



**Wardere v Kinyanjui (Civil Appeal E021 of 2025)
[2026] KEHC 2751 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E021 OF 2025
WA OKWANY, J
FEBRUARY 5, 2026**

BETWEEN

MUHAMED MANTAN WARDERE APPELLANT

AND

JOHN IRUNGU KINYANJUI RESPONDENT

(Being an appeal from the judgment of Honourable J.E. Kemei (Adjudicator/Magistrate) delivered on 12th February 2025 in Naivasha Small Claims Court, SCCC No. E763 of 2024)

JUDGMENT

1. The Respondent herein, who was the Claimant in the lower court, sued the Appellant seeking compensation for material damage to his motor vehicle KCV 916D, following an accident in which his said vehicle collided with the Appellant's motor vehicle KCL 210D/ZH 5323 on 14th September 2024 along the Nakuru–Eldoret Highway.
2. The Appellant denied negligence and after a full hearing in which the Respondent called a total of four witnesses, while the Appellant did not call any witness, the trial Court found the Appellant 100% liable for the said accident and awarded special damages of Kshs. 950,062.
3. Aggrieved by the said decision, the Appellant lodged this appeal by memorandum dated 24 July 2024, on the single issue of quantum, specifically, whether the Respondent proved repair costs in accordance with the law.
4. The appeal was canvassed by way of written submissions.

Appellant's Submissions

5. The Appellant contended that the Respondent relied solely on an assessment report indicating repair costs of Kshs. 873,132, but did not produce any receipts to prove the alleged repairs. The Appellant



noted that the Respondent confirmed, under oath, that the vehicle was repaired but produced no invoices, receipts, or proof of purchase of spare parts.

6. It was submitted that an assessment report merely contains rough estimates of the repair costs but cannot constitute strict proof of actual expenditure. Reliance was placed on the decision in *Capital Fish Kenya Ltd vs. Kenya Power & Lighting Co. Ltd* [2016] eKLR where it was held that: -

“We do not discern from our reading of this decision a departure from the time tested principle that special damages should not only be specifically pleaded but must also be strictly proved... the appellant could not run away from the requirement of specifically proving the loss with credible evidence... However, the claim herein did not fall in that class.”

7. Reference was also made to *Douglas Odhiambo Apel & Another vs. Telkom Kenya Ltd* where the court held that the Plaintiff is under a duty to prove his claim and that such proof cannot be supplied by pleadings or submissions. The court added that it behoves a claiming party to produce evidence to prove special damages claimed.
8. The Appellant urged this Court to find that special damages were not proved at all, and to set aside the award in its entirety.

Respondent's Submissions

9. The Respondent cited Section 38(1) of the *Small Claims Court Act*, arguing that the only issue to be tackled by the appellate court is whether the Adjudicator correctly applied the law in accepting the assessment report as proof of special damages.

10. The Respondent argued that the lower court correctly applied Rule 5(1) of the Small Claims Court Rules, 2019, which provides that: -

“A person claiming compensation... shall attach to the Statement of Claim an itemized estimate of the cost of repair prepared by a licenced mechanic or certified motor vehicle assessor...”

11. It was the Respondent's case that he complied by filing an assessment report from a certified assessor, Quantum Motor Assessors, dated 23rd September 2024. He noted that the trial court relied on the decision in *Nkuene Dairy Farmers Co-op Society vs. Ngacha Ndeiya* [2010] eKLR where it was held, inter alia, that: -

“Special damages in a material damage claim need not be shown to have actually been incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item as near as possible to the condition it was in before the damage complained of. An accident assessor gave details of the parts of the respondent's vehicle which were damaged. Against each item he assigned a value. We think that particulars of damage and value of the repairs were given with some degree of certainty.”

12. The Respondent submitted that the above authority is binding in material damage claims, and that the assessment report met the required standard.



13. Further reliance was placed on *Ratcliffe vs. Evans* [1892] QB 524 where it was held that: -

“As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done.”
14. He argued that the nature of motor vehicle repairs requires reliance on expert assessment and that the assessor’s report was unchallenged. He added that the Small Claims Court accepted it as credible expert evidence since the Appellant did not question any aspects of the pricing.
15. I have carefully considered the record of appeal and the parties’ rival submissions. I find that the main issue for determination is whether the trial court erred in law by accepting the assessment report as sufficient proof of special damages for repair costs.

Analysis and Determination

16. It is trite that special damages must ordinarily be specifically pleaded and strictly proved. This is the principle that was reaffirmed in *Capital Fish Kenya Ltd vs KPLC* (supra) [2016] eKLR where it was held that:

“...special damages should not only be specifically pleaded but must also be strictly proved...”
17. It is however clear that the same decision recognizes that certain exceptions arise in material damage claims, as also discussed by the Court of Appeal in *Nkuene Dairy Farmers Co-op Society & Another vs. Ngacha Ndeiya* (supra) where it was held that: -

“Special damages in a material damage claim need not be shown to have actually been incurred... an accident assessor gave details... and against each item he assigned a value... the particulars of damage and the value of the repairs were given with some degree of certainty.”
18. This to say that in material damage claims, actual receipts are not a requirement where the damage is proven, a professional assessment is tendered and is unchallenged, and the costs reflect reasonable restoration to pre-accident condition.
19. In the instant case, I note that the Respondent proved that the motor vehicle was damaged, produced an expert assessment report, testified that repairs were actually carried out, and called the assessor whose evidence was consistent and unchallenged.
20. The Appellant, on the other hand, did not call any witness, did not challenge the assessor’s methodology, presented no alternative valuation and produced no contradictory evidence whatsoever.
21. I therefore find that this Court cannot fault the Adjudicator for accepting an uncontested expert valuation.
22. Furthermore, Rule 5(1) of the Small Claims Rules expressly allows a claimant to attach “an itemized estimate of the cost of repair prepared by a licenced mechanic or certified motor vehicle assessor...”
23. I find that there is no statutory requirement that actual receipts must always accompany such assessments. It is thus my finding that the Adjudicator acted within the law.
24. It is my view that the decision in *Capital Fish* case (supra) is distinguishable from this case because that case involved millions of shillings claimed for loss that was not tied to a repair estimate and the court, in the said case, emphasized strict proof given the nature of the claim.



25. In contrast, this case involves material damage claim where an assessor's report is expressly acceptable under Rule 5(1) of the Small Claims Rules and the quantum is modest and based on expert evidence which was not challenged by another assessment.
26. In sum, I find that the lower court's reliance on the assessment report was lawful, reasonable, and consistent with binding precedent. I am not persuaded that there was any misdirection by the Adjudicator to justify appellate interference.
27. For the reasons that I have stated in this judgment, I find that the instant appeal is not merited and I therefor dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

05/02/2026

For Appellant No Appearance

For Respondent No Appearance

Court Assistant Karani

