

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. HCCA/E078/2024

**HURUMA MATERNITY & NURSING
HOME.....APPELLANT**

VERSUS

**NELSON OCHIENG
OJWANG.....RESPONDENT**

***(Being an appeal from the judgment delivered on 13th
June 2024 by Hon. Emily Cherop Jerotich (Adjudicator) in
Naivasha SCCC No. E137 of 2024)***

JUDGMENT

Background

1. The Appellant herein sued the Respondent before the trial court for damages arising out of a road traffic accident which occurred on or about 25th May 2022 along the Nairobi-Naivasha Road, where the Appellant's motor vehicle registration number KDC 348X was allegedly involved in an accident with the Respondent's motor vehicle registration number KBP 770Z (Toyota Lexus).
2. The Appellant's case was that the accident occurred due to the negligence and/or recklessness of the Respondent and/or his authorized driver, and that the Appellant suffered

material damage for which it sought compensation as special damages.

3. The Appellant's claim was pleaded and prosecuted as a subrogation claim, the Appellant having been indemnified by its insurer.
4. The Appellant's claim was however allowed only to the extent of Kshs. 2,900/=, and the remainder of the claim was dismissed.
5. Being dissatisfied with that decision, the Appellant lodged the present appeal.

The Appeal

6. The Appellant faulted the trial court for dismissing its claim for:

a) Repair costs - Kshs. 451,938/=

b) Tracing fees - Kshs. 44,410/=

c) Re-inspection fees - Kshs. 3,140/=

Total: Kshs. 499,488/=

7. The Appellant contended that it proved the claim through documents including an assessor's report, invoice, and credit notes evidencing settlement/payment to the service providers.
8. The appeal was canvassed by way of written submissions which I have considered.

Submissions

9. The Appellant submitted that the trial court imposed an unduly high standard of proof by requiring receipts and/or bank statements, yet the Appellant had tendered credit notes and supporting documentation in the normal course of business.
10. The Appellant relied on several cases including the case of ***Joseph Wambugu Muriithi vs. Nyeri Motors Services Ltd (2013) KEHC 1891 (KLR)*** for the argument that credit notes are sufficient evidence of commercial transactions and ***Nkuene Dairy Farmers Co-operative Society vs. Ngacha Ndeiya (2010) eKLR*** where it was held that proof of material damage is based on extent of damage and the cost of restoration.
11. The Respondent, on the other hand, opposed the appeal and maintained that since the claim was one for special damages in subrogation, it required strict proof of actual expenditure incurred, and that credit notes without receipts or bank proof were insufficient.
12. The Respondent referred to the case of ***National Water Conservation & Pipeline Corporation vs. Assembled Enterprises Limited (Civil Appeal E775 of 2021) [2025] KEHC 9487 (KLR)*** where the issue of strict proof of special damages was discussed and the case of ***Zacharia Waweru Thumbi vs. Samuel Njoroge Thuku (Nairobi HCCA No. 445 of 2003)*** where it was held that invoices are not proof of payment and that receipts/bank proof are required.
13. Reference was also made to ***Jimnah Munene Macharia vs. John Kamau Erera (CA No. 218 of 1998)*** on

insufficiency of assessor reports where actual payment is not proved and **Kenya Power & Lighting Co. Ltd vs. Julius Wambale (2019) eKLR** on the doctrine of subrogation and proof of actual expenditure.

14. The Respondent also contended that the tracing charges were unnecessary and disproportionate, and in any event were not strictly proved.

Duty of the Court

15. This being a first appeal, this court is obliged to re-evaluate the evidence tendered before the trial court and reach its own independent conclusion while bearing in mind that it did not see or hear the witnesses testify. (See **Selle vs. Associated Motor Boat Co. Ltd (1968) EA 123**).

Issues for Determination

16. Having considered the record, the memorandum of appeal and the submissions by counsel, I find that the main issue for determination is whether the Appellant proved its case for special damages to the required standard.

Analysis And Determination

17. It is trite law that special damages must not only be specifically pleaded but must also be strictly proved. See **National Water Conservation & Pipeline Corporation vs. Assembled Enterprises Limited** (supra). This principle is intended to guard against speculative awards and to ensure that compensation is based on demonstrable pecuniary loss.

18. Strict proof does not however translate into proof beyond any doubt, nor does it impose the standard of proof expected in criminal cases. The applicable threshold remains proof on a balance of probabilities, albeit requiring cogent documentary support given the nature of special damages.
19. The claim before the trial court was grounded on subrogation which is the equitable right of an insurer, upon indemnifying the insured, to step into the shoes of the insured and pursue recovery from the tortfeasor, of sums paid in settlement of the insured loss. In such a claim, the court must be satisfied that the sums sought are attributable to the insured event and that there is credible evidence demonstrating the actual outlay.
20. The question for determination is therefore whether the Appellant's evidence, taken as a whole, sufficiently demonstrates that the sums claimed were incurred and settled in respect of the accident loss.
- 21.** A perusal of the record reveals that the Appellant tendered an assessor's report detailing the nature and extent of damage, the repair invoice(s), as well as credit notes emanating from the service provider(s) confirming settlement of the sums invoiced.
22. The central question in this appeal turns on the probative value of credit notes. A credit note is a commercial document issued by a supplier or service provider acknowledging that a stated amount has been credited to a customer's account, ordinarily for purposes of reconciliation,

adjustment, or confirmation that an invoice entry has been offset or satisfied.

