



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. E042 OF 2025

GEONET TECHNOLOGIES LIMITED.....APPELLANT

-VERSUS-

ANDREW MWANGI KIHIA..... RESPONDENT

(Being an Appeal against the Judgement/Decree of the Chief Magistrate's Court at Nakuru Law Courts in CMCC Number E754 of 2022 delivered on 23rd January 2025 in Nakuru by Honourable Elizabeth Juma (CM))

JUDGMENT

Background

1. On or about 1st September 2019, the Respondent was a lawful pedestrian along Nakuru Ravine Road near Midas Petrol Station within Nakuru County when motor vehicle registration number KCK 935T, being driven by the Appellant's authorized driver, servant and/or agent, was so negligently driven that it rammed into the Respondent.
2. As a result of the said accident, the Respondent sustained serious bodily injuries and subsequently instituted a claim before the trial Court and after which trial the Respondent was awarded special damages in the sum of four million two hundred and thirty-one thousand three hundred and five shillings (Kshs. 4,231,305.00) as specifically pleaded in his plaint.

3. The Appellant aggrieved with the award now contends on Appeal that the Respondent is only entitled to ninety-eight thousand one hundred and seventy-eight shillings and eighty-two cents (Kshs. 98,178.82), being the amount reflected in receipts issued directly in the Respondent's name.

Appellants Case

4. The Appellant contends that Special Damages as particularized by the Respondent in his Amended Plaintiff.
5. In his filed written submissions dated 23rd March 2026, the Appellant submits that, in the Respondents Amended Plaintiff and specifically page 141 of the Record of Appeal, under particulars of damage, the Respondent herein claimed Kenya Shillings four Million Two Hundred and Thirty-One Thousand Three Hundred and Five only (Res. 4,231,305/-).
6. That during hearing of the main suit, the typed proceedings and specifically page 260 of the Record of Appeal capture that PW2 who is the father of the Respondent admits that, the hospital bills were catered for by a scheme he is a beneficiary to that is ran by Egerton University.
7. That, subject to the actual receipts produced as evidence of payment by the Respondent or directly by the father (PW2), the Appellant vide its Submissions proposed an award of Kenya Shillings Ninety-Eight Thousand one hundred and seventy-eight and eighty-two cents (Kes. 98,178.82/-).

8. That, it is indisputable that, the receipts registered in the name of the Respondent only add-up to Kenya Shillings Ninety-Eight Thousand One Hundred and Seventy-Eight and Eighty-Two Cents (Kes. 28,178.82/-).
9. That pursuant to set of facts PW2 who is the Respondent's father vide his witness statement page 12 of the Record of Appeal highlights the following costs as having been paid:
 - i. Kes. 2,981,347/-paid to Nakuru War Memorial Hospital
 - ii. Kes. 278,125/-paid to Valley Hospital Limited
 - iii. Kes. 763,021/-paid to Valley Hospital Limited
 - iv. Kes. 98,681/-paid for medication and therapy
10. The Court is invited to note that, during cross-examination of PW2 as captured by the typed proceedings and specifically page 261 of the Record of Appeal, he testified that, items number i, ii & iii (as particularized) were paid for by Egerton University which is a scheme that he is a member of and that, this being the 1st Appeal, this Court is vested with powers to assess evidence-afresh and come up with its own finding as was held in the case of **SELLE & ANOTHER V. ASSOCIATED MOTOR BOAT COMPANY LTD & OTHERS (1968) EA 123.**

“That this Court must reconsider the evidence, evaluate itself and draw its own conclusions though it shall always bear in mind that it had neither seen or heard the witness and should made due allowance in that respect...”

