



REPUBLIC OF KENYA



**KENYA LAW**  
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**Namukika Sacco Society Limited v Manyeki (Civil Appeal E044 of 2021)  
[2025] KEHC 2656 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E044 OF 2021  
CW GITHUA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**NAMUKIKA SACCO SOCIETY LIMITED ..... APPELLANT**

**AND**

**FRANCIS BENSON MANYEKI ..... RESPONDENT**

*(Being an appeal from the judgement of Hon. V Ochanda (SRM),  
dated the 25th of August, 2021 in Murang'a CMCC no. 206 of 2018)*

**JUDGMENT**

1. This appeal arises from the judgement of the trial court dated 25<sup>th</sup> August 2021 in which the respondent was awarded Kshs. 1,008,000 as damages for loss of income. The award was made in a suit instituted by the respondent against the appellant in which the respondent sought the following orders;
  - i. An order compelling the defendant to remove Motor Vehicle registration no. KCC 876E from its system, clear and release the same unconditionally to the plaintiff to enable him register the motor vehicle with a Sacco of his choice.
  - ii. That the Plaintiff be awarded against the defendant the loss of earnings for Kenya shillings eleven thousand two hundred per day from 1<sup>st</sup> February 2018, until the date of judgement or the date of release and clearance of the motor vehicle registration number KCC 876E by the defendant;
  - iii. Interest on (b) above at court rates from the date of filing this suit until payment in full; and
  - iv. Costs of this suit.



2. Aggrieved by the trial courts decision, the appellant proffered an appeal to this court vide a memorandum of appeal dated 26<sup>th</sup> August 2021. In its memorandum of appeal, the appellant relied on nine (9) grounds and urged this court to set aside the impugned judgement. The nine grounds of appeal can be summarized as follows:
  - i. That the learned trial magistrate erred in law and fact by treating the respondents claim for loss of earnings/user as a general damage as opposed to a special damage claim.
  - ii. That the learned trial magistrate erred in law and in fact by disregarding the appellant's evidence and wrongly admitting the respondent's evidence of loss of earnings in the form of statement of accounts of a vehicle that was a Sacco van while the subject vehicle was a member's van;
  - iii. That the learned trial magistrate erred in law and in fact by finding that the respondent was entitled to loss of earnings in the sum of Kshs. 400,000 per month for six months without proof to that effect.
  - iv. That the learned trial magistrate erred in law and in fact by failing to appreciate that the respondent had not proved his claim to the standard required by the law in special damage claims.
3. The appeal was canvassed by way of written submissions which both parties duly filed and which I have carefully considered. I have also duly considered the evidence presented before the trial court as I am bound to do by my duty as the first appellate court. The scope of the duty of the first appellate court was well captured by the Court of Appeal in the celebrated case of *Selle V Associated Motor Boat Co.* [1968] EA 123 in which the court stated as follows;

“...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....”
4. Taking into account the grounds of appeal and having considered the parties rival submissions, I find that the main issue arising for my determination in this appeal is whether the learned trial magistrate erred when making her decision on quantum of damages awarded to the respondent.
5. From the evidence on record and the parties' submissions, I find that it is not disputed that the respondent purchased motor vehicle registration No. KCC 876 E in a public auction with the intention of using it for commercial purposes of offering public transport services.

It is also not disputed that at the time of the sale, the vehicle was registered with the appellant under the regulations made by the National Transport and Safety Authority. It is also not contested that in order for the respondent to be issued with a public transport licence by the National Transport and Safety Authority to enable him trade with the motor vehicle, he had to register it with a Sacco of his choice but he could not do so unless and until the appellant released the vehicle and cleared it from its system; that despite several demands starting with the letter dated 1<sup>st</sup> February 2018, the appellant refused to remove the vehicle from its Sacco and system despite being notified that the respondent had purchased the vehicle from its previous owner who was its member until it was compelled to do so by a court order dated 29<sup>th</sup> April 2019.



