Chege & another v Gikanga (Civil Appeal E1427 of 2023)
[2025] KEHC 14258 (KLR) (Civ) (9 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14258 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E1427 OF 2023

TW OUYA, J

OCTOBER 9, 2025

BETWEEN

GRACE WANJIRU CHEGE ..... 1ST APPELLANT

JOHN GITAU NGUGI ..... 2ND APPELLANT

AND

JULIUS NGETHE GIKANGA ..... RESPONDENT

(Being an appeal against the judgement and decree of Hon. Nkurrunah Namunyak, RM, in Milimani Small Claims Court Civil case no. E5303 of 2023, delivered on 14th December 2023)

JUDGMENT

1. This appeal emanates from the judgement and decree of the lower court, in which the respondent, Julius Ngethe Gikanga, was awarded special damages to the tune of Kshs. 319,500 together with costs of the claim assessed at Kshs. 30,000 plus interest from the date of the judgement till payment in full.

2. These damages, were awarded in a suit that was instituted by the respondent against the appellants following material damages to his vehicle, as a result of a road traffic accident that occurred on 10th March, 2022, along Kyuma Road at Kamkunji area. The road traffic accident involved motor vehicle registration no. KAH 998W belonging to the respondent and motor vehicle KBU 972J belonging to the 1st respondent and which was allegedly being driven carelessly by the 2nd respondent. The particulars of the appellants alleged negligence were pleaded at paragraph 4 of the respondent's statement of claim dated 17th October 2023.

3. The records of the trial court show that the learned trial magistrate found the appellants 100% liable for the accident and proceeded to assess the special damages payable to the respondent.

4. The appellants were dissatisfied with the trial court's findings on quantum and proffered an appeal to this court vide a Memorandum of Appeal dated 18th December, 2023.

5. In the Memorandum of Appeal, the appellants advanced a total of ten (10) grounds of appeal, in which they faulted the learned trial magistrate for awarding a judgement in favor of an assessment report for motor vehicle KAW 998W, when the said vehicle was not subject of the suit; for awarding special damages for costs of Kshs. 11,300, allegedly incurred in assessment of motor vehicle Mitsubishi Galant registration no. KBT 409B when the said vehicle was not subject of the suit; for awarding special damages of Kshs. 11, 300, for costs allegedly incurred in assessing Motor vehicle Mitsubishi Galant KBT 409B in the absence of a receipt to show that the amount was paid.

6. The appellants also faulted the learned trial magistrate for awarding special damages of Kshs. 11,300 based on a fee note raised for Motor vehicle KAW 998W, when in fact that vehicle was not subject of the suit; for awarding special damages of Kshs. 11,300 based on a fee note raised for Motor vehicle KAW 998W in the absence of a receipt to show that the said amount was paid; for awarding a judgement in favor of an assessment report for Motor Vehicle KAW 998W, when the said assessment report was unsigned and did not identify the maker; and for awarding special damages of Kshs. 148,000, based on a receipt dated 16th March, 2022, when the said receipt did not identify the vehicle which is the subject of the suit as being the subject of that receipt and neither was the claimant identified as the subject of the receipt.

7. The appellants, in their Memorandum of Appeal further faulted the learned trial magistrate for awarding special damages of Kshs. 148,000 based on a receipt dated 16th March, 2022, when the said receipt did not identify the maker; for awarding special damages of Kshs. 160,000 based on a receipt for Motor vehicle KAW 998W dated 13th March, 2022, whereas the said vehicle was not subject of this suit; and for awarding to the respondent special damages of Kshs. 319, 500, in the absence of proof that such expenses had been incurred by the claimant in respect of motor vehicle KAH 998W, which was the subject of the suit, and in the absence of witness statements showing that there was a witness producing the documents relied upon.

8. The appeal was prosecuted by way of written submissions following the directions issued by this court on 25th July, 2024. In their written submissions dated 6th August 2024, the appellants submitted that the respondent's claim was riddled with falsehoods and unimaginable exaggerations, as his supporting documents were forged and doctored, to suit a narrative of expenses and damages that never occurred.

9. The appellants contended that the respondent was not entitled to the special damages granted to him by the court, given that he did not adduce any evidence to prove the expenses he incurred in repairing the subject vehicle. The appellants further contended that the respondent did not adduce sufficient evidence to prove that his motor vehicle, registration no. KAH 998W, which is the subject of this suit was damaged and that he incurred expenditures in relation to the said vehicle.

10. The respondent on the other hand submitted that there was an error in the assessors' report, in which Motor Vehicle KAH 998W was captured as KAW 998; and that the said error is a minor clerical issue rather than a fundamental flaw, which ought to be rectified by review judgement.

