

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E095 OF 2024

SARAH NJOKI

NJENGA.....APPELLANT

VERSUS

NDUNGU

KARANJA.....RESPONDENT

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(Being an appeal from the judgment delivered on 26th July 2024 by Hon. Yvonne Inyama (PM) in Naivasha in CMCC No. 313 of 2022)

JUDGMENT

Background

1. The Respondent herein was the Plaintiff before the trial court where he sued the Appellant/Defendant for damages arising from a road traffic accident on 11th October 2021.
2. The Respondent's case was that on the material day, his motor vehicle registration number KCV 693E was lawfully being driven within Naivasha Town when the Appellant's motor vehicle registration number KCK 057R, allegedly driven negligently, rammed into it, causing damage.

3. The Appellant denied liability in her statement of defence, contending that the Respondent's driver was to blame or was negligent.
4. The trial court heard the case and found the Respondent's evidence credible and held the Appellant 100% liable and entered judgment in favour of the Respondent against the Appellant on the following terms:
 - a) **Liability: 100% against the Appellant**
 - b) **Cost of repair: Kshs. 159,000/=**
 - c) **Loss of income: Kshs. 15,000/=**
 - d) **Copy of records: Kshs. 550/=****Total: Kshs. 174,550/=, plus costs and interest at court rates.**
5. Dissatisfied with the said judgment, the Appellant filed the present appeal in which she contends the trial court failed to properly consider material facts and issues raised before it, including the alleged failure by the Respondent to disclose critical particulars regarding the purported repairs, such as the persons involved, the place where the repairs were carried out, and proof of payment, if any.
6. The Appellant further challenges the award of Kshs. 159,000/= plus costs as having been made without sufficient evidential or legal basis, and argues that the trial court disregarded or failed to evaluate the defence evidence, thereby arriving at a skewed decision.
7. The Appellant also maintains that the Respondent did not prove the existence of the subject motor vehicle, its status or alleged damage, or the existence of the alleged garage

of repair, and asserts that no vehicle was damaged, repaired, or paid for as claimed.

8. The appeal was canvassed by way of written submissions which I have considered.
9. This being a first appeal, this court has the duty to re-evaluate the evidence on record, analyze it afresh, and draw its own conclusions, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses testify. (See ***Selle vs. Associated Motor Boat Co. Ltd [1968] EA 123***).
10. The court will however be slow to interfere with findings of fact by the trial court unless it is shown that the court acted on wrong principles, misapprehended the evidence, or arrived at a decision not supported by the evidence.

Appellant's Submissions

11. The Appellant filed written submissions dated 30th June 2025, arguing that the trial court failed to give proper reasons for holding the Appellant 100% liable, and that the Respondent's evidence was not as clear as the trial court treated it.
12. On quantum, the Appellant challenged the award, particularly the repair costs and loss of income, contending that the Respondent did not sufficiently prove the expenses and that inconsistencies in evidence were not reconciled.

13. The Appellant relied on the principle that special damages, including loss of earnings, must be strictly proved, and cited ***Abdikarim Mohamed Hussein vs. Hakika Transport Services Ltd & Another (Malindi Civil Appeal No. 42 of 2022)*** for the position that claims for loss of earnings must be proved through documents.

Respondent's Submissions

14. The Respondent opposed the appeal and submitted that the trial court properly considered the pleadings, evidence and law and rightly entered judgment in his favour.
15. The Respondent further argued that appellate courts ought not to disturb findings on liability and awards on damages unless it is shown that the trial court acted on wrong principles, considered irrelevant matters or failed to consider relevant matters.
16. The Respondent cited, inter alia, ***Catholic Diocese of Kisumu vs. Sophia Achieng Tete (Civil Appeal No. 284 of 2001)*** and ***Butt vs. Khan (Civil Appeal No. 40 of 1977)*** on the circumstances under which an appellate court may interfere with awards of damages.

Issues for Determination

17. From the pleadings, the record of appeal and submissions, I find that the issues for determination are whether the trial court arrived at the correct findings on liability and special damages.

