

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. E004 OF 2024

(CORAM: HON. CHARLES M. KARIUKI – J)

(Being an appeal arising from the Judgment and Decree of Hon. P. L. Shinyada, Senior Resident Magistrate, in Narok CMCC No. 206 of 2015 delivered on 8th December 2022)

JAMES MUTUA.....APPELLANT

VERSUS

ELIJAH OMWONYA MARONGA..... RESPONDENT

JUDGMENT

19/02/2026

1. Introduction

- 1) This appeal arises from the judgment of the Senior Resident Magistrate in Narok CMCC No. 206 of 2015 delivered on 8th December 2022, in which the Respondent, Elijah Omwonya Maronga (the Plaintiff), was awarded special damages arising from a road traffic accident that occurred on 14th August 2014 along the Narok–Mulot Road.
- 2) The Respondent had instituted the suit against the Appellant, James Mutua (the Defendant), seeking special damages in the sum of Kshs. 322,900/= comprising repair costs, assessment fees, and loss of user, together with costs and interest.

2. Background and Summary of the Trial Court Judgment

- 3) The Respondent pleaded that while slowing down to navigate a bump, the Appellant's motor vehicle registration number KBE 755R rammed into the rear of his motor vehicle registration number KBL 533V, causing extensive damage. He attributed the accident to the sole negligence of the Appellant.
- 4) In his defence dated 27th August 2019, the Appellant denied liability and averred that, if any accident occurred, the same was caused or substantially contributed to by the Respondent's negligence.
- 5) At the hearing, the Respondent testified and adopted his written statement. He produced documentary evidence, including a police abstract, an assessment report from the Automobile Association of Kenya (AA), and receipts for repairs and car hire expenses. He testified that his vehicle remained grounded for 52 days due to the unavailability of spare parts and that he hired an alternative vehicle at Kshs. 3,000/= per day during that period. Upon cross-examination, he maintained that the delay in repairs was occasioned by the scarcity of spare parts.
- 6) The Appellant did not call any witness nor adduce evidence in support of his defence.
- 7) The trial court framed two issues for determination: liability and quantum.

(a) Liability

- 8) On liability, the court found that the Respondent's evidence was uncontroverted. Relying on Sections 107 and 109 of the Evidence Act and the principle that pleadings without supporting evidence remain mere allegations, the court held that the Respondent had proved his case on a balance of probabilities. The Appellant was found 100% liable, particularly because his vehicle struck the Respondent's vehicle from the rear.

(b) Quantum

- 9) The court reiterated the settled principle that special damages must be specifically pleaded and strictly proved.
- 10) On repair costs, although the Appellant contended that the amount should be limited to Kshs. 102,100/= as per the AA assessment report, the court noted that the Respondent had produced receipts totalling Kshs. 166,900/= from Jopac Auto Garage. These receipts were not effectively challenged. The court was satisfied that the repair costs were strictly proved and awarded Kshs. 166,900/=.
- 11) On the loss of the user, the court held that the claim had been specifically pleaded and proved. The Respondent produced receipts amounting to Kshs. 156,000/= for 52 days at Kshs. 3,000 per day. The court accepted his explanation that the delay in repairs was due to the unavailability of spare parts and observed that the Appellant had not tendered evidence to demonstrate that the repairs were completed earlier. The court therefore awarded Kshs. 156,000/= under this head.
- 12) Pursuant to Section 27 of the Civil Procedure Act, costs were awarded to the Respondent.
- 13) Judgment was consequently entered for the Respondent in the total sum of Kshs. 322,900/= together with interest at court rates from the date of filing suit and costs.

3. The Appeal

- 14) The Appellant lodged a Memorandum of Appeal dated 10th February 2024, challenging the entire judgment and decree.
- 15) He contends that the learned trial magistrate erred both in law and fact by improperly shifting the burden of proof to him, particularly by requiring him to demonstrate when repairs commenced and when the vehicle was released.

- 16) He further faults the trial court for allegedly disregarding the expert opinion contained in the AA assessment report when determining repair costs and the period for loss of user. It is contended that the court misdirected itself by preferring garage receipts over the assessor's report without sufficient justification.
- 17) The Appellant also argues that the court failed to consider the issue of salvage value and the Respondent's duty to mitigate loss. He maintains that the award for loss of user for 52 days was unsupported by evidence and excessive.
- 18) Finally, he challenges the award of interest from the date of filing suit, arguing that the claim was unliquidated and that interest ought to have run from the date of judgment.
- 19) He prays that the appeal be allowed, the damages be reduced or reassessed, and the costs of the appeal be awarded to him.

4. Submissions of the Parties

(a) The Appellant's Submissions

- 20) The Appellant submits that this Court, as a first appellate court, is obligated to re-evaluate the evidence and draw its own conclusions in accordance with the principles set out in **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123 (Court of Appeal for East Africa)** and **Mursal & Another v Manese [2007] eKLR (Court of Appeal of Kenya)**.
- 21) On repair costs, he relies on **Nkuene Dairy Farmers Co-operative Society Ltd & Another v Ngacha Ndeiya [2010] eKLR (Court of Appeal of Kenya)**, arguing that an assessment report is sufficient evidence of the cost of restoration and that the trial court erred in preferring garage receipts over the AA report.