“The appellate Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to the Court

of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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. In particular, the Court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

11. The Appellant submits that, the Court ought to exercise its discretion and review the set of facts between parties afresh and based on its own assessment, come up with its own finding.
12. That when it comes to special damages, the law is very clear, this is well captured in **National Social Security Fund Board of Trustees Vs Sifa International Limited (2016) EKLR, Macharia & Waiguru Vs Muranga Municipal Council & Another (2014) eKLR and Provincial Insurance Co. EA Ltd Vs Mordekai Mwangi Nandwa, KSM CACA 179 of 1995 (UR)**. Where Court held that:

".... It is now well settled that special damages need to be specifically pleaded before they can be

awarded. Accordingly, none can be awarded for failure to plead”.

13. That, it is equally clear that no general damages may be awarded for breach of contract.
14. That Appellant relies on the decision of the Court of Appeal in **HAHN V. SINGH, CIVIL APPEAL NO. 42 OF 1983 [1985] KLR 716**, (Unreported) at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved....for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The decree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves”.

15. That this Court is tasked with the duty of ascertaining that the Plaintiff suffered loss, and this includes providing evidence that the medical bills were paid by him or as is in the current case, his father who was PW2.
16. The Appellant submits that, the only direct loss suffered by the Plaintiff and by Extension his father, is that of Kes. 98,178.82 and this is evidenced by receipts. The balance of the medical expenses were paid by third-parties through a medical scheme PW2 is a member.
17. That, an order for recovery of such sums not expended by the Plaintiff or as it is in this case, the father, would amount to double

compensation. That the logic of 'PLEADED AND PROVED' when it comes to a claim of special damages is well explicated by Justice O. K. Mutungi in **Zacharia Waweru Thumbi V Samuel Njoroge Thuku [2006] KEHC 2976 (KLR) [2006] KEHC 2976 (KLR)** where he connotes that: -

“If I were to explain, or define, special damages to a layman, I would say “they are a reimbursement to the Plaintiff/Victim of the tort, for what he has actually spent as a consequence of the tortuous act (s) complained of”. This point cannot be overstressed: that the claimant of special damages must not only plead the claim, but also go further and strictly prove, usually by documentary evidence, that he has actually spent the sum claimed. In medical claims the claimant must produce receipts to support his claim for special damages. In my view, given the requirement of strict proof, I would further hold that an invoice would not suffice. Only a receipt, for the payment, will meet the test.”

18. Consequent to the reasoning above the Respondent did not meet any of the ingredients and thus should not be a beneficiary of the broth. This is a Court of procedure and law and when both are not in favor of the Respondent then this Honorable Court should constrict the parties herein to strict application of the law.
19. That, further to the assertions above, the Appellant reiterates the Respondent himself did not cater to the payments as particularized below: -

- i. Kes. 2,981,347/-paid to Nakuru War Memorial Hospital
- ii. Kes. 278,125/-paid to Valley Hospital Limited
- iii. Kes. 763,021/-paid to Valley Hospital Limited

20. Thus, he cannot benefit from the said reimbursement and, in strict application of the law, the father should have been the one specifically claiming the said sums in his own name. This is because he has demonstrated that the monies were paid by a scheme that he has been contributing to. This was the holding in the Court of Appeal by Justices K. Musinga, A. K. Murgor and F. Sichale in the case on **Forwarding Company Ltd & Another V Kisilu; Gladwell (Third Party) 2022] KECA 96 (KLR) [2022] KECA 96 (KLR)** when they held that: -

“In this case, the respondent's father (PW2) testified that that his insurer paid a sum of Kshs.5,318,755.00 towards the doctor's fees and hospital bill for the respondent. PW2 testified that he was claiming this money as the respondent's father and that he was entitled to the same although the money was paid was by his insurance company. The trial Court after in its judgment stated as follows:”

“That in this case the plaintiff did not pay any premiums for the medical insurance, it was his father, PW2 who claimed that his insurance company paid some medical expenses and therefore PW2 or Catherine Kisenga under whose name some bills were issued should have been enjoined to this suit to claim for such reimbursement of special

damages incurred on their dependant/son-the plaintiff herein and settled by the insurance company."