Analysis and Determination

Liability

18. The trial court's finding was that the Respondent's driver blamed the driver of motor vehicle KCK 057R for the accident, and that a police abstract was produced blaming the driver of the said motor vehicle KCK 057R.
19. The trial court also noted that the Appellant did not give a clear account of the accident and that on cross-examination, she stated that she did not blame anyone for the accident, which contradicted her earlier position.
20. The trial court concluded that the Respondent's evidence was uncontroverted and that the Respondent proved his case on a balance of probabilities.
21. I have re-evaluated the record and I find no basis upon which to fault the trial court's reasoning on liability. The trial court considered both parties' versions and gave reasons why it accepted the Respondent's evidence. The trial court rendered itself as follows on liability: -

“The evidence by the plaintiff was uncontroverted. The defendant failed to give sufficient reasons why she blamed the driver of motor vehicle KCV. The court has weighed the evidence on a balance of probabilities and finds that the plaintiff has proved his case against the defendant. Consequently, the defendant is held 100% liable.”

22. My take is that it is not enough for an Appellant to merely state that the court was wrong. The Appellant must demonstrate how and where the trial court misdirected itself. From the record before this court, I am satisfied that the finding of 100% liability against the Appellant was supported by evidence.
23. Accordingly, I find no merit in the appeal against liability, and I uphold the trial court's finding that the Appellant was 100% liable.

Special Damages

24. It is trite that special damages must not only be specifically pleaded but must also be strictly proved. However, the standard of proof remains on a balance of probabilities.
25. On repair costs, the record shows that the trial court considered an assessment report that placed repairs at Kshs. 178,640/=, and a receipt issued by KIM Auto Spares for Kshs. 159,000/=. The trial court however awarded Kshs. 159,000/= as the cost incurred in repairing the vehicle.
26. I am satisfied that the repair costs were supported by documentary evidence and were proved to the required standard. The award was not speculative and was properly

anchored on proof. I therefore uphold the award of Kshs. 159,000 as proved special damages for repair costs.

27. Turning to the claim for loss of income, I note that the trial court observed that the driver's evidence on daily wage was inconsistent but awarded Kshs. 15,000 despite the inconsistency based on a letter prepared by TNK Travelers Sacco dated 9th February 2022.

28. My finding is that even though the evidence was not perfectly consistent, the trial court exercised discretion and made a reduced award supported by a document on record. I find that this was not an erroneous exercise of discretion.

29. It is trite that an appellate court's interference with an award is not warranted merely because this court may have reached a different figure. The threshold for interference is higher as it must be shown that the trial court acted on the wrong principles or misapprehended the facts of the case. This was not the position in this case as the trial court's findings were backed by evidence.

30. I therefore uphold the award of Kshs. 15,000/= for loss of income.

31. The trial court awarded **Kshs. 550/=** for the copy of records based on a receipt produced in evidence. I find that there is no basis to interfere with the award.

32. In ***Butt vs. Khan (Civil Appeal No. 40 of 1977)***, the Court of Appeal held that an appellate court should not disturb an award of damages unless it is so inordinately

high or low as to represent an entirely erroneous estimate or unless the court proceeded on wrong principles.

33. Similarly, in ***Catholic Diocese of Kisumu vs. Sophia Achieng Tete (Civil Appeal No. 284 of 2001)***, the Court of Appeal reiterated that the assessment of damages is primarily a matter within the discretion of the trial court, and an appellate court should not substitute its figure merely because it would have awarded a different amount.

34. Applying the above principles to the present appeal, I find that the impugned award was based on evidence and was neither excessive nor unsupported.

35. Accordingly, I find no justification for interfering with the award of Kshs. 174,550/=.

Disposition

36. For the foregoing reasons, the court makes the following orders:

- a) The appeal is dismissed in its entirety.***
- b) The Judgment of the Chief Magistrate's Court at Naivasha in CMCC No. 313 of 2022 delivered on 26th July 2024 is hereby upheld.***
- c) The Respondent shall have costs of the appeal and interest at court rates 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 Kimani

FOR RESPONDENT Kanyi Kiruchi

COURT ASSISTANT Karani

30 days stay of execution is granted

File closed

ORIGINAL