



REPUBLIC OF KENYA



**Motrex Limited v Dahir & another (Civil Case E134 of 2023)
[2025] KEMC 301 (KLR) (25 November 2025) (Judgment)**

Neutral citation: [2025] KEMC 301 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE E134 OF 2023
YA SHIKANDA, SPM
NOVEMBER 25, 2025**

BETWEEN

MOTREX LIMITED PLAINTIFF

AND

FARAH ALI DAHIR 1ST DEFENDANT

MATANO RASHID 2ND DEFENDANT

JUDGMENT

The Claim

1. Motrex Limited (hereinafter referred to as the plaintiff) filed this suit on 26/7/2023 vide a plaint dated 21/7/2023. The plaintiff company sued Farah Ali Dahir and Matano Rashid (hereinafter referred to as the 1st and 2nd defendants respectively) on account of a road traffic accident that allegedly occurred on 21/7/2022 at Thyange area along Nairobi-Mombasa road. The plaintiff averred that on the material day, the plaintiff's motor vehicle registration number KBV 873C/ZE 3251 was lawfully being driven along the aforementioned road when suddenly, the 2nd defendant, being the 1st defendant's driver so carelessly drove motor vehicle registration number KAW 342P by overtaking when it was not safe to do so and in the process, collided with the plaintiff's motor vehicle. That as a result, the plaintiff's motor vehicle was extensively damaged.
2. The 1st defendant was sued as the registered owner of motor vehicle registration number KAW 342P whereas the 2nd defendant was used as the driver thereof at the material time. The plaintiff pleaded several particulars of negligence against the 2nd defendant. I will not reproduce the particulars of negligence since the parties entered into a consent on liability. The plaintiff thus prays for judgment against the defendants for:
 - a. Special damages of Ksh. 1,041,528/=;



- b. Costs of this suit;
- c. Interest on the above;
- d. Any other relief that this Honourable court may deem fit to grant.

The Defence

3. The defendants entered appearance on 8/8/2023 and filed a statement of defence on the same day in which they denied the plaintiff's claim in toto. The defendants denied that they were the registered owner and driver respectively of motor vehicle registration number KAW 342P, denied the occurrence of the accident on the material day, denied that the accident involved the two motor vehicles and averred that if the accident occurred, the same was solely caused or substantially contributed to by the plaintiff's driver. The defendants pleaded several particulars of negligence as against the plaintiff's driver but I will not reproduce them for the reason already given hereinabove. The defendants prayed that the plaintiff's suit be dismissed with costs.

Consent On Liability And Evidence

4. The record indicates that on 5/8/2025, the parties recorded a consent on liability, in which the plaintiff was to shoulder 20% whereas the defendants were to bear 80%. The parties further agreed to adopt the plaintiff's witness statements and documents in evidence without calling the makers. The consent was adopted by the court.

The Evidence

5. The Plaintiff produced in evidence several documents in support of its case. No evidence was tendered by the defendants.

Main Issues For Determination

In my opinion, the main issues for determination are as follows:

- i. Whether the plaintiff suffered loss and damage as a result of the alleged accident;
- ii. Whether the plaintiff is entitled to damages and if so, the nature and quantum thereof;
- iii. Who should bear the costs of this suit?

The Plaintiff's Submissions

6. The plaintiff relied on his evidence on record and submitted that it incurred a total of Kshs. 1,041,528/ = as the costs of repairs of motor vehicle KBV 873C. The plaintiff further submitted that it produced receipts of all the expenses incurred and urged the court to award the amount pleaded. The plaintiff also urged the court to award costs and interest. The plaintiff filed a list of authorities but did not bother to attach copies thereof.

The Defendants' Submissions

7. The defendants filed brief submissions. They urged the court to award what had been specifically pleaded and proved by production of receipts.



Analysis And Determination

8. I have carefully considered the evidence on record. The plaintiff pleaded special damages amounting to Ksh. 1,041,528. The plaintiff produced an assessment report which clearly shows that its motor vehicle was damaged as a result of the accident. I am satisfied that the plaintiff suffered loss and is thus entitled to damages as against the defendants. The plaintiff's claim is basically one for special damages. It is trite law that special damages must be specifically pleaded and strictly proved. In *Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd* the court said:

“It has time and again been held by the Courts in Kenya that a claim for each particular type of special damage must be pleaded”

9. In *Ouma v Nairobi City Council* [1976] KLR 304 after stressing the need for a plaintiff in order to succeed on a claim for specified damages, Chesoni J (as he then was) quoted in support the following passage from Bowen L.J's Judgment on page 532 and 533 in *Ratcliffe v Evans* [1832] 2Q.B. 524 an English leading case on pleading and proof of damage:

“The character of the acts themselves which produce the damage, and the circumstances under which those acts are done, must regulate the degree of 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. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

10. Similarly, in the case of *Hahn v Singh* [1985] KLR 716, it was held that:

“... special damages which must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the act themselves.”

