



REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT MERU
CIVIL APPEAL NO. E199 OF 2024

MOSES KOOME MANYARA.....
.....APPELLANT

VERSUS

MEWASCO.....
RESPONDENT

JUDGMENT

1. This Appeal arises from the Judgment of the learned Resident Magistrate Hon. Lilian Wangari Maina (R.M) delivered on 22.8.2024 in Meru Small Claims Court Claim No. E436 of 2024, wherein the trial court dismissed the Appellant's claim with costs.
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 18th September, 2024;
 1. The trial court erred in law and fact by dismissing the suit owing to a mistake that occurred on the cash receipts dated 26th November 2023 by JKS Garage by not indicating the registration of motor vehicle No. KBP 309 G and the name of the owner.
 2. The trial court erred in law and fact by failing to consider the nature of the case in that the appellant would lose the amount of money he used to repair his motor vehicle.

3. The trial court erred in law and fact by finding that the mistake of JKS Garage was fundamental to the case hence relying on it to make a decision that prejudiced an innocent litigant.

4. The entire Judgment was against the weight of evidence.

SUBMISSIONS

3. The Appellant, through the firm of Mwenda A.K & Co. Advocates, filed submissions dated 13/8/2025. Counsel submitted that while the law was clear that special damages must be specifically pleaded and strictly proved, strict proof entailed credible and sufficient evidence, and not rigid technical perfection, and cited **Hahn v Singh [1985] KLR 716 and Capital Fish Kenya Ltd v Kenya Power & Lighting co. Ltd (2016) eKLR**. Counsel asserted that the Appellant had established that his vehicle sustained damage, was repaired, expenses were incurred, and the omission of the name or registration number on the receipts, in the face of corroborating documents, did not negate proof of actual loss. Counsel cited **Benedeta Wanjiku Kimani v Changwon Cheboi & Another (2013) eKLR, Abdirahman Abdi v Safi Petroleum products Ltd & 6 others [2011] eKLR and John Richard Okuku Oloo v South Nyanza Sugar Co Ltd (2013) eKLR**, where it was emphasized that minor anomalies in documents cannot override substantive evidence of loss. Counsel faulted the trial court for adjudicating on the unpleaded issue of receipts, which was uncontested by the parties, and cited **Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 others [2014] eKLR**.

4. The Respondent, through the firm of Mithega & Kariuki Advocates, filed submissions dated 19/9/2025. Counsel argued that the Appellant failed to prove his case to the required standard, and cited **Omari Gulea Jana v BM Muange [2010] eKLR, Linus Fredrick Msaky v Lazaro Thuram Richoro and Another [2016]**

eKLR and Charles Mutachwa & 2 others v Phares Njenga Kibaki (2021) eKLR.

ANALYSIS AND DETERMINATION

5. This being a first appeal, the court is obligated to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.

6. In **Selle & another v Associated Motor Boat Co. Ltd [1968] EA**, the court held as follows:

“This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

7. I have considered the appeal herein, the trial court’s judgment, which is the subject of this appeal, as well as the submissions by counsel.

8. From the grounds of appeal, the issue for determination is whether the trial court’s decision was grounded in law.

9. While there is no dispute that the Appellant’s motor vehicle registration No. KBP 309 G was involved in an accident on 3/11/2023, the bone of contention is whether the Respondent incurred Ksh. 346,000 in repairs. The receipt from KJS Garage, which the Appellant overly relied on, made no reference either to him or his motor vehicle.

10. The significance of producing an assessment report in material damage claims was emphasized by (H.M Okwengu J, as she then was) in **Omari Gulea Jana v B.M. Muange [2010] KEHC 3497 (KLR)** that,

“Although it was alleged that motor vehicle KAC 996F was damaged, the assessment report was not produced in evidence. This was crucial evidence as without the assessment report it was impossible for the Court to establish the damage to the motor vehicle or the estimated costs of repairs.”

11. Comparatively in **Linus Fredrick Msaky v Lazaro Thuram Richoro & another [2016] KEHC 5907 (KLR)**, the court held that;

“Only a specialist and qualified motor vehicle assessor would have examined the vehicle and set out the exact damages before stating what parts required replacement or repair as the case may be. It was not enough for a garage to quote for repairs without an accident assessment report on the specific damages caused by the accident and the value estimated for each damaged part.”

12. It was incumbent upon the Appellant to strictly prove the expenses he incurred in respect of the repairs allegedly undertaken to his motor vehicle, the consent on liability notwithstanding.
13. Consequently, I find that the trial court properly dismissed the Appellant’s claim for want of proof of special damages.
14. For the foregoing reasons, I find that the appeal in want of merit and it is hereby dismissed with costs to the Respondent.

DATED AND DELIVERED AT MERU THIS 9TH DAY OF APRIL 2026.

S.M. GITHINJI
JUDGE

APPEARANCES:

Mr. Kariuki for the Respondent.

Mr. Mwenda for the Appellant absent.