



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Kamamia (Civil Appeal E715 of 2022)
[2025] KEHC 3695 (KLR) (Civ) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3695 (KLR)

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

CIVIL

CIVIL APPEAL E715 OF 2022

LP KASSAN, J

MARCH 26, 2025

BETWEEN

DAVID NJOROGE KAMAU APPELLANT

AND

CHARLES MUYA KAMAMIA RESPONDENT

(Being an appeal from the judgment and decree of Hon. A.N. Makau (Miss) (PM) delivered on 2nd September 2022 in Nairobi Milimani Commercial CMCC No. E5813 of 2020)

JUDGMENT

1. The Appellant filed suit seeking special damages of Kshs 445,912/= under subrogation for motor vehicle repairs arising from a road traffic accident that occurred on 14.10.2017 along Kamiti road involving motor vehicles registration number KCF 045Q belonging to the Appellant and KCL 972V belonging to the Respondent.
2. The trial magistrate dismissed the claim having found the appellant didn't avail documentary evidence of the expenses incurred in allegedly repairing his motor vehicle.
3. It is the aforesaid award that has precipitated this appeal. The grounds of appeal are set out in the memorandum of appeal dated 09.06.2022. In summary, the grounds are that:
 - I. The Learned magistrate erred in law and in fact in failing to analyse the evidence adduced particularly two ETR receipts and invoices filed by the Plaintiff.
 - II. The Learned trial magistrate erred in fact and in law in finding that the plaintiff had failed to prove his case for special damages.



4. The essence of the Appellants' submissions was that they had the locus standi to initiate the suit underlying this appeal by virtue of the grant ad litem issued on 16.10.2017.

Counsel for the Appellants further submitted that nothing bars the listed dependents from benefitting under the *Law Reform Act*, not forgetting the award of special damages which were pleaded and proved on balance of probabilities. Appellants relied on the authorities of Mutiso-vs-Patel (Civil Case E008 of 2021) [2022] KEHC 11783 (KLR) (18 July 2022) (Ruling), HCCA 242 of 2017, Rottger-vs-Dusa & Ano. (Suing on behalf of the Estate of Wilson Baya Thoya-Deceased) (Civil Appeal 063 of 2023) [2023] KEHC 26630 (KLR) (18 December 2023) (Judgment).

5. The Respondent supported the decision of the trial magistrate. Their counsel submitted that the Appellants had locus standi to institute a suit as representatives of the deceased person, they lacked the locus to receive any proceeds on their own behalf or on behalf of the deceased person's estate. That the grant issued to the Appellants was limited only to purposes of filing suit. That this court should consider the precise wording and specific contents of the grant issued to the Appellants. That without the locus to represent the deceased's estate then there could be no claim under the *Law Reform Act* and for special damages. The Respondent relied on the authorities Alfred Njau-vs-City Council of Nairobi (1983) KLR 625, Gabriel Macharia Njoroge-vs-ABSA Bank Kenya PLC (2021) eKLR, Lydia Ntembi Kairanya & ANo.-vs-Attorney General (2009) eKLR, Hussein Omar Farar-vs-Lento Agencies C.A. Nairobi, Civil Appeal No. 34/2005 (2006) eKLR and Maritim & Ano.-vs-Anjere (1990-1994) EA 312.

6. Both parties agreed to canvass the appeal through written submissions which I have reviewed. The issues raised in this appeal are:

- i. Whether the trial magistrate's finding the Appellant did not prove special damages was erroneous?
- ii. Who is to bear the costs?

7. The court has considered the rival submissions and the record of the court below. In *Selle v Associated Motor Boat Co.* [1968] EA 123 the Court of Appeal for East Africa laid down the principles guiding the exercise of the jurisdiction of the first appellate court. The court stated:

“An appeal to this Court from the trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that 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 Judges findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities or materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally (*Abdul Hamid Saif v. Ali Mohamed Sholan*[1955] 22 EACA 270).” See also *Peters v Sunday Post Limited* (1958) EA 424; *Williams Diamonds Limited v Brown* (1970) EA. 1.



8. The Court of Appeal in *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) IKAR 278 stated that:

“A court of Appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have altered on wrong principles in reaching the findings he did”.

