



Real People Kenya Limited v Gachanja & another (Civil Appeal E1004 of 2024) [2026] KEHC 334 (KLR) (Civ) (23 January 2026) (Judgment)

Neutral citation: [2026] KEHC 334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1004 OF 2024

FR OLEL, J

JANUARY 23, 2026

BETWEEN

REAL PEOPLE KENYA LIMITED APPELLANT

AND

EDWARD MWANGI GACHANJA 1ST RESPONDENT

BRAYAN MUNENE 2ND RESPONDENT

(Being An Appeal From The Judgment And Decree Of The Small Claims Court At Nairobi By Honourable Kiongo Kagenyo (resident Magistrate/adjudicator) Delivered On 19th Day Of August 2024 In Sccomm No. E6536 Of 22023)

JUDGMENT

A. Introduction

1. The 1st Respondent filed a material damages/loss of income claim before the Small claims court where he averred that he was the registered owner of Motor Vehicle Registration No KAW 847E Toyota Hiace Matatu (hereinafter referred to as the 1st suit Motor Vehicle), and sued the Appellant as the registered/beneficial owner of Motor Vehicle Registration No KCD 162M Volkswagen Station Wagon (hereinafter referred to as the 2nd suit Motor vehicle) with the 2nd respondent being sued as the driver/agent and/or employee of the Appellant.
2. The 1st respondent averred that on or about the 29th June 2022 the 1st suit motor vehicle was lawfully being driven along Savannah road, when the 2nd respondent in the normal course of his duty as the Appellants driver did recklessly and carelessly drove the 2nd suit motor vehicle and cause it to ram into the rear right side of the 1st suit motor vehicle thereby occasioning substantive loss and damage to the claimant.



3. The 1st respondent particularized the negligence of the Appellant/2nd respondent and prayed to be awarded at total of Kshs.240,650/= being costs for repair of the material damage, loss of income, for 21 days when the 1st suit motor vehicle was being repaired, Motor vehicle assessment costs, cost of Motor vehicle search and disbursements.
4. In response to the claim, the Appellant filed their statement of defence where they categorically denied all the averments made by the 1st respondent in his statement of claim and further specially denied being the registered and/or beneficial owner of the 2nd suit motor vehicle stating that they were mere financiers of one Agnes Mutua, its real owner who had possession, management, control and/or daily use of the said 2nd suit motor vehicle. They further noted that their name was registered as co-owner of the 2nd suit motor vehicle to protect their interest as financier's of the said 2nd Motor vehicle and not as its owner.
5. The Appellant further did plead that it did not directly employ or instruct individuals in whose custody and/or care and/or under whose management and control the said motor vehicle was placed and as a financier, it could not be held liable in law or fact for actions that were done or undertaken by the 2nd respondent as driver/agent and/or employee of the said Agnes Mutua the true owner thereof. To that extent the suit filed by the 1st respondent was a nonstarter, bad in law fatally defective as it did not disclose a cause of action against them and thus prayed that it be struck out.
6. The 2nd respondent despite being served did not file any pleading in the primary suit and interlocutory judgment was entered as against him.
7. The trial before the small claims court proceeded by way of written submissions under Section 30 of the *small claims court Act*, and the trial Magistrate did hold that the 2nd suit motor vehicle was owned by the Appellant and was to blame for the said accident, but on damages held that the 1st respondent did not prove that he had expended money for the repairs and that special damages pleaded for loss of profit too was not sufficiently proved. The court thus awarded the 1st respondent limited special damages of Kshs.4,550/= plus interest thereon at 12% P.A from 21st December 2023 until payment in full, plus Kshs.10,000/= as costs of the suit.

