



REPUBLIC OF KENYA



**KENYA LAW**  
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**James v Joshua (Civil Appeal E028 of 2024)  
[2025] KEHC 2625 (KLR) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2625 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E028 OF 2024  
AN ONGERI, J  
FEBRUARY 25, 2025**

**BETWEEN**

**JOSEPHAT MSHINGATI JAMES ..... APPELLANT**

**AND**

**JULIUS MWANGANGI JOSHUA ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. S. M. Musili(RM/Adjudicator) in the Taveta Small Claims Court Case No. E009 of 2023 delivered on 22nd March, 2024)*

**JUDGMENT**

1. The Appellant filed a claim at the Taveta Small Claims Court seeking compensation for damages to his property which occurred on 30<sup>th</sup> October 2023 in the sum of Kshs. 274,165/= allegedly destroyed by the Respondent.
2. The Appellant's claim was that the Respondent destroyed his banana plants worth Kshs. 274,165.50 on 30<sup>th</sup> October 2023.
3. The Appellant produced a plant damage assessment report from the Department of Agriculture Taveta Sub-County dated 7<sup>th</sup> November 2023.
4. The Respondent denied the Appellant's claim.
5. The trial court entered judgment in favour of the Appellant in the sum of Kshs. 137,082/= plus costs and interest.
6. The Appellant has appealed against the award on the following grounds:-
  - i. That the Learned Magistrate erred in law and in fact in failing to exercise his discretion in favour of the Appellant.



- ii. That the Learned Magistrate erred in law and in facts by disregarding the Appellants oral evidence and submissions.
  - iii. That the Learned Magistrate erred in law and in fact by failing to take into consideration that the Assessment Report was conducted based on an initial report made at Taveta Police Station.
  - iv. That the Learned Magistrate erred in law in deciding that the Appellant did not prove his claim to the required standard despite the overwhelming evidence tabled in court by the Appellant.
  - v. That the Learned Magistrate erred in law and in fact by wearing a hat of the Respondent in the matter thus arriving at a totally wrong decision.
  - vi. That the Honorable Magistrate erred in law and in facts by awarding the Appellant half the amount claimed without any legal backing and justification.
  - vii. That the Learned Magistrate erred in law and in fact by not giving parties chance to file written submissions insinuating that the Defendant is a lay person.
  - viii. That the Honorable learned Magistrate erred in law and facts and misdirected himself by acting on wrong and unsound principles and provisions of the Law.
7. The Respondent did not file any submissions. The Appellant submitted that he testified before the trial court and further called as a witness the Agricultural Officer responsible for conducting the assessment.
  8. That a comprehensive report was subsequently prepared, and the trial court was furnished with said report, which served as evidence in support of the Appellant's claim. It is further submitted that the evidence presented before the trial court remained unchallenged upon cross-examination.
  9. The appellant further argued that the claim before the trial court was for material damage to property. There was an assessment report tendered by an expert and the respondent never brought any evidence in the contrary.
  10. That the trial court however slashed what was claimed by half without any basis. The trial court acted on the wrong principles by relying on the appellant's failure to call other parties like the chief or elder to participate in the assessment process among other reasons. The evidence presented was overwhelming in support of the claim.
  11. The jurisdiction of the small claims court is set out in the *Small Claims Court Act*. Ipso facto, there is only one chance of Appeal to this court. It is an Appeal on points of law. In view of the provisions of section 38 of the *Small Claims Court Act*, which posits as doth: -
 

“

“ 38. Appeals (1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.  
An appeal from any decision or order referred to in subsection (1) shall be final.”
  12. In the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, the court of Appeal addressed the duty of a court considering points of law as doth: -
 

“ This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have



considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

13. This being an appeal from the Small Claims Court, the mandate of this court is to determine the same on matters of law only.
14. The issues for determination in this appeal are as follows:-
  - i. Whether the Trial court had a legal basis for slashing the special damages.
  - ii. Whether the appeal should be allowed.
15. On the issue as to whether the Trial court had a legal basis for reducing the special damages, I find that the Appellant proved on a balance of probabilities that the Respondent destroyed his banana plants.
16. . There was an assessment report tendered by an expert and the respondent never brought any evidence in the contrary.
17. The appellant’s evidence presented before the trial court was not controverted.
18. The trial court had no basis for slashing what was claimed by half. I agree with appellant that the trial court acted on the wrong principles by relying on the appellant’s failure to call other parties like the chief or elder to participate in the assessment process among other reasons.
19. In the case of Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47, the Court of Appeal held that:

“In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principles of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency.”
20. In the case of 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”.
21. I find that the appellant specifically pleaded and proved special damages Kshs. 274,165/= and it is not clear how the Trial court reduced the same to the sum of Kshs. 137,082/= .
22. The Trial court did not have the discretion to reduce the special damages. The Court of Appeal in the case of 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.”

23. I find that the appellant proved on a balance of probabilities that he incurred the special damages pleaded.
24. The *evidence act* does not require a specific number of witnesses to prove a fact. Section 143 of the *Evidence Act* provides that there is no specific number of witnesses to be called unless otherwise specified in law.
25. I find that this appeal has merit and I set aside the award of Kshs. 137,082/= and replace it with an award of Kshs. 274,165/= which was pleaded and proved.
26. The appeal was not opposed and for that reason, I direct that the appellant pays the costs of the same.

**DATED, SIGNED AND DELIVERED THIS 25<sup>TH</sup> DAY OF FEBRUARY 2025 IN OPEN COURT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Maina

Mr. Mwazighe for the Appellant

No appearance by the Respondent

