Kamau v Karanja (Suing as the Legal and Personal Representative of the Estate of Eliud Ngugi Ngige (Deceased)) (Civil Appeal E122 of 2024) [2026] KEHC 3970 (KLR) (25 March 2026) (Judgment)

Neutral citation: [2026] KEHC 3970 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL E122 OF 2024

BM MUSYOKI, J

MARCH 25, 2026

BETWEEN

JOHN WAKAHU KAMAU ..... APPELLANT

AND

BETH WANGARI KARANJA (SUING AS THE LEGAL AND PERSONAL REPRESENTATIVE OF THE ESTATE OF ELIUD NGUGI NGIGE (DECEASED)) ..... RESPONDENT

(Being an appeal from judgment and decree in Small Claims Court at Thika (Hon. Sylvia A. Wayodi RM) claim number E1144 of 2023 dated 9-05-2024)

JUDGMENT

1. In her statement of claim dated 22nd September 2023 filed in the lower court, the respondent claimed Kshs 466,098/= being special damages arising from damage to the deceased's motor vehicle registration number KCS 745J following road accident involving the said vehicle and the respondent's motor vehicle registration number KAE 267G. The respondent had brought the claim as the administrator of the estate of the deceased. In his response to the claim, the appellant denied liability including the occurrence of the accident and attributed the accident to the negligence of the respondent.

2. The matter went to full trial with the respondent calling three witnesses while the appellant called two witnesses. The court found in favour of the respondent on liability at 90 per cent and quantum as prayed following which the appellant preferred this appeal based on the following grounds;

    1. The learned Magistrate committed an error of law by not adequately establishing and verifying the ownership of the motor vehicle with the registration number KAE 267G.

2. The learned Magistrate committed an error of law by failing to determine whether sufficient evidence was presented to substantiate the claim for material loss, as mandated by the laws of evidence.

3. The learned Magistrate committed an error of law by relying exclusively on the respondent's evidence concerning the material damage incurred, without giving due consideration to the evidence presented by the appellant, an approach that contravened the principles of equality and natural justice.

4. The learned Magistrate committed an error of law by apportioning liability at 90 per cent against the appellant, despite the presence of contradictory evidence regarding liability.

5. The learned Magistrate committed an error of law by awarding damages that were disproportionate to the material damage incurred, thereby failing to align the award with the principles of proportionality and fairness.

6. The leaned Magistrate erred in law by not finding sufficient evidence of material loss amounting to Kshs 419,488.20 and by incorrectly concluding that an invoice can serve as proof of payment, instead of recognizing that only a receipt can fulfil this evidentiary requirement.

7. The learned Magistrate erred in law by holding the appellant liable to settled the respondent an amount of Kshs 419,488.20 against the weight of the evidence and precedent decisions of superior courts, which establish that such damages require strict proof.

8. The learned Magistrate erred in law by failing to consider the weight of case law rendered by superior courts on the facts in issue, as submitted by the appellant's counsel. The decision in question failed to appreciate the doctrine of stare decisis, resulting in an erroneous outcome.

9. The learned Magistrate erred in law by awarding costs to the respondent.

3. The memorandum of appeal has a tenth ground which in my opinion was meant to be the prayers. In it, the appellant asks the impugned judgment to be set aside and the case be heard on its merits and that there be a stay of execution pending hearing and determination of the appeal. These are interesting prayers because a look at the proceedings shows that the case was heard on merits while the portion for stay of execution cannot find space in a memorandum of appeal. Be that as it may, I will treat the appeal as one asking for the judgment of the trial court to be set aside and the respondent's claim be dismissed.

4. Upon reading the judgment of the trial court and the record of appeal, I am satisfied that the appeal raises some matters of law. I will avoid the grounds which raises matters of facts as considering the same will be in violation of section 38(1) of the *Small Claims Court Act* which restricts appeals to this court to matters of law only. The issues I have identified are;

   a. Whether the judgment of the trial court was against the weight of the evidence.

   b. Whether the court failed to abide by the principle of stare decisis.

   c. Whether the special damages were proved to the required standard.