"We agree with the finding of the trial Court on this issue. It is PW2 who paid premiums to the insurance company and not the respondent and therefore it is PW2 who could have claimed for reimbursement of the same. PW2 was not a party to the suit but a witness of the respondent. Therefore, there could not have been any basis for the trial Court to award the entire sum of Kshs.5,318,755.00 paid by PW2's insurer".

21. The Appellant therefore submits in support of the assertions of the learned judges that the Respondent did not prove that he suffered loss by payments he made himself and as such needs reimbursement under the head of Special Damages.

22. The Appellant thus invites the Court to exercise its Appellate jurisdiction and allow the Appeal setting aside the judgment decree on the award of special damages and grant costs of the Appeal to the Appellants.

Respondents Case

23. The Respondent in its written submissions dated 8th April 2026 argues that the Judgement/Decree of the Chief Magistrate's Court at Nakuru Law Courts in CMCC Number E754 of 2022 delivered on 23rd January 2025 in Nakuru by Hon. Elizabeth Juma (CM) is sound and that the Court should dismiss the Appeal.

24. To fortify his case the Respondent has refined four (4) issues for the Court's consideration as follows;

- i. **Whether special damages were specifically pleaded and strictly proved?**
- ii. **Whether payment by a third-party disentitles the respondent from recovering special damages?**
- iii. **Whether the award amounted to double compensation?**
- iv. **Whether the learned trial magistrate erred in awarding special damages?**

25. On the 1st issues as to whether special damages were specifically pleaded and strictly proved? The Respondent submits that, it is trite law that special damages must be specifically pleaded and strictly proved. That this principle was firmly settled in **HAHN V SINGH [1985] KLR 716**, where the Court of Appeal held that;

"Special damages must not only be specifically pleaded, but also strictly proved."

26. That, applying the foregoing principles to the present case, it is not in dispute that the Respondent specifically pleaded special damages amounting to four million two hundred and thirty-one thousand three hundred and five shillings (Kshs 4,231,305.00) in the Amended Plaintiff.

27. Further, the he produced receipts and hospital bills in evidence demonstrating that the said expenses were incurred as a direct consequence of the injuries sustained.

28. The Respondent maintains that the Appellant does not dispute the existence of the expenses or the authenticity of the documents, but

instead seeks to challenge the award on the basis of who settled the bills which argument according to him does not go to prove the special damages but rather to the issue of entitlement.

29. On the 2nd issue as to whether payment by a third party disentitles the Respondent from recovering special damages?

30. The Respondent submits that the Appellants assertion is contrary to established law. In **"General Principles of Law" 6th edition (E.R. Hardy Ivamy)**, the author states as follows at page 493.

"In the case of all policies of insurance which are contracts of indemnity the insurers, on payment of the loss, by virtue of the doctrine of 'subrogation' are entitled not to be placed in the position of the assured, and succeed to all his rights and remedies against third parties in respect of the subject-matter of insurance. Thus, subrogation applies to marine insurance policies and to many non-marine policies, e.g. a fire, motor, jewelry, contingency insurance providing cover against non-receipt of money within a given time, fidelity, burglary, solvency, insurance of securities, and an export credits guarantee policy. But it does not apply to life insurance nor to personal accident insurance, for these are not contracts of indemnity."

31. Furthermore, in **LELI CHAKA NDORO V MAREE AHMED & S. M. LARDHIR (2017 KEHC 7713 (KLR))**, the Court held

"Personal accident claims are not affected by the doctrine of subrogation. The doctrine of subrogation applies to

indemnity insurance claims. In cases of indemnity, the insured loss is premeditated and can be computed upto the last cent. In personal accident claims, one cannot compute the extent of the suffered injuries. A lost limb cannot be replaced by an artificial one irrespective of the latter's costs. If an accident victim can recover payment out of a personal accident policy, that is an added advantage which should not benefit the tortfeasor."

32. That, the Court went further to emphasize that:

"The respondents (in this instance, the Appellant) are not party to that arrangement between the appellant and his insurer (namely, the Respondent and the Insurer)... These arrangements cannot benefit the respondents (in this case the Appellant)."