B. The Appeal.

8. Both parties, being dissatisfied by this decision, did file their Appeal and cross Appeal seeking to have the said judgment overturned.
9. The Appellant filed their memorandum of Appeal where they raised the following grounds of appeal that;
 - i. The learned Trial Magistrate erred in law and in fact when in the face of and despite the Appellants documentary evidence, the trial Magistrate failed to find and hold that the Appellant was exonerated from any blame for the accident of 29th June 2023 in that;
 - a. The appellant was a mere financier of the motor vehicle KCD 162M.
 - b. The appellant was neither the employer of the 2nd respondent.
 - c. That the mere registration of the appellant as the owner of the subject motor vehicle to secure financial risk did not invite risk or liability, vicariously or otherwise or at all
 - d. That at all times of the accident the subject motor vehicle was neither in the possession of nor under the control of the appellant.



- e. That at the material time of the accident the motor vehicle was being driven neither at the request of nor upon instructions of the appellant.
- ii. That the learned trial Magistrate erred in law and in fact by faulting the appellant for not addressing the issue of which car was to blame for the accident, despite the appellant having raised a defence in its statement of response dated 25th January 2024, asserting its role as the financier of Motor vehicle Registration Number KCD 162M.
- iii. The learned trial Magistrate erred in law and in fact by failing to consider the law relating to the liability of a road traffic accident hence arrived at a wrong conclusion.
- iv. The learned trial Magistrate erred in law and in fact in finding that the Appellant was the owner of the motor vehicle KCD 162M as at 29th June 2023 when the accident occurred giving rise to the case.
- v. The learned trial Magistrate erred in law and in fact in failing to consider the copy of the logbook (the registration certificate) of the subject motor vehicle bearing the date 13.04.2017 which was produced by the Appellant showing joint registration of the vehicle between the appellant and another person, one Agnes Nkatha Mutua.
- vi. The learned Magistrate misconstrued the provisions of Section 8 of the [Traffic Act](#) by failing to find that despite being named as the sole owner of the subject vehicle in the copy of record dated 29th August 2023, the appellant had proved to the contrary that indeed it was not the owner thereof.
- vii. The learned Magistrate erred in law and in fact in failing to consider the uncontroverted evidence adduced by the appellant that it was only a financier of the subject vehicle and in particular the loan agreement between the appellant and Agnes Mutua, the Chatels transfer instrument dated 2nd September 2015 and signed by Agnes Nkatha Mutua and a statement of accounts showing a drawdown amount of Kshs 1,100,000/= on 2nd September, 2015.
- viii. The learned trial Magistrate erred in law and in fact by failing to consider the letter addressed to National Transport and safety Authority (NTSA) dated 12th January 2024, which was duly received by the NTSA on the same date, as well as the subsequent motor vehicle copy of records dated 14th June, 2024 and its payment receipt, which indicated that Agnes Nkatha Mutua as the owner of the vehicle and the appellant as the financier.
- ix. The learned trial Magistrate erred in law and in fact in finding that he would have only been persuaded by the appellant if the explanation given by the appellant for appearing as the sole owner on the copy of records dated 29th August, 2023 would have been made by Agnes Nkatha Mutua or the director General of the NTSA when in fact the appellant had produced weighty evidence proving that it was just a financier and not the owner of the vehicle.
- x. Having found that the accident was caused by the negligence of the 2nd respondent, the learned trial Magistrate erred in law and in fact in finding and holding that the appellant was vicariously liable for his negligence.
- xi. Thee learned Magistrate erred in law and in fact and further misdirected himself by completely disregarding the appellant's submissions on record hence failing to take into account the principles applicable and the relevant authorities cited in the written submissions presented and filed by the appellant and thus arriving at a wrong conclusion.



- xii. The learned trial Magistrate erred in law and in fact in entering judgment against the appellant against the weight of evidence.
10. The Appellant thus prayed that this appeal be allowed, the decision of the trial magistrate be set aside and the suit filed against them be dismissed.
11. The 1st respondent too filed his cross appeal on grounds that;
- a. That the trial court erred in law and fact by holding that the claimant had not proved the costs of repair of Kshs.142,100/=.
 - b. That the trial magistrate erred in law and fact by holding that the claimant had not proved the prayer for loss of daily earnings of Kshs.84,000/=.
 - c. The trial court erred in awarding the claimant costs of Ksh.10,000/= which was very minimal.
 - d. That the trial court erred in law and fact by not recognizing that the *small claims court Act* and The Small claim Rules.
 - e. That the trial court erred in law and fact by placing a higher burden of proof on the claimant than by the *small claims court Act* and the small claims court rules.
12. The 1st Respondent thus urged the court set aside the trial court's order dismissing his claim for material damage and claim for loss of profit and be pleased award the same. He also urged the court to award him costs of this Appeal.

