



**Kinyua v Lavis International Limited & another (Civil Appeal E809 of 2022)
[2024] KEHC 1982 (KLR) (Civ) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1982 (KLR)

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

CIVIL

CIVIL APPEAL E809 OF 2022

DAS MAJANJA, J

FEBRUARY 29, 2024

BETWEEN

CHRISTINE WANGARI KINYUA APPELLANT

AND

LAVIS INTERNATIONAL LIMITED 1ST RESPONDENT

FELIX SHIKOLI AMBANI 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. B. J. Ofisi, RM/Adjudicator dated 29th September 2022 at the Small Claims Court at Nairobi in SCCC No. E2145 of 2022)

JUDGMENT

1. This is an appeal from the judgment of Small Claims Court dismissing the Appellant's claim for Kshs. 162,280.00 being repair costs following an accident that took place on 15.05.2022. She was driving her motor vehicle registration number KBTS along First Parklands Avenue when the 2nd Respondent drove the 1st Respondent's motor vehicle registration number KCJY negligently causing it to ram into the Appellant's motor vehicle causing it extensive damages.
2. The Appellant testified at the trial and called two witnesses; PC Andrew Ogueno (CW 1) and Peter Owiti (CW 2), a motor vehicle assessor. The Respondents did not call any witness. Upon considering the evidence and submissions, the Adjudicator rendered the judgment on 29.09.2022 holding that while the Appellant had proved that the Respondents were liable for causing the accident that led to her vehicle being damaged, she had failed to prove special damages by providing receipts to prove the repair costs.
3. In the Memorandum of Appeal dated 12.10.2022, the Appellant raises two grounds of appeal. First, that the Adjudicator misapplied the law on standard of proof in material damage claims thereby



reaching the finding that the Appellant did not adduce sufficient evidence of her claim. Second, that the Adjudicator ignored her submissions on the nature of material damage claims, leading to the erroneous conclusion that she did not prove the special damage claims. The appeal was urged by written submissions filed by the parties.

4. This is an appeal from the Small Claims Court. Under section 38 of the *Small Claims Court Act* (“SCCA”), the jurisdiction of this court is limited to matters of law. This means that this court can only determine whether the evidence on record supports the findings of the Adjudicator.
5. Both parties agree on the general principle that special damages must be pleaded and proved (see *Ratcliffe v Evans* [1892] 2 QB 254, *Kampala City Council v Nakaye* [1972] EA 446 and *Hahn v Singh* [1985] KLR 716). The question for consideration is whether the failure to provide receipts proving repair costs is sufficient proof of loss and damage. The starting point for consideration is rule 5(2) of the *Small Claims Court Rules* (“the Rules”) which provides as follows:

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- (2) A person claiming compensation for loss or damage caused to any property, or for the delivery or recovery of movable property, pursuant to section 12(1)(c) of the *Act* shall attach to the Statement of Claim—
 - a. an itemized estimate of the cost of repair prepared by a competent assessor;
 - b. an itemized receipt issued in acknowledgement of money paid by the claimant on account of repairs already carried out on the property; or
 - c. a copy of any document proving the value of the property sought to be recovered.

6. In order to make a claim for repair costs, a claimant seeking compensation for loss or damage must under Rule 5(2) of the Rules, produce the estimate of the cost of repair and an acknowledgment of the money paid for repair already carried out on the property. The Appellant only produced an inspection report prepared by CW 2 but did not produce any evidence of payment or itemized receipt in acknowledgment. While the rule appears to be mandatory by use of the word shall, it must be read in the context of the *SCCA* and its objectives.
7. Under section 50 of the SCCA, the Chief Justice is empowered to make rules of practice and procedure for the better functioning of the court. This power, under section 50(2) of the *SCCA*, is to enable the Chief Justice make rules to provide for the better carrying into effect the provisions of the Act. The general purpose of the Small Claims Court is to provide a forum for determination of small claims fairly and expeditiously without procedural and evidential strictures provided for in ordinary proceedings in a manner consistent with the right of access to justice enshrined in Article 47 of the Constitution. The rules promulgated by the Chief Justice must therefore comport with the policy of the Act.
8. Does the mandatory requirement in rule 5(2) of the *Rules* to provide receipts for evidencing money paid for repair services violate the principles and policies of the *SCCA*? I think so. Whether payment made by a person seeking repair costs is a question of fact dependent on the circumstances of the cases. Parties who come before the Small Claims Court do not necessarily arrange their affairs in accordance with the *Rules*. It is the duty of the court to ascertain whether in fact the case is proved by admissible evidence. Such evidence need not be documentary as required by the *Rules*. I would further venture to hold that by insisting on the mode of proof, the Rule 5(2) can only be directory as the Act itself provides for flexibility in the rules of procedure and evidence.



9. The manner of proof of repair costs has been the subject of the decisions of the Court of Appeal and in particular two decisions which I quote. In *David Bagine v Martin Bundi* [1996] eKLR, the court considered whether the respondent had proved repair costs. The court expressed the following view:

We come now to the issue of special damages award for Kshs.277,750/= for repair costs. Counsel for the appellant argued that the respondent could properly only have claimed such sum as he actually spent towards repair of his lorry and that he could not have claimed on the basis of an estimate of costs of parts to be replaced. It was indeed on the basis that the parts damaged could cost Kshs.277,750/= that the respondent claimed such sum in the superior court. No evidence by any expert was called to prove the exact repair costs. Nor was there any evidence to show what was the pre-accident value of the lorry and the salvage value (if the lorry was indeed a wreck). There was nothing to show if the sum of Kshs.277,750/= could have properly been spent to put the lorry back on the road. It is for the claimant to prove his damage. In this case the claimant simply produced to court an estimate. 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.5,000/= to Shs.9,000/= 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. But as we have no such evidence we have no choice but to also set aside that award in its entirety. We are not saying that the respondent did not suffer damage. We are saying he did not prove it.

10. In *Nkuene Dairy Farmers Co-operative Society and Another v Ngacha Ndeiya* [2010]eKLR, the court held as follows:

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.

11. In both cases, the Court of Appeal explained that the production of an expert report on the value of parts was sufficient to prove special damages and that failure to provide receipts for repair was not fatal to the claim. In view of the binding decisions of the Court of Appeal, I hold that while rule 5(2) of the Rules requiring production of receipts is a salutary rule, it is not mandatory. By requiring on such receipts would undermine the overall policy of the Small Claims Court by insisting on a higher standard of proof for the Small Claims Court which would be contrary to the objective of the SCCA.
12. In light of the decisions of the Court of Appeal, I find and hold that the Adjudicator erred in dismissing the suit for want of proof by disregarding the law regarding proof of special damages. The Appellant through CW 1 produced the Assessor's report detailing the cost of repairs, the receipt for towing charges, assessment and tracing fees all amounting to Kshs. 161,280.00. This was the value of the loss sustained by the Appellant for which she was entitled to relief.
13. I allow the appeal and order as follows:
 - a. The judgment and decree of the Subordinate Court is set aside and substituted with judgment for kshs. 161,280.00 with costs and interest thereon from the date of filing the claim.
 - b. The Appellant is awarded costs of this appeal assessed at Kshs. 30,000.00.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024.

D. S. MAJANJA

JUDGE

Ms Njoroge instructed by Nduati and Company Advocates for the Appellant.

Ms Oganga instructed by Eboso and Company Advocates for the Respondent.