5. The respondent called three witness, the first one being Francis Isisan a police officer attached to Juja police station who produced a police abstract for the accident. He confirmed that the accident occurred on 26-09-2020 at 16.30 hours and the same was investigated by PC Lembomba who blamed motor vehicle registration number KAE 267G. He admitted in cross examination that he was not the investigating officer and he could not tell the point of impact or the resting position or directions of the motor vehicles. He had no sketch plan or photographs.

6. The second witness was George Kimemia a motor vehicle assessor who produced assessment report dated 28-09-2020 and a supplementary assessment report dated 22-10-2020. He stated that he had assessed repairs to cost Kshs 483,930 and that his fees for the assessment was Kshs 6,380.00. When he was cross-examined, he stated that the damages were at the front, depicting a classic head-on collision. He added that there was no impact on the left headlight or the left side of the vehicle.

7. The third witness was Japheth Kilonzi who was a claims analyst at the CIC Insurance Company which had insured the respondent's motor vehicle. He adopted his witness statement dated 22-09-2023 and testified that the insurer received report of the accident and confirmed that the motor vehicle had a valid cover. He did not testify on how the accident occurred. His piece of testimony covered the sequence of receiving of the report of the accident, their investigations of the accident, processing of the claim and instructions for repairs of the motor vehicle. In cross examination, he stated that he did not produce a copy of insurance certificate. He could not tell how the accident occurred and he could not verify the claim statements.

8. Joseph Kamau testified on the side of the appellant and stated that he was on the material day the driver of motor vehicle registration number KCS 745J. He added that while he was driving on his lawful lane, motor vehicle registration KCS 745J which was in front of him signaled suggesting that it was about to turn to the left but it made an abrupt U-turn towards the right side of the lane obstructing his lawful path. He attempted to swerve to avoid hitting the motor vehicle and that is when it hit his vehicle on the left side. He added that he was in a slow motion going towards the same direction as the respondent's vehicle and insisted that he hit him on the right as he tried to move away.

9. In cross examination, the witness maintained that he kept a distance to the respondent's vehicle and was driving at slow speed. He stated that he hit the respondent's vehicle after it indicated its intention to turn to the left but abruptly made a U-turn and that the impact was on his right as he tried to move. He claimed that the respondent hit him as he tried to give space. He admitted that he was blamed by the police.

10. Cyrus Gitau, the 2nd witness for the appellant told the court that he was the turnboy for the appellant's vehicle on the material day. His testimony which was by adoption of his witness statement dated 15-02-2024 was word for word similar to the driver's. In cross examination, he stated that the respondent's motor vehicle was hit on the right side as they tried to give it way. He confirmed that the respondent's vehicle was on the other lane.

11. I have reproduced the above in my effort to analyse whether I have the jurisdiction to interfere with the finding of the trial court on issue of liability which would cover the first issue I have identified above. It has been held that where an appeal is limited to matters of law only, the appellate court should not interfere with decision of the trial court on matters of facts unless in reaching its decision, trial court ignored pertinent and material evidence or failed to consider material evidence it should have or the decision is so perverse that no reasonable tribunal would have reached such a decision. It was held by Honourable Justice A.C. Mrima in Ayere v Wanyama & another [2026] KEHC 1234 (KLR), that;

> " From the foregoing, an appeal on matters of law calls upon the appellate Court to steer clear of findings of fact derived from primary evidence and to also restrain itself from treating findings of fact as holdings of law or mixed findings of fact and law unless the findings or conclusions are so perverse as to defeat the object of justice. In other words, where the findings or conclusions could not be reasonably derived from the primary facts, then such transcends to matters of law."

12. A perverse decision is one that is so unreasonable, wrong or goes against the flow or weight of evidence or one that does not make sense in the context of the evidence produced before the court. I have read the decision of the trial court on lability and I find that she in her assessment found that the respondent was to blame to an extent for having taken a U-turn. She based her decision on what she called the evidence of the appellant. I note that the appellant's witnesses said that the motor vehicles were moving in the same direction before the respondent's took a U-turn after indicating that it was turning to the left.

