

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

CIVIL APPEAL NO. E775 OF 2024

STEPHEN MUKENYA WANJALA

APPELLANT

VERSUS

JULIUS MWANGI GITHAIGA

RESPONDENT

(Being an appeal from the the Small Claims Court at Nairobi (Hon. J.W. Nasimiyu, R.M./Adjudicator) delivered on 10th June 2024 in SCCC No. E1504 of 2024)

JUDGMENT

- 1.** The trial court entered judgment in favour of the Appellant at 100% liability and awarded special damages in the sum of Kshs. 127,080. The trial court however disallowed a claim of Kshs. 30,000 pleaded as car hire expenses and further capped party-and-party costs at Kshs. 10,000.
- 2.** Aggrieved by the disallowance of the car hire claim and the capping of costs, the Appellant filed the present appeal challenging the trial court's said findings.
- 3.** The Appeal was canvassed by way of written submissions which I have considered alongside the record of appeal and the grounds contained in the Memorandum of Appeal. I find that the main issues for determination are whether the trial court erred in disallowing the Appellant's claim of

Kshs. 30,000 for car hire and in capping party-and-party costs at Kshs. 10,000 without reference to the Advocates Remuneration Order.

Analysis and Determination

Car Hire Claim (Kshs. 30,000)

4. It is trite law that special damages must be specifically pleaded and strictly proved. In ***Hahn vs. Singh [1985] KLR 716***, the Court held:

“Special damages must not only be specifically claimed but must also be strictly proved.”

5. The record shows that the Appellant specifically pleaded Kshs. 30,000 for car hire and produced a receipt in evidence. There is no indication on record of any cross-examination challenging the receipt, nor was any rebuttal evidence tendered by the Respondent.
6. The legal effect of unchallenged evidence is well settled. In ***Ngugi vs. Karanja & Another [2023] KEHC 2368 (KLR)***, the Court held that:

“In my view, a statement made on oath should as a matter of fact be expressly denied on oath. If not challenged, it remains a fact and the truth for that matter.”

7. Similarly, in ***Zacharia Waweru Thumbi vs. Samuel Njoroge Thuku [2006] eKLR***, the Court stated:

“...special damages must be both pleaded and proved, before they can be awarded by the Court.”

8. Further, the Court of Appeal in ***Capital Fish Kenya Ltd vs. Kenya Power & Lighting Co Ltd [2016] eKLR*** held:

“...special damages must not only be specifically pleaded, they must also be strictly proved with as much particularity as circumstances permit.”

9. The record reveals that the car hire claim was specifically pleaded, supported by documentary evidence and was not controverted by the Respondent.

10. I find that in the absence of challenge or rebuttal, the learned magistrate had no lawful basis for disallowing the claim. The rejection of uncontroverted evidence amounted to a misdirection in law and in fact. Accordingly, this ground of appeal succeeds.

Capping of Party-and-Party Costs at Kshs. 10,000

11. Section 27 of the Civil Procedure Act provides that the award of costs are at the discretion of the court. However, that discretion must be exercised judicially and not arbitrarily.

12. In ***Supermarine Handling Services Ltd vs. Kenya Revenue Authority [2010] eKLR***, the Court of Appeal stated that a court’s discretion on costs is not unfettered but must be exercised upon reason and not caprice.

- 13.** Similarly, in *Limuru Country Club & 6 Others vs. Rose Wangui Mambo & 15 Others* [2019] eKLR, the Court of Appeal emphasized that a trial court's discretion in awarding costs must be exercised judicially and not arbitrarily, and that appellate intervention requires a clear showing that the trial court misdirected itself, acted on matters it ought not to have acted upon, or failed to take relevant matters into account, such that the conclusion reached was wrong.
- 14.** I note that the trial court capped costs at Kshs. 10,000 without reference to the Advocates Remuneration Order, the value of the subject matter and without giving any reasons on record justifying the limitation. My take is that the blanket cap imposed without legal basis constitutes an arbitrary exercise of discretion and amounts to an error in principle.
- 15.** This Court is therefore entitled to interfere with that exercise of discretion.
- 16.** In sum, I find that the trial court erred in rejecting uncontroverted evidence relating to special damages and in arbitrarily limiting costs without lawful justification. This is therefore justified to exercise its appellate jurisdiction in order to correct those errors in principle.

Disposition

- 17.** In light of the foregoing analysis, this Court finds that the appeal is merited and accordingly make the following orders:

- a) The appeal is hereby allowed.**
- b) The finding of the trial court disallowing the claim for car hire in the sum of Kshs. 30,000 is set aside and substituted with an award of Kshs. 30,000 to the Appellant.**
- c) The order capping party-and-party costs at Kshs. 10,000 is hereby set aside.**
- d) Costs in the trial court shall be assessed in accordance with the Advocates Remuneration Order.**
- e) The Appellant shall have the costs of this appeal.**

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2026.

**HON. W. A. OKWANY
JUDGE**

19/02/2026

FOR APPELLANT

FOR THE RESPONDENT

COURT ASSISTANT Abdirizak

File closed