



REPUBLIC OF KENYA



**Waruingi v Nyambura & another (Civil Appeal 904 of 2022)
[2025] KEHC 866 (KLR) (Civ) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 904 OF 2022

REA OUGO, J

JANUARY 31, 2025

BETWEEN

JOSEPH KINYANJUI WARUINGI APPELLANT

AND

SAMUEL MBOGO NYAMBURA 1ST RESPONDENT

SAMUEL GAKUNGA 2ND RESPONDENT

*(An appeal from the judgment of Hon. J.W Munene, Adjudicator,
delivered in Nairobi on 19th October 2022 in Claim No. E 1972 of 2022)*

JUDGMENT

1. The appellant was the claimant before the subordinate court. He averred that he was the registered owner of Matatu Registration Number KBB 879L while the 1st respondent was the registered owner of Matatu Registration Number KCP 950D. It was alleged that on 27th April 2022, the appellant's driver was lawfully driving his matatu when the 2nd respondent drove the 1st respondent's vehicle so negligently causing it to ram on the rear side of the appellant's matatu.
2. Interlocutory judgment was entered against the respondent and the matter proceeded to formal proof. The trial court in its decision found the respondents 100% liable. Although the appellant sought special damages of Kshs 457,778/-, the court found that he only proved special damages of Kshs 127,158/- via receipts. The trial court made an award of Kshs 126,830/-.
3. The appellant dissatisfied with the finding of the trial court has preferred this appeal on the following grounds:



1. The Learned Adjudicator misapplied the law on standard of proof in material damage claim thereby reaching the finding that the appellant did not adduce sufficient evidence of repair costs;
 2. The Learned Adjudicator completely ignored the Claimant's evidence of repair costs; and
 3. The Learned Adjudicator completely ignored the Claimant's submissions on the nature of material damage claims, leading to the erroneous conclusion that the Claimant did not prove his claim for repair costs.
4. The appellant filed submissions dated 13th November 2023 in support of the appeal. It was argued that the import of Rule 5 (1) of the Small Claims Court Rules 2019 is that to succeed in a claim before the Small Claims Court relating to liability in tort in respect of loss or damage caused to any property, a person claiming compensation for Motor Vehicle which has been damaged in a road traffic accident or other accident must submit an itemized estimate of the costs of repair prepared by a licensed mechanic into evidence. Alternatively, the itemized cost of repairs may be compiled by a certified Motor Vehicle Assessor into evidence.
5. It was submitted that, unlike a claim under the Insurance Principle of Subrogation, the appellant was only required to show the extent of the damage which he had suffered and what it would cost to restore the damage to as near as possible the condition it was in before the damage complained of. The appellant was not required to show he incurred the cost of repairing the vehicle. He extensively cited the Court of Appeal in Nyeri CACA No 154 of 2005; Nkuene Dairy Farmers Co-op Society & Another v Ngacha Ndeiya where the court observed as follows:

“Mr. Kaburu for the appellant submitted before us that special damages once pleaded must be strictly proved. It was his view that no evidence of repairs carried out was adduced. In our view special damages in a material damage claim need not be shown to have actually been incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item to as near as possible the condition it was in before the damage complained of. An accident assessor gave details of the parts of the respondent's vehicle which were damaged. Against each item he assigned a value. We think the particulars of damage and the value of the repairs were given with some degree of certainty. In *Ratcliffe v. Evans* [1892]2QB 524 Bowen L.J. said:

“The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much 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 pendency.”

Motor vehicle parts are sold in shops. An assessor, we think would be in a position to know their cost. The prices may vary from one shop to another but the prices are nonetheless ascertainable even without purchasing the item and fixing it on the damaged vehicle. Motor vehicle parts are common items and any price which the assessor might have given could be counter checked and either accepted or disproved. The appellants having not questioned those prices must be taken to have accepted the report as representing the correct market prices of the various parts which were shown on the Assessor's report. The experience of



the Assessor was not challenged and we think Onyancha J. was right in describing him as an expert, and his report as being opinion evidence. The court had the right to accept or reject his opinion if the circumstances so dictated. The respondent, to our mind, particularized his claim in the plaint and called acceptable evidence to prove the same and we have no basis for faulting both the trial and first appellate courts in the concurrent decision they came to. Indeed the decision of David Bagine v. Martin Bundi Civil Appeal No. 283 of 1996 which Mr. Kaburu cited to us, does state that a motor vehicle Assessor's report would provide acceptable evidence to prove the value of material damage to a motor vehicle. This Court differently constituted there said, as is material, as follows:

“He said he had not at all repaired the vehicle as he could not afford it. This seems far-fetched. If he was earning as he said shs.5000/= to shs.9000/= a day he could easily have repaired the vehicle and put it back on the road. The best evidence in this respect could have been supplied by an automobile assessor.”

In the result, we agree with Mr. Charles Kariuki that the Assessor's report was sufficient proof and the failure to produce receipts for any repairs done was not fatal to the respondent's claim. We dismiss this appeal with costs to the respondent.”

6. The appellant urged the court to find that the lower court's finding that the award of repair costs could only be made in respect of the amounts which the appellant proved to have spent on his motor vehicle as a result of the accident is incompatible with the clear provisions of rule 5(1) of the Small Claims Court Rules 2019.

Analysis and Determination

7. An appeal from the small claims court is on issues of law only. This is pursuant to section 38 of the Small Claims Court Act. It provides:

“ 38.

- (1) A person aggrieved by the decision or an order Appeals. of the Court may appeal against that decision or order to the High Court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final.”

8. The only issue before the court is whether the appellant proved the cost of the repair of the motor vehicle. The trial court in dismissing repair costs found that the appellant failed to prove the repair costs by furnishing the court with receipts.
9. It is now settled that the assessor's report is sufficient proof and the failure to provide receipts for any repairs done is not fatal to the claim. (See the Court of Appeal's decision in David Bagine v Martin Bundi (1996) eKLR). I am constrained to agree with the submissions of the appellant that he provided sufficient evidence for the material claim and the decision in Nkuene Dairy Farmer Co-operative Society Ltd -vs- Ngacha Ndeiya(2010) eKLR where the court held;

“special damages in a material damage claim need not be shown to have actually been incurred, that the claimant is only required to show the extent of damage and what would



cost to restore the damaged item as near as possible to the condition it was before the accident.”

10. According to the report by Quantum Motor Assessors and Valuers the repair costs were assessed at Kshs 330,948/-. The amount was pleaded and proved.
11. Therefore, I allow the appeal, set aside the lower court Judgment and substitute it with a Judgment for Kshs 457,778/= plus interest at court rates from the date of filing suit. The Appellant is awarded the costs of the appeal.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JANUARY 2025

R. OUGO

JUDGE

In the presence of:

Mr. Njoroge -For the Appellant

Respondent - Absent

Wilkister C/A