13. I have also looked at the nature of damage on the respondent's vehicle and I agree with the opinion of the motor vehicle assessor that the same were consistent with a head on collision. In my view, the point of impact must have been on the right side of the directions the appellant's vehicle was moving. The appellant's witnesses are on record saying that the accident was on the other lane which must have been after the respondent's vehicle allegedly took a U-turn. The trial court made analysis of the facts placed before her and reconstructed the scene as narrated by the witnesses. Taking all this into consideration, I do not see why the decision of the trial court could be said to have been perverse so as to justify interference by this court.

14. he appellant faults the trial court for relying on the police abstract to make conclusion on negligence. My reading of the judgment of the court does not reveal that the court gave weight to the police abstract as claimed by the appellant. Although she does not mention much about the basis of her opinion on the evidence of the parties, the court shows that it considered their evidence. Actually, the ten per cent liability apportioned to the respondent was borne out of the appellant's evidence which means that the Honourable Magistrate considered his evidence contrary to what he claims. It is true that a police abstract is not proof of negligence but where it is accompanied by circumstantial evidence which can only point to the negligence of a party, the court would be justified in drawing an inference to a certain state of affairs.

15. The next issue is whether the court failed to abide by the principle of stare decisis which posits that courts are bound by decisions of those ranking higher to them. In his submissions, the appellant has said nothing about this ground. It is not clear to me which decision of a higher court the trial Magistrate ignored or went against. I find no merits in this ground.

16. On quantum, the appellant claims that the respondent was bound to substantiate beyond reasonable doubt the extent of the damages allegedly incurred which required production of concrete documentary evidence rather than mere verbal assertions. The appellant is clearly wrong on the standard of proof needed in matters of quantum. The standard of beyond reasonable doubt is only applicable in criminal cases. What the law requires in claims of special damages is strict proof on a balance of probabilities which is not the same as beyond reasonable doubt.

17. The appellant has submitted that the respondent did not produce documentary evidence to prove what was spent on repairs to his motor vehicle. According to the appellant, the only way special damages can be proved is through adduction of receipts or invoices which are endorsed as paid. I do not think that the appellant is right on this. Strict proof is not synonymous with receipts. Production of any other transactional documents which show that the damages were actually incurred would in my view be sufficient.

18. In this case, the respondent produced two assessment reports, an invoice from the repairers, re-inspection report confirming that repairs were done and credit notes. In addition, the respondent produced a satisfaction note confirming that the vehicle was repaired to satisfaction of the deceased and as per the assessment reports. This was in tandem with the principle of tort that an injured party should be restored to the position they were in before the tort was committed. In this case, that could only be achieved by compensating the respondent for the amount payable or paid for the repairs, investigators

and assessors. In Julius Kariuki Kimani v Evanson Kariuki [2021] KEHC 4272 (KLR), Justice Joel Ngugi held that;

> " The aim of Tort law is to, as much as possible, return the victim to where he would have been if he had not suffered the tort. The rationale for the rule that special damages must be strictly proved is to police the practice so that Plaintiffs do not present exaggerated claims not tied to actual losses. The rule is, therefore, that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before compensation will be permitted or otherwise demonstrate with the permitted degree of certainty what loss or amount he will suffer in the future."

19. The appellant has claimed that an invoice without endorsement of payment cannot be proof of damages. To me, whether the amount was actually paid or not is not material. What is material is that the liability to that extent was incurred and was due for payment and that the garage released the motor vehicle with undertaking of payment. Even if I were wrong on this, the credit notes detailing or referencing the invoice are a mode of settlement of the debt. A credit note is like a refund voucher which is common in commercial transaction and in essence settles the debt. A credit note is issued in favour of the transacting parties and not third parties and the appellant cannot in effect benefit from the same. Consequently, I hold that these documents were sufficient proof of the claimed special damages.

20. In my above holding, I am guided by the holding of the Court of Appeal in Nkuene Dairy Farmers Co-op Society Ltd & another v Ngacha Ndeiya [2010] KECA 20 (KLR) where it was held that;

> " In our view 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 to as near as possible the condition it was in before the damage complained of."

21. The conclusion of the above discussion is that, I find no merits in this appeal and the same is hereby dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.