23. A credit note forms part of recognized accounting practice and is issued for a distinct commercial purpose. Where it is linked to a specified invoice and transaction, it is capable of demonstrating that the liability captured therein has been settled. In ***Joseph Wambugu Muriithi vs. Nyeri Motors Services Ltd (2013) KEHC 1891 (KLR)***, the court acknowledged that credit notes may constitute evidence of a commercial transaction, and may be relied upon as proof of value passing between parties within the ordinary course of business.
24. The Respondent urged the court to reject credit notes for want of bank statements or receipts. My take is that while that argument would be persuasive where the documentary trail is unclear, contradictory, or uncorroborated, the present case is distinguishable. The credit notes herein were produced alongside an assessor's report and corresponding invoice(s), and I find that together, they formed a consistent chain of documentary evidence relating to the same accident loss.
25. My further finding is that the authorities cited by the Respondent, to the effect that invoices are not proof of payment, are good law and remain applicable where the claim rests on bare invoices, uncorroborated estimates, or unsupported assertions of expenditure. The present case is however, distinguishable because the Appellant did not merely tender an invoice; it produced an assessor's report

establishing the nature and extent of damage, invoices reflecting the quantified repair costs, and credit notes confirming settlement in the ordinary course of business. In such circumstances, the court is entitled to accept the documentary trail as sufficient proof on a balance of probabilities, and the absence of bank statements alone cannot be used to defeat a claim that is otherwise credibly supported.

26. Accordingly, I find that the trial court erred in rejecting the credit notes and the accompanying documentation merely because receipts and/or bank statements were not produced.

27. In the circumstances of this case, I am satisfied that the Appellant met the strict proof threshold because the claim was supported by a consistent documentary chain linking:-

- (i) the accident loss,
- (ii) the assessed damage,
- (iii) the repair and ancillary charges as invoiced, and
- (iv) settlement of the invoiced sums through credit notes issued in the ordinary course of business.

28. It is my finding that strict proof requires credible evidence of actual pecuniary loss, and does not demand a single form of documentary proof to the exclusion of all others.

29. The Appellant relied on the assessor's report and invoice(s). It is correct that an assessor's report, standing alone, may only demonstrate the nature and estimated extent of damage, but may not necessarily prove actual expenditure.

30. Nevertheless, where an assessor's report is coupled with invoice(s) and credit notes confirming settlement of those sums, it ceases to be a mere estimate and becomes part of a coherent evidential trail demonstrating actual loss. In ***Silas Mutua vs. Muthoni Njue Monica (2021) eKLR***, the court underscored that material damage claims are proved through evidence showing the extent of damage and the cost of repair/restoration.
31. Similarly, in ***Nkuene Dairy Farmers Co-operative Society vs. Ngacha Ndeiya*** (supra), the court recognized that compensation for material damage is anchored on the extent of damage and the cost of restoration.
32. In the present matter, the documentary evidence tendered was consistent and sufficiently linked to the pleaded sums. I am therefore satisfied that the assessor's report, invoice(s), and credit notes were sufficient proof of the special damages claimed.
33. I find that this evidence was consistent, mutually reinforcing, and was not displaced or controverted by any contrary material.
34. In my view, the learned trial magistrate adopted an unduly restrictive approach by insisting that only receipts and/or bank statements could amount to proof, without sufficiently considering whether the totality of the documentation tendered met the civil evidential burden.
35. This court is also alive to the fact that the dispute originated from the Small Claims Court, whose statutory design is intended to facilitate expeditious, proportionate

and accessible justice through simplified procedure. In that regard, the court must be cautious not to elevate form over substance or impose unduly technical requirements that defeat legitimate claims supported by credible documentation. This is the approach that is consistent with Article 159(2)(d) of the Constitution, which enjoins courts to administer justice without undue regard to procedural technicalities, while still maintaining fidelity to the burden and standard of proof in civil claims.

36. In the premises, I find that the Appellant proved its claim for special damages on a balance of probabilities.

37. Turning to the issue of whether tracing fees was proved as pleaded, it is trite that such fees may be recoverable where it is shown that they were reasonably incurred in the process of confirming ownership, tracing relevant particulars, and facilitating recovery efforts arising from the accident loss.

38. The record shows that the Appellant produced documentation supporting the tracing charges and linking them to the claim process. On a balance of probabilities, I am satisfied that the tracing fees were reasonably incurred and sufficiently proved.

Disposition

39. In the end, I find that the Appellant has established sufficient basis for this court to interfere with the decision of the trial court.

40. Accordingly, the appeal succeeds and is hereby allowed. The judgment of the Small Claims Court in Nakuru SCCC No.

E137 of 2024 is hereby set aside and substituted with judgment for the Appellant as follows:

a) Repair costs - Kshs. 451,938/=

b) Tracing fees - Kshs. 44,410/=

c) Re-inspection fees - Kshs. 3,140/=

Total: Kshs. 499,488/=

d) The Appellant shall have the costs of the suit before the Small Claims Court and the costs of this appeal together with interest on costs and special damages at court rates from the date of this judgment till payment in full.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 9TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

9/04/2026

FOR APPELLANT Isolio

FOR RESPONDENT Nyende

COURT ASSISTANT Karani

30 days stay of execution is granted

Leave to appeal evacuated

File closed