11. Regarding the special damages awarded by the learned trial magistrate, the respondent submitted that the judgement by the trial court was based on evidence and there was no proof of misapprehension of evidence by the learned trial magistrate or that she acted on wrong principles of law in reaching her decision on quantum. The respondent further submitted that the appellants have not demonstrated any error in principle committed by the learned trial magistrate in exercise of her discretion, and that

the error referred to by the appellants is a clerical error that does not affect the substantive issue of the occurrence of the accident and the expenses he incurred in repairing the damaged Motor vehicle.

12. It was the respondent's submissions that the onus was on the appellants to prove that the assessor who prepared the assessment report does not exist or that the assessor was unqualified; as such, the appellants claim regarding the assessor of the suit vehicle remains mere allegations.

13. I have carefully considered the grounds of appeal, the rival written submissions by both parties as well as the judgement of the trial court. Having done so, I find that the main issues for determination in this appeal are two-fold as follows:

    i. Whether there was damage to the respondent's Motor vehicle registration no. KAH 998W following the road traffic accident that occurred on 10th March, 2022; and

    ii. Whether the respondent adduced sufficient evidence to prove that he had incurred special damages in the sum of Kshs. 319,500 in repairing the said vehicle.

14. Turning now to the first issue for determination, the appellants in this case, had alleged that the respondent did not adduce sufficient evidence before the trial court to prove that his vehicle was damaged following the alleged road traffic accident, or that he incurred any expenses to repair the said vehicle; as such, he was not entitled to the special damages awarded to him by the learned trial magistrate.

15. As per the records of the trial court, the respondent adduced a copy of a police abstract from Kamkunji Police Station dated 10th March, 2022, to prove that indeed a road traffic accident had occurred between motor vehicle registration KAH 998W, a Toyota starlet, belonging to him and motor vehicle registration no. KBU 972J Isuzu bus, and that the accident had been reported to the said police station.

16. As per the said police abstract, the road traffic accident was a non-injury road traffic accident and the investigations carried out revealed that Motor vehicle KBU 972J was to blame for the occurrence of the said accident.

17. The respondent also attached copies of photos of a damaged vehicle, which he claimed was his vehicle, Toyota Starlet KAH 998W, that had been damaged as a result of the accident. The photos adduced did not however show the registration number of the damaged vehicle, and this court cannot therefore ascertain if it was the same vehicle that the respondent alleged had been damaged as a result of the accident.

18. Aside from the police abstract and the aforementioned photos, the respondent also attached an assessment report from Dante Assessors dated 11th March, 2022. As per the assessment report, the vehicle that had been taken for assessment was registration number KAW 998W Toyota Starlet, station wagon, belonging to Julius Ngethe Gikanga, who is the respondent herein.

19. The appellant's case was therefore that the assessment report should not have been admitted by the trial court as evidence, given that the assessment conducted by Dante Technical Agencies referred to vehicles that were not subject to the suit at the said court. The respondent on the other hand is of the view that the errors in the assessment reports were typographical errors and minor clerical issues that can be rectified by review of the judgement.

20. Having stated that, I have perused the assessment report adduced by the respondent in support of his case at the trial court, and whereas the said report captured the wrong registration number of the vehicle that had been taken for assessment, the report included the chassis number of the vehicle, which is a unique identification number given to a vehicle by manufactures so as to identify them.

21. The chassis number captured in the assessment report is EP71-5540297, which is the same chassis number indicated in the registration certificate for motor vehicle registration number KAH 998W, a Toyota Starlet belonging to the respondent. It is therefore evident that, although the assessment report contains an error as to the registration number of the vehicle assessed, the report indeed relates to the respondent's vehicle.

22. The appellants had alleged that the assessment report was not credible given that it was not signed and neither was the maker of the document identified. To this I'd like to state that under section 32 of the Small Claims Act, the small claims court is allowed to admit into evidence material that would not otherwise be admissible in any other court under the Law of Evidence, as long as the court considers the material to be credible and trustworthy.

23. The court in Wachira v Mwai [2024] KEHC 3173 (KLR); stated as follows regarding admissibility of evidence at the small claims court:

> " The court below is entitled to evaluate the evidence and come up with the evidence they believe. The strict rules of evidence do no bind the Court below. This is on the basis of Section 32 of the Small Claims Court, which provides as follows: -Exclusion of strict Rules of evidence
>
> (1) The Court shall not be bound wholly by the Rules of evidence.
>
> (2) Without prejudice to the generality of subsection (1), the Court may admit as evidence in any proceedings before it, any oral or written testimony, record or other material that the Court considers credible or trustworthy even though the testimony, record or other material is not admissible as evidence in any other Court under the law of evidence.
>
> (3) Evidence tendered to the Court by or on behalf of a party to any proceedings may not be given on oath but that Court may, at any stage of the proceedings, require that such evidence or any part thereof be given on oath whether orally or in writing.
>
> (4) The Court may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it may require.
>
> (5) All evidence and information received and ascertained by the Court under subsection (3) shall be disclosed to every party
>
> 6) For the purposes of subsection (2), an Adjudicator is empowered to administer an oath.
>
> (7) An Adjudicator may require any written evidence given in the proceedings before the Court to be verified by statutory declaration."