33. That similarly, in **ONDIEK & ANOTHER V SIMBA [2023] KEHC 3073 (KLR)**, the High Court upheld an award of special damages notwithstanding that the hospital bills had been paid by an insurer by holding:

"The award of Kshs. 711,597 is correct since it is not in dispute that the doctrine of subrogation does not affect personal injury claims."

34. Furthermore, the Court in **Ondiek & Another V Simba [2023]** further relied on the decision in **REINAN V PACIFIC MOTOR TRUCKING COMPANY**, where it was stated:

"A plaintiff who receives life or medical insurance benefits from a third-party provider generally will have paid premiums for those benefits... the collateral benefits paid by a third party may only reimburse the plaintiff for prior labour or investment."

35. The Respondent submits that, the principle emerging from these authorities is clear, namely:

- i. That personal injury claims are not contracts of indemnity;
- ii. That the doctrine of subrogation does not apply;
- iii. That benefits received from third parties do not reduce the liability of the tortfeasor; and
- iv. That denying recovery would unjustly enrich the wrongdoer.

36. That, in the present case, the Respondent (through PW2) benefitted from a medical scheme which was funded through contributions and/or employment benefits. This is precisely the type of collateral benefit contemplated in the above authorities.

37. That to allow the Appellant's argument, would be to permit the tortfeasor to benefit from arrangements to which it is not a party, which the Courts have consistently rejected.

38. With regards to the 3rd issue as to whether the award amounted to double compensation? whilst relying on the case **of AKINYI V OOKO & ANOTHER [2023] KEHC 18754 (KLR)**, where the Court held:

"The special damages awarded to the Respondents would not amount to double payment. The reason is that the Appellant is not a party to any arrangement with the Respondents' insurer regarding the bills paid. The Appellant was liable to satisfy the damages suffered by the Respondents and this does not amount to double compensation..."

39. That the Court further affirmed the collateral source rule, stating:

"The salutary policy underlying the collateral source rule is simply that if an injured party received some compensation from a source wholly independent of the tortfeasor, such compensation should not be deducted..."

"The common-law collateral source rule does not concern itself with whether a plaintiff actually obtains a double recovery."

40. That, the legal position is clear what the Appellant describes as double compensation is, in law, simply a permissible collateral benefit, the law does not concern itself with the fact that a Plaintiff may receive benefits from independent sources, and in all circumstances, the tortfeasor must bear full and undiminished responsibility for the loss caused.

41. Finally, with regards to whether the learned trial magistrate erred in awarding special damages? The Respondent submits that; it is settled law that an Appellate Court will only interfere with an award of damages where the Trial Court applied wrong principles or misapprehended the

evidence. In **Catholic Diocese of Kisumu v Sophia Achieng Tete**, the Court held:

"The Appellate Court can justifiably interfere... only if it is satisfied that the trial Court applied the wrong principles... or misapprehended the evidence..."

42. That in the in the present case, the Learned Trial Magistrate:

- i. Considered the pleadings;
- ii. Evaluated the documentary evidence,
- iii. Applied the correct legal principles on special damages;
- iv. Arrived at an award supported by the evidence on record.

43. That the Appellant has not demonstrated any misdirection in law or fact that would warrant interference by this Honourable Court. That in view of the foregoing the Respondent urges that the Appeal be dismissed with costs and the Lower Court judgment be upheld.

Analysis and Determination

44. Being a first Appeal this Court lays emphasis on the principles as set out in **Selle and Another vs Associated Motor Boat Company Ltd & others [1968] 1EA 123**:

"...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. In particular, this Court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take into account of

particular circumstances or probabilities materially to estimate the evidence.”

45. I have carefully reviewed the Appellant’s memorandum of appeal filed herein, the pleadings and proceedings from the Lower Court as well as the submissions by the parties in support of their respective positions.