C. Analysis And Determination

13. I have considered the entire record of Appeal and pleadings filed, the grounds of appeal raised, the submissions filed by both parties, and the cited authorities. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the *Small Claims Court Act* provides that appeals from the said court shall be only on issues of law. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts. See John Munuve Mati Vr The returning officer, Mwingi North Constituency & 2 others (2018) eKLR
14. The issues that arise for determination are as follows
- a. Whether the trial Court erred in law or in fact in finding that the Appellant was the owner of the 2nd suit Motor vehicle at the time of the accident.
 - b. Whether the trial court erred in fact and in law in finding that the Appellant was vicariously liable for the Accident.
 - c. Whether the trial Magistrate erred in failing to award the 1st respondent special damages pleaded for in terms of material damage and loss of profit.
 - d. Who should bear the costs of this Appeal and Cross Appeal.



I. Whether the trial court erred in law or fact in finding that the Appellant was the owner of the 2nd suit Motor vehicle at the time of the Accident.

15. Section 8 of the *Traffic Act*, Cap 403 Laws of Kenya provide that;

“the person in whose name a Vehicle is registered shall unless the contrary is proved be deemed to be the owner of the Vehicle”

Section 2 of the same Act provides that;

“owner”, in relation to a vehicle which is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of the vehicle under that agreement.

16. At the Court of Appeal, in the case of *Securicor Kenya Ltd v Kyumba Holding Ltd* (2005) eKLR, the said court relied on the case of *Osapil v Kaddy* (2000) 1 EALA 187 where it was held that.

“A registration card or a logbook was only prima facie evidence of title to a motor vehicle and the person whose name was registered was presumed to be the owner thereof unless proved otherwise. The applicant has indeed proved on a balance of probability that it was not the owner of motor Vehicle registration KAY 909Y as at the time of the accident.”

17. The court of Appeal also in the case of *Jared Magwaro Bundi & Another v Primarose Flowers limited* (2018) eKLR, held that;

“It was therefore held in *Muhambi Koja* (supra) that section 8 of the *Traffic Act* recognizes registration book or the registrar’s extract of the record as prima facie evidence of title to a vehicle and the persons in whose name the vehicle is registered is presumed to be the owner thereof unless the contrary is proved. The burden is discharged if, on a balance of probabilities, it is shown that as a matter of fact the vehicle had been transferred but not yet registered to a de facto owner, a beneficial owner or a possessory owner. Such a owner though not registered for the practical purpose maybe more relevant than in whose name the vehicle is registered.”

The position taken by this court in *Joel Muga opija* (supra) and *Muhambi Koja* (supra) appears to us to accord with modern thinking and jurisprudence where the law is encouraging courts to interpret the law governed more by substance than the technical chains of form, the latter which does not ordinarily look at the justice of a case.”

18. Though the 1st appellant did prove that at the time of the accident, the suit motor vehicle was registered under the name of the Appellant, the trial court did err in ignoring the appellants evidence including the loan agreement, Chattels Mortgage, Certified loan statement and a copy of the original log book all produced into evidence by the said appellant conclusively proving that they were mere financiers, who had provided a facility to one Agnes Nkath Mutua.

