



**Gitahi v Sportlight Publicshers East Africa Limited (Civil Appeal
E1436 of 2023) [2025] KEHC 9167 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9167 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E1436 OF 2023**

**AN ONGERI, J
JUNE 30, 2025**

BETWEEN

SAMUEL GIKONYO GITAHU APPELLANT

AND

SPORTLIGHT PUBLICSHERS EAST AFRICA LIMITED RESPONDENT

*(Being an appeal from Hon. V. K. Momanyi (RM/Adjudicator) in
Nairobi SCCC No. 65024 of 2023 delivered on 15th December 2023)*

JUDGMENT

1. The Appellant filed Nairobi Small Claims Court Case No. E5024 of 2023 seeking the following remedies:-
 - i. Kshs. 975,000/= in respect of material damage to his motor vehicle registration KTWB 826N Piaggio Tuktuk and loss of earnings for 32 months..
 - ii. Costs and interest on the said amount.
2. The Appellant contended that the accident was as a result of the negligence of the Respondent's authorized driver of the Respondents motor vehicle registration KCP 849R.
3. The material damages claimed were Kshs. 135,000/= and Kshs. 840,000/= was in respect of loss of earnings.
4. The trial court dismissed the claim in respect of loss of earnings and awarded Kshs. 135,000 in respect of material damages.
5. The trial court apportioned liability at 80:20 on the awarded material damages of Kshs. 135,000/= subject to 20% liability = 108,000/=.



6. The trial court also awarded costs and interest from date of filing suit.
7. The Appellant appealed on the following grounds;
 - i. That the Learned Magistrate erred in facts and law by apportioning liability in the ratio 80:20 or at all.
 - ii. That the Learned Magistrate erred in facts and law in faulting the Appellant by reason that he did not adduce evidence to indicate measures that he had taken to avoid the accident while the evidence on record indicates that he was hit from behind.
 - iii. That the Learned Magistrate erred in facts and law by failing to consider the evidence on record and appreciate the fact that the Respondent was wholly to blame for the accident.
 - iv. That the Learned Magistrate erred in facts and law by failing to award the Appellant damages for loss of income based on the minimum global figure.
 - v. That the learned Magistrate applied the wrong principles in failing to award the Appellant damages for loss of income in light of the documents filed and the evidence tendered in support thereof.
 - vi. That the Learned Magistrate erred in facts and law in failing to appreciate the totality of the weight of the evidence adduced by the Appellant.
 - vii. That the Learned Magistrate erred in facts and law in failing to award the Appellant special damages for Kshs. 10,000.00 being the court attendance fees for the police and the assessor in spite of their presence and proof of their attendance fees being filed.
8. The parties filed written submissions as follows;
9. The appellant's submissions challenge the trial court's decision dated 15th December 2023, raising seven grounds of appeal.
10. The appellant argues that the magistrate erred in apportioning liability at 80:20, as the evidence clearly showed the respondent was entirely at fault for hitting the appellant's vehicle from behind.
11. The appellant contends that the trial court wrongly faulted him for not taking measures to avoid the accident, despite the fact that he could not have foreseen the collision.
12. That the respondent failed to rebut the appellant's evidence or call any witnesses, which should have led the court to accept the appellant's uncontested version of events.
13. On the issue of damages, the appellant asserts that the trial court failed to award compensation for loss of income, despite evidence that the vehicle was his sole source of livelihood.
14. Though he lacked formal income records, he provided bank and SACCO deposit slips to support his claim.
15. He urges the appellate court to adopt the minimum wage for drivers under the Regulation of Wages (Amendment) Order 2022, amounting to Kshs 840,000 (or alternatively Kshs 820,268.80) for 32 months of lost earnings.
16. Additionally, the appellant submitted that the trial court neglected to award Kshs 10,000 in special damages for police and assessor attendance fees, despite proof of payment via M-Pesa.



17. The appellant seeks the setting aside of the trial court's judgment and a new award holding the respondent fully liable, along with compensation for lost income and special damages.
18. He also requests costs for both the lower court proceedings and the appeal.
19. The appellant's submissions emphasized that the appellate court must independently evaluate the evidence, as established in *Odero v Aga Khan Hospital Kisumu*, and correct the trial court's errors in fact and law.
20. The respondent opposed the appeal, arguing that the Small Claims Court's decision was sound and that the appeal is improperly grounded.
21. The respondent emphasized that appeals from the Small Claims Court are restricted to matters of law under Section 38 of the *Small Claims Court Act*, whereas the appellant's grievances largely concern factual findings.
22. On liability, the respondent defended the 80:20 apportionment, noting that the appellant failed to demonstrate precautionary measures taken to avoid the accident, and the police investigation remained inconclusive, with no sketch map or definitive evidence attributing full blame to the respondent.
23. The respondent relied on *Stephen Kanjabi Wariari v Dennis Mutwiri Muriuki* to argue that the appellant did not discharge the burden of proving negligence.
24. Regarding loss of earnings, the respondent contended that the appellant's claim of Kshs. 840,000 was unsubstantiated, as the deposits provided lacked clarity on their source or purpose, rendering the claim unproved as required for special damages.
25. The court's dismissal of this claim is supported by precedent, such as *Equity Bank Limited v Perpetua Muthoni Nduma*, which underscores the need for quantifiable proof.
26. The respondent also clarified that the appellant was awarded general costs, which implicitly covered the Kshs. 10,000 attendance fees for the police officer and assessor.
27. Finally, the respondent urged the court to dismiss the appeal, as it improperly seeks a reevaluation of facts rather than addressing legal errors.
28. The respondent cited *Mwangi v Kihui* to reinforce that factual disputes fall outside the scope of appellate review under the *Small Claims Court Act*.
29. The respondent urged the court to dismiss the appeal with costs.
30. This being an appeal from the Small Claims Court, the only issue is whether the same is on a point of law.
31. The issues for determination in this appeal are as follows;
 - i. Whether the appeal raises a point of law under Section 38 of the *Small Claims Court Act*.
 - ii. Whether the trial court erred in apportioning liability at 80:20 in favor of the Appellant.
 - iii. Whether the trial court erred in failing to award damages for loss of earnings.
 - iv. Whether the trial court erred in not awarding Kshs. 10,000/= for police and assessor attendance fees.
32. Under Section 38 of the *Small Claims Court Act*, appeals from the Small Claims Court are restricted to matters of law.