9. In considering the issue of special damages, the trial magistrate held as follows:

“I have considered the submissions versus the documents herein annexed by the plaintiff and also the record of the court, I find that the accident occurred and the plaintiff’s vehicle was damaged. The plaintiff did not avail documentary evidence of the expenses he incurred in allegedly repairing his motor vehicle herein. He particularized the expenses of spare part costs to the specified amounts herein. He averred that the vehicle was repaired to his satisfaction as per the satisfaction report. It’s true from the record of the court that, in the listed documents by the plaintiff I find an estimate of expected costings of repair is filed, an invoice from Prime Auto Solution Ltd, a fee note from Intergrated Motor Assessors dated 05/12/2017 of Kshs 2,900/= was filed and relied on by the plaintiff in support of the claim. I find fee notes and invoices per se are not prove of any monetary payment in a bid to prove special damages for it is trite that special damages must be specifically pleaded and strictly proved. I find the plaintiff has not met the threshold and proved his pleaded expenses as per law requires. I, therefore, dismiss his case against the defendant with costs.”

10. The Appellant in his plaint dated 05.10.2020 had particularized the special damages as:

- a. Repair Costs Kshs 250,652/=
 - b. Assessment Fees Kshs 9,860/=
 - c. Re-assessment Costs Kshs 2,900/=
 - d. Spare Parts Kshs 182,500/=
 - e. Tracing Fees To be slated later
- Total Kshs 445,912/=

11. The Appellant’s vehicle was repaired and Prime Auto Solutions Ltd issued a vehicle collection/ Satisfaction form wherein the Appellant collected the said vehicle on 30.11.2017. For the repairs the said company issued an invoice dated 12.04.2017 amounting to Kshs 250,652/=. A look at the invoice, an ETR receipt issued by the said company is affixed and is dated 04.12.2017 showing payment of Kshs 250,652/=. The same was missed by the trial court.

12. There is also an invoice by Prime Auto Spares & Accessories Ltd dated 23.11.2017 for vehicle parts amounting to Kshs 182,500/=. Therein affixed is an ETR receipt dated 23.11.2017 for Kshs 182,500/=.

13. Integrated Motor Assessors Limited issued a fee note/receipt for re-inspection dated 05.12.2017 amounting to Kshs 2,900/=.

14. Instep Loss Assessors Limited raised a fee note dated 31.10.2017 amounting to Kshs 9,860/=.



15. In the case of Joram Njoga Ngeruro-vs-Peter Nyakiri Mokaya [2017] eKLR, the court held:

“ 9. It should be pointed out, from the outset, that a demand note, a fee note and an invoice are not documents that evidence payment, for they are merely notes making demands for payment. Payment is evidenced or established by a receipt, or some other document evidencing acknowledgement of payment. Indeed, in Great Lakes Transport Co. (U) Ltd vs. Kenya Revenue Authority [2009] eKLR (Waki, Onyango Otieno & Visram, JJA), the court asserted that invoices were not receipts, unless they carried an endorsement that the goods, or services for that matter, for which the invoice was raised, had been paid for.”

16. I associate myself entirely with the findings of Musyoka J. in the Joram Case Supra and will liberally replicate the sentiments of Muteti J in the case of Catherine Makanda Kioko-vs-Joseph Mwaura Karagu () eKLR. The learned Judge observed that:

“ 50. An Electronic Tax Register is an online cash register that keeps records of all business between a supplier and buyer and is used to record sales and provide ETR Receipts to customers. The system links the customer to the tax man and is meant to avoid Tax Frauds on the part of business people and entities who are under duty to collect tax such as Value Added Tax. It follows therefore an ETR Receipt is issued upon payment as evidence that the businessman providing a service or providing a good has sold the service or good and in return thereof received payment inclusive of tax.

51. It is the view of this court that there cannot be any better piece of evidence of payment other than the ETR receipt. In this case the ETR receipt was issued by Motorcare Limited who had issued the invoice tendered by the appellant.

52. It is therefore that the invoice being a demand of payment was satisfied and as a consequence thereof the ETR receipt was issued.”

17. I find that the claim for special damages as particularized for repair costs of Kshs 250,652/= proved and spare parts for Kshs 182,500/= proved. The prayer for assessment fees and re-assessment costs only fee notes were produced and thus not proved.

18. The Appellant thus proved part of the special damages claim as he had produced ETR receipts.

19. Accordingly, I make the following orders:

- i. The judgment delivered on 02.09.2022 is set aside.
- ii. The special damages awarded at Kshs 433,152/=.
- iii. The costs of this appeal to the Appellants.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

Were for the Appellant



Rono for the Respondent

Carol – Court Assistant

