



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mugo & another v Kamau (Civil Appeal E035 of 2024)
[2026] KEHC 4150 (KLR) (19 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E035 OF 2024
WA OKWANY, J
MARCH 19, 2026**

BETWEEN

PETER GITHINJI MUGO 1ST APPELLANT

SAMUEL GITHINJO NJIRU 2ND APPELLANT

AND

PAUL NDIRITHI KAMAU RESPONDENT

*(Being an appeal from the judgment delivered on 24/10/2023
by Hon. Eunice Kelly (PM) in Naivasha CMCC 299 of 2020)*

JUDGMENT

1. The Respondent sued the Appellants before the trial court seeking both special and general damages arising out of a road traffic accident that occurred on 25th February 2019. The Respondent's case was that he was on the material day travelling as a lawful passenger in motor vehicle registration KCJ 365X, driven by the 2nd Appellant, when the vehicle lost control and hit a building thereby causing him injury and loss of his consignment valued at Kshs 250,000/=.
2. The Appellants denied the claim and filed a statement of defence dated 21st July 2020.
3. After hearing the case, the trial court awarded the Respondent a cumulative sum of Kshs. 410,000/= as general damages and Kshs. 11,310/= as special damages.
4. The award included Kshs. 250,000/= for alleged loss of goods in transit consisting of watermelons said to have been destined for sale.
5. Aggrieved by the award of Kshs. 250,000 for the alleged loss of goods in transit, the Appellant filed the instant appeal.



6. The Appellants filed submissions challenging the award for loss of goods. The Respondent did not file submissions on the appeal.
7. From the record, and submissions of the Appellants, I find that the only issue for determination is whether the learned trial magistrate erred in awarding Kshs. 250,000/= for loss of goods in transit.
8. The Appellants contended that the Respondent did not produce any receipts or documentary proof to demonstrate the alleged purchase price or value of the goods.
9. The record shows that the Respondent admitted, during the hearing, that he had no receipts to show that the consignment was purchased at Kshs. 250,000/=.
10. A perusal of the Complaint filed before the trial court also reveals that the claim for the value of goods allegedly lost in the accident was not pleaded.
11. Loss of goods in transit is a claim in special damages, and must not only be pleaded but must also be strictly proved. In *Hahn v Singh* Civil Appeal No. 42 of 1983 [1985] KLR 716 the court held: -

“Special damages must not only be specifically claimed (pleaded) but also strictly proved.”
12. In *Capital Fish Kenya Limited v Kenya Power & Lighting Company Limited* [2016] eKLR the Court of Appeal in held: -

“No evidence whatsoever was led by the appellant on this aspect. This, as we already stated elsewhere, was an abstract figure which was thrown to the court with a mere statement that ‘this is the loss the appellant has suffered’. Please award it to the appellant.”
13. In *Ryce Motors Ltd & Another v Muchoki* (1995-98) 2 E.A 363 (CAK) the court stated as follows on documentary proof: -

“...The pieces of paper produced as evidence of income could not be accepted as correct accounting practice. They did not constitute proof of special damages.”
14. In the present appeal, the Respondent offered no receipts, invoices, valuation evidence, accounting record, or corroboration. I therefore find that the trial court acted without evidentiary basis in awarding Kshs. 250,000/=. The trial court rendered itself as follows on the subject of loss of the water melons on transit: -

“It’s not clear what portion of the melons were stolen by the area residents which he may have been helpless to stop vis a vis those loaded into the said motor vehicle which registration number he did not take note of and for which I now find his negligence to blame for the loss.”
15. From the above extract of the trial court’s judgment, it is clear that the said court was not even sure on the exact value, if any, of the water melons that were lost. I find that the claim for the good allegedly lost on transit was not proved to the required standard or at all.
16. Accordingly, the appeal succeeds on that ground and I therefore make the following final orders: -
 - a. The portion of the judgment awarding Kshs. 250,000/= for loss of goods in transit is hereby set aside.



- b. The award of Kshs. 250,000/= is substituted with a finding that no special damages for loss of goods were proved, and therefore nothing is awarded under that head.
- c. The rest of the trial court's judgment remains undisturbed.
- d. Costs of the appeal are awarded to the Appellants.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

19/03/2026

For Appellant Bore

For Respondent N/A

Court Assistant Karani

File closed

HCCA E035 OF 2024 - JUDGEMENT	0
-------------------------------	---