22) On loss of user, he cites **David Bagine v Martin Bundi [1997] eKLR (Court of Appeal of Kenya)** for the proposition that loss of user must be strictly proved and limited to a reasonable repair period.

23) On interest, he relies on **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 (Court of Appeal for East Africa)** and **Cimbria (EA) Ltd v Kenya Power & Lighting Co. Ltd [2013] eKLR (High Court of Kenya)** to argue that interest on unliquidated claims should run from the date of judgment.

(b) The Respondent's Submissions

24) The Respondent relies on Section 78 of the Civil Procedure Act and **Kiruga v Kiruga & Another [1988] KLR 348 (Court of Appeal of Kenya)**, submitting that an appellate court should not interfere with findings of fact unless they are unsupported by evidence.

25) On quantum, he cites **Power Lighting Co. Ltd & Another v Zakayo Saitoti Naingola & Another [2008] eKLR (Court of Appeal of Kenya)** and **Kemfro Africa Ltd t/a Meru Express Service (1976) & Another v A.M. Lubia & Another (No. 2) [1987] KLR 30 (Court of Appeal of Kenya)** on the limited circumstances under which an appellate court may interfere with an award of damages.

26) On interest, he relies on Section 26(1) of the Civil Procedure Act and **Franco Esposito v Assia Animal Health Limited [2015] eKLR (High Court of Kenya)** which cited **Prem Lata v Peter Musa Mbiyu [1965] EA 592 (Court of Appeal for East Africa)**, to support the award of interest from the date of filing suit.

5. Issues for Determination

27) The following issues arise:

- i. **Whether the trial court erred in its finding on liability and the application of the burden of proof.**
- ii. **Whether the award for repair costs was excessive or unsupported by evidence.**
- iii. **Whether the award for loss of user was properly proved and whether the duty to mitigate loss was discharged.**
- iv. **Whether the trial court acted on wrong principles in assessing damages.**
- v. **Whether this Court should interfere with the award.**

6. ANALYSIS AND DETERMINATION

28) This being a first appeal, this Court is duty-bound to re-evaluate and re-analyse the evidence, while bearing in mind that it did not see or hear the witnesses, as stated in **Selle v Associated Motor Boat Co. Ltd and Peters v Sunday Post Ltd [1958] EA 424 (Court of Appeal for East Africa)**.

(a) Burden of Proof and Liability

29) Sections 107 and 109 of the Evidence Act place the legal burden upon the plaintiff. In **Karugi & Another v Kabiya & 3 Others [1987] KLR 347 (Court of Appeal of Kenya)**, the Court of Appeal held that even where the defence calls no evidence, the plaintiff must still prove his case, though uncontroverted evidence may suffice.

30) Further, in **Trust Bank Ltd v Paramount Universal Bank Ltd & 2 Others [2009] eKLR (Court of Appeal of Kenya)**, it was held that pleadings unsupported by evidence remain mere allegations.

31) The Respondent's evidence was uncontroverted. The trial court did not shift the burden of proof but properly found that the Respondent had discharged it. This ground fails.

(b) Repair Costs

32) The principle that special damages must be specifically pleaded and strictly proved was restated in **Hahn v Singh [1985] KLR 716 (Court of Appeal of Kenya)**.

33) The Respondent produced actual receipts showing expenditure of Kshs. 166,900/=. An assessment report is an estimate; whereas actual costs are proved, the court may rely on them. In **Coast Bus Service Ltd v Sisco E. Murunga & Another [1992] eKLR (Court of Appeal of Kenya)**, it was held that proven actual expenditure may properly be awarded.

34) No evidence was led on salvage value. Courts do not speculate. This ground lacks merit.

(c) Loss of User and Mitigation

35) In **David Bagine v Martin Bundi**, it was emphasized that loss of user must be strictly proved.

36) The Respondent pleaded and proved loss of user through receipts. On mitigation, **African Highland Produce Ltd v John Kisorio [2001] eKLR (Court of Appeal of Kenya)** establishes that a claimant must take reasonable steps to minimize loss but is not required to act unreasonably.

37) No evidence demonstrated that the Respondent acted unreasonably. The award was therefore justified.

(d) Whether the Court Acted on Wrong Principles

38) In **Kemfro Africa Ltd t/a Meru Express Service & Another v A.M. Lubia & Another**, the Court of Appeal held that interference with damages is only warranted where the trial court acted on wrong principles or the award is inordinately high or low.

39) The awards herein were grounded on documentary proof and correct legal principles. No misdirection has been demonstrated.

7. CONCLUSION

40) Upon independent re-evaluation of the evidence and applicable law, this Court finds that:

- i. The Respondent discharged the burden of proof on a balance of probabilities.**
- ii. Special damages were specifically pleaded and strictly proved.**
- iii. The trial court applied correct legal principles; and**
- iv. There is no basis for appellate interference.**

Accordingly, the appeal lacks merit and is hereby dismissed. The judgment of the lower court is upheld. Costs of the appeal shall follow the event.

41) It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS
APPLICATION, THIS 19TH DAY OF FEBRUARY, 2026**

.....

**CHARLES KARIUKI
JUDGE**