19. The Appellant’s evidence did prove that they were not the primary owner/de facto owner of the suit motor vehicle and thus had on balance of probabilities discharged the evidential burden placed on them under Section 109 and 112 of the *Evidence Act*. For the trial court to only rely on the NTSA records, without examining the Appellants other exhibits submitted in support their case was thus an error and the Appellants’ grounds of appeal on this issue have merit and are upheld.



ii Whether the trial court erred in fact and in law in finding that the Appellant was vicariously liable for the Accident

20. On the second issue of vicarious liability, the same was discussed in the case of *Jane Wairimu Turanta v. Githae John Vickery and Equity Bank Limited & Munene Don*, [2012] eKLR held as follows:

“The respondent raised the issue of vicariously liable since the logbook was jointly owned by the Bank and Munene Don. The doctrine of vicarious liability was expounded in the case of *Morgan v Launchbury* (1972) 2 ALL ER 606 which stated that to establish agency relationship it was necessary to show that the driver was using the car at the owner’s request express or implied or in his instruction and was doing so in performance of the tasks or duty thereby delegated to him by the owner. Moreover, the fact that the applicant was the owner of the vehicle by way of the log book being in its name.

Such ownership was not sufficient to create vicarious liability for the negligence of anyone happened to drive it.

It is common ground now that the *Munene Don* was not the servant of the applicant within the normally accepted meaning of vicarious liability from the facts *Munene Don* and the Bank would not ordinarily be vicariously liable for the tort of *Munene Don* since it was not an agent. The case of *HCM Anyanzwa & 2 Others v Lugi De Casper & Anor* (1980) KLR 10 stated that “vicarious liability depends not on ownership but on the delegation of tasks or duty.”

21. This The position has further been underscored in *Consolidated Bank of Kenya Limited v Mwangi & Another* (Civil Appeal E056 of 2021) [2022] KEHC 3104 (KLR) (Commercial and Tax) (8 July 2022 (Judgment) which cited with approval the case of *Wairimu* (supra) and reaffirmed that;

Ownership of a motor vehicle does not, of itself, establish liability for an accident. The plaintiff must prove that the owner is vicariously liable for the acts of the driver of the motor vehicle by showing that the driver is an employee or agent (see *Jane Wairimu Turanta v Githae John Vickery and Equity Bank Limited & Munene Don* ML HCCC No. 483 of 2012 [2012] eKLR).

As to whether the owner who has a financial interest in a motor vehicle has control over the driver, which is at the heart of this appeal, our courts have held that a financier’s only interest in the security is to secure the repayment from the owner and it is not in control of the motor vehicle for that reason. In *Ali Abdi Dere v Hash Hauliers Limited & Another* MKS HCCC No. 16 of 2014 [2018] eKLR the court held that the position of a financier was merely to protect its interest in the motor vehicle it had financed and could not be held vicariously liable for the actions of its driver.

22. In response to the claim, the Appellant were categorical that they were not possession, management and/or control of the 2nd suit motor vehicle, nor was the 2nd respondent their driver, agent and/or their employee and thus could not be held vicariously liable for the accident which occurred on 29th June 2022.
23. The 1st respondent had the obligation to prove that indeed the 2nd respondent was the Appellants driver, servant and or employee and/or that he was exercising control over the 2nd suit motor vehicle while undertaking any work for the Appellant. The 1st respondent failed to do so and thus proof of agency was not established.



iii. Whether the trial Magistrate erred in failing to award the 1st respondent special damages pleaded for material damage loss and loss of profit.