33. The Court of Appeal in *Mwangi v Kihiu* [2021] eKLR emphasized that factual disputes fall outside the scope of appellate review under this provision.
34. However, where the trial court misapplies legal principles in assessing evidence or determining liability, such errors qualify as points of law.
35. In this case, the Appellant challenged the apportionment of liability and the failure to award certain damages—issues that hinge on the correct application of legal principles, thereby bringing them within the purview of this appeal.
36. The Appellant contended that the trial court erred in apportioning liability at 80:20, arguing that the Respondent’s driver was wholly to blame for hitting his vehicle from behind.
37. The general principle in negligence cases is that a driver who rams into another vehicle from behind is presumed negligent unless proved otherwise (*Karanja v Malele* [1983] eKLR).
38. In this case, the trial court had no basis for holding that the appellant contributed to the accident.
39. The trial court’s apportionment, is accordingly set aside as the same is without basis.
40. That said, given the nature of rear-end collisions, the respondent is held 100% liable in negligence.
41. The Appellant sought Kshs. 840,000/= for loss of earnings over 32 months, relying on bank and SACCO deposit slips.
42. While special damages must be strictly proved (*Equity Bank Limited v Perpetua Muthoni Nduma* [2020] eKLR), courts have recognized that where exact earnings cannot be ascertained, a reasonable estimate based on industry standards may be adopted (*Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR).
43. However, a claim for 32 months of lost earnings is excessively prolonged and unsupported by evidence demonstrating that the Appellant could not mitigate his losses by repairing or replacing the tuk-tuk within a reasonable time.
44. Courts have consistently held that claims for loss of earnings must be confined to a reasonable period for repairs or replacement of the vehicle.
45. In *Team for Kenya National Sports Complex & 2 others v. Chabari M’Ingaruni* (Civil Appeal No. 293 of 1998), a claim for loss of user of a vehicle, a matatu, which had apparently been written off in an accident, was allowed for a period of six months although no supporting documentary proof by way of books of accounts had been produced upon the court being satisfied that the vehicle was used as a means of earning income for the deceased plaintiff.
46. Further in *Peter Njuguna Joseph & Another v Anna Moraa* (Civil Appeal No. 23 of 1991), the Court of Appeal assessed the loss of user of an immobilized matatu by estimates of the net income and period under which it should have been repaired even though not a single document was produced. (see also *Jebrook Sugarcane Growers Co. Limited v. Jackson Chege Busi*, (Civil Appeal No. 10 of 1991).
47. The above decisions are clear that loss of user of profit is in the nature of general damages and is proved on a balance of probabilities.
48. The decisions also relate to commercial vehicles which were damaged and as a result, the owners claimed loss of user.



49. The decisions further agree that the owner of a damaged vehicle is entitled to compensation and courts have been liberal when quantifying damages for loss of user.
50. In *Joseph Kiarie Waithaka v Simon Mbiriri Ndarwa* [2019] eKLR, the High Court held that 12 months is a reasonable period for loss of use where no evidence is adduced to justify a longer duration.
51. Considering that the Appellant operated a tuk-tuk—a relatively low-cost commercial vehicle—a period of 10 months is deemed reasonable.
52. Applying the minimum wage for drivers under the Regulation of Wages (Amendment) Order 2022 (Kshs. 15,000/= per month), the award for lost earnings is as follows: 10 months x Kshs. 15,000 = Kshs. 150,000/=.
53. While the Appellant lacked formal income records, the deposit slips provided some basis for estimating earnings.
54. The trial court's outright dismissal of this claim was overly restrictive.
55. Courts have recognized that where exact earnings cannot be ascertained, a reasonable estimate based on industry standards may be adopted (*Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR).
56. Given that the Appellant operated a tuk-tuk, a modest award based on the minimum wage for drivers under the Regulation of Wages (Amendment) Order 2022 (approximately Kshs. 15,000/= per month) is appropriate.
57. On special damages, the Appellant produced M-Pesa receipts proving payment of Kshs. 10,000/= for police and assessor attendance fees.
58. Special damages must be specifically pleaded and proved (*Mugambi v Kanyoko* [2017] eKLR).
59. The trial court's failure to award this amount despite clear proof was an error in law.
60. On Special Damages, the award of Kshs. 135,000 is upheld.
61. On Loss of user, the Appellant is awarded Kshs. 150,000 (10 months x Kshs. 15,000/=),
62. The Appellant is awarded the full Kshs. 10,000/= as special damages.
63. The total award payable is Kshs. 295,000.
64. Judgment is entered in favour of the appellant against the respondent in the sum of Kshs. 295,000.
65. Interest on the awarded sums shall accrue from the date of filing the suit in the trial court.
66. The Appellant is awarded costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 30TH JUNE 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellant

.....for the Respondent