11. In the case of *Christine Mwigina Akonya v Samuel Kairu Chege* [2017] KEHC 1484 (KLR), Joel Ngugi J (as he then was) held that:

“Our decisional law is quite clear now that one consequence of this general principle is that a party claiming special damages must demonstrate that they actually made the payments or suffered the specific injury before compensation will be permitted. A natural corollary of this has been that the Courts have insisted that a party must present actual receipts of payments made to substantiate loss or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party. In this regard, our Courts have held that an invoice is not proof of payment and that only a receipt meets the test. See *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] eKLR; *Zacharia Waweru Thumbi v Samuel Njoroge Thuku* [2006] eKLR; *Sanya Hassan v Soma Properties Ltd*. Consequently, our case law seems quite clear that a party must produce actual receipts in order to meet the test of specifically proving special damages and that a pro forma invoice will not suffice.”



12. In *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] KECA 822 (KLR), the Court of Appeal held:

“A proforma invoice is considered a commitment to purchase goods at a specified price. It is not a receipt, and as such cannot attest to the existence of or the acquisition of goods. We consider that a proforma invoice was not satisfactory proof of the respondent’s loss, or the replacement value of the respondent’s equipment, and the learned judge misdirected himself in finding that the proforma invoices were sufficient proof of special damages for the respondent’s equipment supposedly withheld by the appellant.”

13. In the authority of *Jonathan Njenga v Hassan Faraj About* [1987] KECA 17 (KLR), the Court of Appeal (per Platt JA) was of the view that in cases of material damage, the victim would be entitled to compensation for depreciation of his motor vehicle. The compensation is arrived at by getting the pre-accident value of the car less the scrap value. Similarly, in *Herbert Hahn v Amrik Singh* [1985] KECA 68 (KLR), the Court of Appeal observed:

“The appellant was, nevertheless, entitled to the depreciation in the value of his vehicle resulting from the accident. That depreciation is calculated by deducting the post-accident estimated market value from the estimated pre-accident market value of the motor vehicle and getting the difference, if any, which represents the loss the plaintiff will suffer at the time of resale of his vehicle and which is recoverable. But this loss has to be proved by evidence and is not automatic.”

14. The position was also alluded to in the authority of *DAVID BAGINE v MARTIN BUNDI* [1997] KECA 54 (KLR) in which the court of Appeal held:

“We come now to the issue of special damages award for Kshs. 277,750/= for repair costs. Counsel for the appellant argued that the respondent could properly only have claimed such sum as he actually spent towards repair of his lorry and that he could not have claimed on the basis of an estimate of costs of parts to be replaced.....No evidence by any expert was called to prove the exact repair costs. Nor was there any evidence to show what was the pre-accident value of the lorry and the salvage value (if the lorry was indeed a wreck). There was nothing to show if the sum of Kshs. 277,750 could have properly been spent to put the lorry back on the road.....The best evidence in this respect could have been supplied by an automobile assessor.”

15. The foregoing reveals that there are two ways in which a claimant may be compensated for damages for material damage;
- a. Where the property is repaired and repair costs are proven. In this case, the claimant must prove loss incurred in terms of repair costs by production of receipts for payment of the costs;
 - b. Where the property is beyond repair and written off, the claimant may be paid the pre-accident value thereof. If the property can be salvaged, compensation is reached by deducting the salvage value from the pre-accident value.

16. In this case, although the plaintiff claimed to have paid for repairs, no payment receipts were produced in evidence. The plaintiff produced a quotation from City Panel Beaters and Painters Ltd and an invoice from Intersparses Ltd. There is no documentary proof to show that the plaintiff incurred any expenses. A quotation and invoice are not proof of payment. Without proof of payment for the repair



costs, the plaintiff would have no legal basis to claim special damages. There is even no evidence to show that the motor vehicle was repaired.

Disposition

17. In summary, I hold that the plaintiff has failed to prove its case on a balance of probabilities as against the defendants. Consequently, I proceed to dismiss the suit with costs. It is unfortunate that parties entered into a consent on liability but the suit has to suffer this fate.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 25TH DAY OF NOVEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