24. The trial Magistrate held that though the 1st respondent had pleaded special damages, he had not proved the same because he did not provide receipts to prove payment of costs of repairing his vehicle and that the tabulation of daily income too did not demonstrate the basis for claiming 21 days off business.
25. The 1st respondent did produce his assessment report from Automobile Valuers and loss Assessors Ltd, which confirmed that the costs of repairing the 1st suit motor vehicle was Kshs.142,100/=.
26. In the case of *Silas Mutua Mberia v Muthoni Njue Veronica (2021) Eklr*, it was held;
- “it’s thus clear that the appellants only needed to prove the extent of the damage to his motor vehicle and what it would cost to repair it without necessarily proving that the repairs were actually done and paid for. It must always be remembered that the balance of proof on the appellant was always on a balance of probabilities and not higher. The claim by the appellant was not for an expense already incurred but a claim to restore his damaged motor vehicle to its pre- accident state. The value of the damage was assessed and a report produced in evidence. The Appellant was not legally required or obligated to specifically prove the claim by production of receipts”.
27. On the final issue as to whether the 1st respondent was entitled to loss of use of his motor vehicle for 21 days. There are conflicting Court of Appeal Authorities which have categorized the award of “loss of user” as either “special or general damages”.
28. In the court of appeal decision in *Samuel Kariuki Nyangoti v Johaan Distelberger (2017)eKLR*, the court of appeal held that a claim for loss of use falls under general damages. Particularly, the court held that;
- “The appellant claimed both special and general damages. The special damages which did not include loss of user were particularized. The respondent in his defence denied that eh vehicle was a public service vehicle that it warned the appellant the alleged sum per day and that appellant was entitled to damages for loss of earnings. The damages claimed by the appellant were in the nature of pecuniary loss which the law does not presume to be the direct, natural or probable consequence of the accident since it is subject of ascertainment by court through evidence and the application of the law relating to the measure of damages. In personal injury cases, the loss of business profits and loss of future earning capacity are usually in the nature of general damages. The loss of use of a profit making chattel such as a lorry or matatu through an accident is similarly a claim in general damages. The standard of proof is such claims is on balance of probabilities and the principle of restitution in integrum is applied in such cases.”
29. Justice W. Musyoka was faced with a similar predicament in *Martin Gicimu Kamanga v Board of governors, St. Anne’s Juniro School, Lubao (2021)eKLR*. He had the rare but challenging opportunity of hearing the rival arguments presented by parties and making a decision thereon. From the outset, the honourable judge captured the conflicting legal positions thus;
- “There is court of Appeal authority which the High Court had followed to the effect that loss of user is in the nature of general damages, proved on a balance of probabilities. The



position was pronounced in Peter Njuguna Joseph and another v Ann Mora C.A No. 23 of 1991 (unreported) and Samuel Kariuki Nyangoti v Johaan Distelberger (2017) eKLR (Githinji, Karanja and Kantai JJA). The appellant submits that based on those decisions, the trial court was in error in holding that loss of user was a claim in special damages and in failing to grant it. There is on the other hand, other authority from the Court of Appeal to the contrary. It was said in David Bagine v Martin Bundi (1997) eKLR (Gicheru, Shah and Pall), for example, that loss of user could only be special damage, for it is a loss which the claimant suffers specifically and which could not be equated to general damages. The High Court weighed in in such cases as in Summer Limited Meru v Moses Kithinji Nkanata (2006) eKLR (Lenaola J), where it was said that earnings from a matatu business were not a matter that could be left to judicial discretion for it was related to special damage which had to be specifically proved.”

30. Faced with the conflicting position, the court proceeded to trace the conflicting decisions based on their age and conclude that the current legal position is that a claim for loss of user is a claim for general damages. In arriving at this conclusion, the court observed that;

“It would seem from the judicial authorities above that the law is settled on the matter. However, the decisions in David Bagine v Martin Bundi (1997) eKLR Gicheru, Shah and Pall) and Summer Limited Meru veruss Moses Kithinji Nkanata (2006)eKLR (Lenaola J) are a little dated and it would appear that there has been a shift in jurisprudence since then going by the positions taken in Wambua v. Patel and another (1986) KLR 336 (Apaloo J) and Jebroke Sugarcane Growers Co. Limited v Jackson Chege Busi Civil Appeal no. 10 of 1991 (Kisumu) (unreported), that the fact that damages are difficult to estimate, and cannot be assessed with certainty or precision, does not relieve the wrong doer of the necessity of paying damages for his breach of duty and is no ground for awarding only normal damages. That position appears to have led to Samuel Kariuki Nyangoti v Johaan Distelberger (2017) eKLR (Githinji Karanja and Kantai JJA) where the plaintiff did not keep books of account or records, given the nature of their business. The correct law, therefore appears to be that stated in Samuel Kariuki Nyangotu v Johaan Distelberger (2017)eKLR (Githinji, Karanja and Kantai JJA) and adopted by the High Court in such decision as Jackson Mwabili v Peterson Mateli (2020)eKLR (Mwita J) and Mac master limited v Onesmus Mutuku Muia (2018) eKLR (DK Kemei J).”

