprehended, misunderstood, misconstrued and misinterpreted the statement by Hon. Justice John M. Mativo -Judge in Hydro Water well (K) Limited vs Nelso Mankara & 2 others [2021] eKLR that;

“To successfully claim for breach of contract, the plaintiff had to show that a contract was in existence, that the contract was breached by the defendant and that the plaintiff suffered (loss) as a result of the defendant's breach. The plaintiff was not required to show a causal link between the breaches of an agreement and the damages with certainty. He was only required to establish that the wrongful conduct was probably a cause of loss. A plaintiff who at the time of trial can show no more than a probability that he would

not have suffered loss if the contract had been properly performed, would succeed unless the defendant could discharge the onus of proving that there was no such probability.....”

Without wholesomely taking into account the whole findings of the Judge in regard to loss suffered for breach of contract, thus leading her to make a wrong finding that the respondent was entitled to general damages for breach of contract.

10.The learned Resident Magistrate applied the wrong principles and misapprehended the evidence tendered in court thus fell into error in awarding general damages for breach of contract amounting to Kshs.142,800/= to the respondent.

11.The learned Resident Magistrate erred in law and fact in awarding the respondent Kshs. 7,000/= which was not prayed for.

12.The learned Resident Magistrate erred in law and fact in failing to consider the appellant’s submissions and the authorities referred thereto by the appellant thus leading her into making wrong findings in regard to awarding of general damages for breach of contract.

13.The learned Resident Magistrate erred in law and fact in awarding the respondent Kshs. 2,600/= as disbursements without any evidence on how she arrived at the said amount.

14.The learned Resident Magistrate’s decision is against the evidence tendered in court.

15.The decision of the learned magistrate is legally and factually untenable.

Oral evidence

3. **CW1 Doris Kagwiria Mururu**, the Respondent herein, adopted her statement as her evidence in chief and produced the documents filed therewith as exhibits. She told the court that she saw the destroyed papers at the Appellant's offices, and she was claiming Ksh. 7,000 being the value of the papers, and Ksh. 142,900 being the value of the business she lost.
4. **RW1 Joseph Bundi**, the Appellant's manager denied being served with a demand notice and prayed for the claim to be dismissed. He accused the Respondent of failing to prove loss of earning or breach of contract. He requested the Respondent to come to their office, which she never did.

Submissions

5. The Appellant, through the firm of Nyamu Nyaga & Co. Advocates, filed submissions dated 4/6/2025. Counsel submitted that the purpose of damages for breach of contract is subject to mitigation of loss and the claimant is to be put in as fair as possible in the same position as he would have been if the breach complained of had not occurred. Counsel argued that such damages are not damages at large but are in nature special damages which must be pleaded and proved, and cited **Kenya Tourist Development Corporation v Sundower Lodge Limited (2018) eKLR, Habib Zurich Finance (K) Limited v Muthoga & another [2002] 1 EA 81, Visoi Saw Ltd v The Attorney General (1997) eKLR and Caltex Oil (Kenya) Limited v Rono Limited (2016) eKLR**. Counsel faulted the trial court for erroneously awarding damages for breach of

contract which had not been pleaded, and cited **Joseph Mbuta Nziu v Kenya Orient Insurance Company Ltd (2015) eKLR, Nyamogo & Nyamogo Advocates v Barclays Bank of Kenya (2015) eKLR, David Irungu Mwangi v Attorney General (2018) eKLR, Consolata Anyango Ouma v South Nyanza Sugar Co. Ltd (2015) eKLR, Mary Gathoni Weru v Mt. Kenya Bottlers Limited (2021) eKLR, and Captain Harry Gandy v Caspar Air Charters Limited Civil Appeal No. 7/1955 EACA 140.**

6. The Respondent filed her submissions dated 1/10/2025, arguing that she lost the tender contract due to the damaged papers, and prayed for the dismissal of the appeal with costs.

Analysis and Determination

7. This being a first appeal, the court is obligated to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.
8. In **Selle & another v Associated Motor Boat Co. Ltd [1968] EA**, the court held as follows: ***“This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither***

seen nor heard the witnesses and should make due allowance in this respect.”

9. I have considered the appeal herein, the trial court’s judgment, which is the subject of this appeal, as well as the submissions on record.
10. From the grounds of appeal, the issues for determination are whether the damages awarded by the trial court were justified and whether the Appellant’s submissions and authorities were considered.
11. The Respondent was entitled to reimbursement of the expenses incurred in instituting the claim, which the trial court assessed and capped at Ksh. 2,600.
12. The Respondent produced a receipt from Ruth Mark Limited dated 22/2/2024 for the purchase of 5 rolls of paper valued at Ksh. 7,000. RW1 was vividly clear in his statement dated 7/9/2024, which was adopted as part of his evidence, that the Respondent had declared the value of the goods at Ksh. 7,000. The Respondent was candid even on thorough cross examination that, ***“Raha Company told me the papers were destroyed. I saw the papers at Raha Offices that they were destroyed. The value of the papers was 7,000. I am asking for Kshs. 7,000 and the value of the business lost. Ksh. 142,900 no other documents other than the tender I sent.”***

13. The claim for breach of contract is pegged on a purchase order by Freds Academy dated 22/2/2024 for Ksh. 142,800.
14. In **Gichaba v Lexis Investment Limited (Civil Appeal 131 of 2019) [2024] KEHC 479 (KLR) (29 January 2024) (Judgment)**, the court (R. E. Aburili J) espoused that; ***“The law is that general damages are not awardable for breach of contract or breach of contractual obligations. A contract for performance of specific duties or obligations, if breached, would lead to compensation for the specific loss suffered as a result of the breach, but not general damages.”***
15. Halsbury’s Laws of England Fourth Edition Reissue Vol. 12 (1) at paragraph 941 provides that: ***“The normal function of damages for breach of contract is compensatory. Damages are awarded, not to punish the party in breach, or to confer a windfall on the innocent party, but to compensate the innocent party and repair his actual loss. Compensation is normally achieved by placing the innocent party in the same position, so far as money can do, as if the contract had been performed. Only in exceptional circumstances do courts depart from this policy and award some greater or lesser sum. Ordinarily there is just one measure of damages in contract, which is the loss truly suffered by the promisee.”***

16.I find that the lost tender to supply books at Fred's Academy flowed naturally from the damage to the printing papers, which was solely occasioned by the Appellant's negligence, and the Respondent was accordingly entitled to restitution.

17.Contrary to the Appellant's contention that breach of contract was not pleaded, the Respondent was categorical at paragraphs 9 and 10 of the statement of claim that, ***"I had won a tender to supply books to one of the schools in Meru but because of the delay the school has since cancelled the tender thus making me go into a huge business loss (Annexed 4). Unless the Respondent is ordered to compensate for the damaged papers and the loss of business worth thousands of Shillings, I will continue suffering great losses."***

18.I find that breach of contract and the value of the damaged papers were specifically pleaded and strictly proved, and the awards made thereunder were proper.

19.The trial court is faulted for failing to consider the Appellant's submissions and authorities. That fault is misconceived because submissions cannot take the place of pleadings, and their non-consideration cannot in itself be a basis to overturn a trial court's decision. Moreover, the mere fact that the trial court was ultimately dissuaded by the submissions of the Appellant together with the authorities it cited does not imply that they were disregarded altogether.

20. For the foregoing reasons, I find that the appeal is in want of merit and it is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT MERU THIS 26TH DAY OF
JANUARY, 2026**

S.M. GITHINJI

JUDGE

APPEARANCES:

Mr. Nyaga for the Appellant (absent).

Respondent - Absent