46. The Sole issue herein is whether the Special Damages were proven as particularized.

47. The Appellate Court has to discern pleaded damages and proceed to find their proof. It is not based on estimates. The Court of Appeal in **Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd [1992] KLR 177** stated that:

“The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

48. Special damages are thus very specific and constitute liquidated claim which must be pleaded and proved. This Court’s task thus entails

whether the Trial Court allowed unproven special damages that were pleaded. In **Joseph Kipkorir Rono vs. Kenya Breweries Limited & Another Kericho HCCA No. 45 of 2003**, Kimaru, J held that:

“In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred...Special damages and general damages are used in corresponding senses. Thus in personal injury claims, ‘special damages’ refers to past expenses and lost earnings, whilst ‘general damages’ will include anticipated loss as well as damages for pain and suffering and loss of amenities...Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses. Therefore in the instant case the loss of income as a direct consequence of this fraud would be both a general damage as well as a special damage. General damages particularly extent thereof would be unknown at the time of the trial and must await the conclusion of the case so that they may be assessed. Special damages on the other hand consist of those losses that could be calculated at the time of the trial. Special

damages must be pleaded, but so must future pecuniary loss if it may lead to surprise. Non-pecuniary damage must not be quantified in a pleading...There ought to be a distinction between past pecuniary losses or expenses already incurred and could easily be calculated by say reference to receipts obtained and anticipated future pecuniary loss or expenses which is continuing and which though one may know the multiplicand you will not normally know how long the loss will take. Such an anticipated loss is general damage, which must of necessity await the completion of the suit to be assessed by the Court. Special damages on the other hand is calculable at the date of the trial out of which a round figure will be obtained. General damages are such as the law will presume to be the direct natural or probable consequences of the action complained of. Special damages on the other hand, are such as the law will infer, from the nature of the act. They do not follow in the ordinary course but are exceptional in their character and, therefore, they must be claimed specifically and proved strictly...Specific loss of profits consequential upon the loss of use of an article for a specific period to the date of the plaint is special damage, which must be pleaded. However, in certain circumstances loss of profits could be included within a claim for general damages...General damages consist of the nature of prospective loss of income while special damages consist of out of pocket

expenses and loss of earnings or income incurred down to the date of trial and is generally capable of substantially exact calculation. Where damages has become crystallised and concrete since the wrong the defendant could be surprised at the trial by the detail of its amount.”

49. 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.”

50. Furthermore, 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.”

51. In this instance it was the Respondent evidence at page 260 of the Record of Appeal, that PW2 testified that part of the hospital bills was settled through a medical scheme which he is a member. The Respondent was not a member, and PW2 was not claiming reimbursement thereof and the medical insurance scheme was not claiming reimbursement and any claim on an expense by a 3rd party would be so distant and would constitute an unjust enrichment and cannot thus be termed as reimbursement.

52. I do concur with the Appellants that the Trial Court misdirected herself in finding the following special damages as proven;

- i. Kes. 2,981,347/-paid to Nakuru War Memorial Hospital
- ii. Kes. 278,125/-paid to Valley Hospital Limited
- iii. Kes. 763,021/-paid to Valley Hospital Limited

Total 4,022,492

53. I accordingly find merit in this Appeal and the same is allowed.

54. This Appeal is thus allowed. the Judgement/Decree of the Chief Magistrate's Court at Nakuru Law Courts in CMCC Number E754 of 2022 delivered on 23rd January 2025 in Nakuru by Hon. Elizabeth Juma (CM), is hereby set-aside, and substituted with as follows;

- i. Liability 30:70
- ii. General Damages assessed remains unaffected at Kshs.6,000,000/-.
- iii. Special Damages of Kshs 98,681/-

TOTAL Kshs 6,098,681/-

Less 30% 1,828,604/-

Judgment Sum - Kshs 4,269,076/

55. The award of General damages as awarded will have interest at Court rates, from the date of judgment in the lower Court until payment in full.

56. The Respondent to bear the costs of this Appeal.

It is so ordered.

**Dated, signed and delivered virtually at Busia
this 12th day of May 2026.**

**Mohochi S.M.
Presiding Judge**