6. It is clear from the evidence presented by the appellant during the trial through the testimony of DW1, its treasurer, that the appellant did not justify its refusal to remove the vehicle from its system to enable the respondent make necessary arrangements to put the vehicle into commercial use which is the purpose for which he had acquired it.
7. DW1 contradicted himself by claiming that one of the reasons for the aforesaid refusal was that the vehicle's previous owner had outstanding loans with the appellant but he also confirmed that the vehicle had not been used by its previous owner as collateral for his loans with the appellant. The witness did not also avail any evidence, for instance, a policy document or its Bylaws to prove its claim that it could only remove a vehicle from its system if it was authorised by its member.
8. The respondent on his part availed evidence which was not controverted by the appellant that but for the appellant's refusal to release the vehicle, he would have registered it under the MTN Sacco, the Sacco of his choice which he eventually did after the appellant was compelled to remove it from its system; that vehicles under the MTN Sacco which ply between Murang'a and Nairobi earned a gross income of Kshs 11,200 per day. To prove his claim, the respondent produced through the evidence of PW2 a statement of accounts duly stamped by MTN Sacco proving earnings per day of motor vehicle registration No. KCD 510 T which was part of the fleet operated by the Sacco.
9. In his evidence, the respondent testified that though motor vehicle registration No. KCD 510 T was owned by the MTN Sacco, the statement of accounts produced by PW2 as PExhibit 6 was representative of earnings made by each vehicle registered under the Sacco whether member or Sacco owned since all vehicles queued for passengers the same way and none was given any preferential treatment.
10. Given the foregoing evidence and having carefully read the judgement of the learned trial magistrate, I find no reason to fault the learned trial magistrate's finding that the respondent had proved on a balance of probabilities that the appellant had denied the respondent commercial use of his vehicle in the matatu business from 1<sup>st</sup> February 2018 to sometime in March 2019 when the appellant released the vehicle from its system following a court order.
11. It is apparent that the learned trial magistrate got the time of release of the motor vehicle wrong given the evidence on record that the court order on the basis of which the appellant released the vehicle from its system was dated 29<sup>th</sup> April 2019 not march 2019 but this is neither here nor there. The error does not affect the substantive finding by the trial court that having denied the respondent commercial use of his vehicle by refusing to remove it from its system despite several requests, the appellant was liable to compensate him for the loss incurred thereby.
12. Contrary to the claim made by the appellant in its grounds of appeal, it is evident from the impugned judgement that the learned trial magistrate fully appreciated that the respondents claim being that of loss of earnings was a special damage claim which ought to be specifically pleaded and strictly proved. This is demonstrated by her reliance on the case of Shelly Beach Hotel & Another V Kenya Revenue Authority [2019] eKLR which espoused the above principle and further held that to prove loss of profits or user, it was not enough to prove gross income as the same was subject to overhead costs including taxation.
13. In this case, the respondent had pleaded loss of earnings or income at the rate of 11,200 per day from 1<sup>st</sup> February 2018 until date of Judgement or date of release of the motor vehicle by the appellant.

As stated earlier, the respondent proved through both oral and documentary evidence that had the appellant released the vehicle as demanded in letters dated 1<sup>st</sup> February 2018 and 16<sup>th</sup> April 2018, the



vehicle would have earned him Kshs 11,200 per day like all other vehicles registered under the MTN Sacco.

14. After my independent analysis of the evidence on record as shown above, I am in agreement with the learned trial magistrate's finding since the respondent had specifically pleaded and proved that due to the appellant's unlawful action, he was deprived of a gross income of Kshs 11,200 per day from 1<sup>st</sup> February 2018 to the date the appellant released the vehicle from its Sacco. I am satisfied that the learned trial magistrate properly evaluated the evidence adduced by both parties and came to the correct conclusion that the respondent had proved his claim against the appellant to the standard required by the law.
15. The learned trial magistrate in her discretion awarded the respondent Kshs 1,008,000, an equivalent of Kshs 5,600 per day for six months after taking into account that the proved gross income was subject to operational costs like fuel, insurance, payment, staff costs, wear and tear as well as the fact that the respondent ought to have mitigated his losses.
16. In my view, there is nothing on record to show that in making the impugned award, the learned trial magistrate wrongly exercised her discretion or applied wrong legal principles. I cannot also say that the learned trial magistrate misapplied the evidence placed before her. I therefore find no legal basis to interfere with the impugned award and the same is consequently upheld.
17. For the foregoing reasons, I have come to the conclusion that this appeal lacks merit and I accordingly dismiss it with costs to the respondent.
18. It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 27<sup>th</sup> day of February 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the Presence of:

Mr. Mbugua for the appellant

Mr. Kariuki for the respondent

Ms. Susan Waiganjo, Court Assistant