31. While this position is a clear and a rare departure from the English Common Law, it is more progressive and appropriate in the Kenya circumstances. While previous cases have not provided a clear rationale for this departure, Justice Musyoka made a justification for this departure in Martin Gicimu Kamanga (Supra) thus;

“of course, under English common Law, loss of user or profits is strictly a special claim, as stated in David Bagine v Martin Bundi (1997) eKLR (Gicheru, Shah and Pall) and Summer Limited Meru v Moses Kithinji Nkanata (2006) eKLR (Lenaola J). It would appear, however that English approach to loss of user works injustice in Kenya where African Communities despite high levels of literacy, still operate in the pre-literate mode, where record keeping is not part of the African psyche and consciousness, for information is kept mentally and is transmitted orally. Operating in the pre-literate mode is part of African nature and mentality. It is just part of the African way of life and modern education has not done much to change. The decisions in Wambua v Patel and another (1986)KLR 336(Apaloo J) and Samuel Kariuki Nyangoti v Johaan Distelberger (2017) eKLR (Githinji Karanja and



Kantai JJA) take cognizance of that. The matatu business culture evolved out form that environment given that the matatu business is strictly an indigenous African model and not an import from elsewhere, and applying the English Common Law approach to assessment of damages for loss of user or profits in respect of that business, in the circumstances would only work injustice. There is a whole paradigm shift in jurisprudence here, where what is strictly a special damage under English Common Law is now treated as general damage under Kenya Common Law.”

32. Finally in Peter Njuguna Joseph & Another v Anna Moraa (Civil Appeal No. 23 of 1991), the Court of Appeal assessed the loss of user of an immobilized matatu by estimates of the net income and period under which it should have been repaired even though not a single document was produced. Also (see also Jebrock Sugarcane Growers Co. Limited v. Jackson Chege Busi,(Civil Appeal No. 10 of 1991).
33. The above decisions are clear that loss of user of profit is in the nature of general damages and is proved on a balance of probabilities. The decisions also relate to commercial vehicles which were damaged and as a result, the owners claimed loss of user. The decisions further agree that the owner of a damaged vehicle is entitled to compensation and courts have been liberal when quantifying damages for loss of user.
34. The 1st respondent filed his returns showing daily profits averaging Kshs.4,000/= per day and sought loss for 21 days when the 1st suit motor vehicle was under repair. In light of the clear exposition in law above explained the 1st respondent was entitled to be awarded damages under this heading, though it must be recognized that the suit motor vehicle will have breakdowns and/or the fact that after a reasonable period of being off road, the 1st respondent had the duty of mitigating his loss, The said loss is thus allowed for a period of 14 days.

D. Disposition

35. Having considered all the grounds raised in the main Appeal and Cross Appeal I do find and hold that the judgment and decree of the Hon Kiongo Kagenyo (Resident Magistrate/Adjudicator) dated 19th day of August 2024 delivered in Nairobi SCCCOMM Case No 6536 of 2023 is partially allowed as follows:
 - a. The learned trial magistrate finding that the Appellant was liable for the said accident which occurred on 22nd June 2022 is set aside and the suit as against the Appellant is dismissed.
 - b. The 1st respondent claim for material damage being Kshs.142,100/= is allowed.
 - c. The 1st respondent claim for loss of user is allowed at kshs.4,000/= per day for 14 days (Kshs.56,000/=).
 - d. The award of costs of Kshs.10,000/- in the primary suit is set aside.
 - e. Each party will bear their own costs for this Appeal and Cross Appeal, while the 1st respondent will have costs of the primary suit to be taxed in the normal manner.
36. It is so Ordered

JUDGEMENT WRITTEN, DATED AND SIGNED AT MARSABIT THIS 23RD DAY of JANUARY 2026.

FRANCIS RAYOLA OLEL

JUDGE



Delivered on the virtual platform, Teams this 23RD day of JANUARY 2026.

In the presence of;

N/Afor Appellant

N/Afor Respondent

MR. JarsoCourt Assistant