24. Given the foregoing, it is evident that in as much as the assessment report was not signed, the learned trial magistrate could admit it into evidence for as long as she was of the view the assessment report was credible and trustworthy.

25. Regarding the complaint that the maker of the assessment report was not identifiable, it has been clearly indicated in the said assessment report that the report was prepared by Dante Technical Agencies. Given the above, I see no reason to interfere with the learned trial magistrate's decision to admit the said assessment report into evidence. Furthermore, nothing stopped the appellants from taking the

respondent's vehicle for another assessment, if it felt that the assessment report by the respondent was not credible.

26. Based on the above, I am of the considered view that the respondent has proved that his vehicle was not only involved in an accident, but that it was damaged as a result of the said accident.

27. Having found that the respondent's vehicle was damaged in the course of the accident, the next step is to determine whether the respondent proved that he incurred costs amounting to Kshs. 319,500 for the repair of the said vehicle.

28. It is trite that special damages must not only be specifically pleaded, but they must be strictly proved. This position was re-stated by the court of appeal in Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited [2016] KECA 56 (KLR) as follows:

> "...it is trite law that special damages must not only be specifically pleaded, they must also be strictly proved with as much particularity as circumstances permit. See National Social Security Fund Board of Trustees vs Sifa International Limited (2016) eKLR, Macharia & Waiguru vs Muranga Municipal Council & Another (2014) eKLR and Provincial Insurance Co. EA Ltd vs Mordekai Mwanga Nandwa, KSM CACA 179 of 1995 (ur). In the latter case this Court was emphatic that "... It is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead. It is equally clear that no general damages may be awarded for breach of contract ...".

29. In this case, the respondent produced a fee note from Dante Technical Agencies for services allegedly rendered by the said assessors. The fee-note, dated 11th March 2022, contains apparent errors regarding the motor vehicle that was being assessed. It makes reference not only to motor vehicle registration number KAW 998W but also to motor vehicle registration number KBT 409B, a Mitsubishi Galant. Indeed, the particulars in the fee note indicate that it relates to professional services rendered in respect of the Mitsubishi Galant, registration number KBT 409B.

30. Whereas there may have been a typographical or clerical error in the preparation of the said fee note, this Court has no way of ascertaining whether the amount indicated therein as charges for services rendered by Dante Technical Agencies was indeed the amount the respondent was charged for the assessment of his vehicle, or whether it related to the Mitsubishi Galant, registration number KBT 409B. It could well be that the person who prepared the fee note forgot to edit the same by indicating the correct figure in the fee note and left the amount that was charged for services rendered to Mitsubishi Galant KBT 409B.

31. In the absence of a receipt evidencing payment of the said amount for the assessment of motor vehicle registration number KAH 998W, I find that the fee-note for Kshs. 11,300 is not credible and cannot be relied upon as proof that the respondent incurred the said costs.

32. The respondent also adduced a receipt from Force Two Electronic to show that he had incurred a cost of Kshs. 148,000 in repairing his vehicle. As per the said receipt, Force Two Electronic provided the respondent with the following services: painting, gas and welding, materials, spare and repair, labor and other miscellaneous service. I have however scrutinized the said receipt, and I am not convinced that the same is credible or that it is for the repair of the suit vehicle.

33. I say so because, first, from the receipt, Force Two electronic only deals with sales and supply of CCTV cameras, Alarms, Electric fencing and accessories, there is no indication that they are mechanics or that they offer the services listed in the said receipt. Secondly, from looking at the receipt, one cannot tell

whether it is for the repair of the respondent's vehicle. One cannot tell the purpose or why the said receipt was issued. I am therefore not convinced that the receipt dated 16th May, 2022, was for the repair of the respondent's vehicle.

34. Regarding the receipt dated 13th March, 2022, from Ziwani Jua Kali Engineering Works Association, the same shows that the respondent spent a sum of Kshs. 160, 200, for the repair of Motor Vehicle KAW 998W. The respondent's vehicle however bears the registration no. KAH 998W.

35. Whereas I agree that the Assessors, Dante Technical Agencies, may have made a typographical error while preparing their assessment report, I am of the view that it would be too much of a coincidence to state that Ziwani Jua Kali Engineering works Association, which has not in any way been shown to be associated with Dante Technical agencies, would also commit the same error while writing the said receipt. The only explanation for this would be that either the respondent took another vehicle to be repaired by the Mechanics from Ziwani Association, that is KAW 998W or that the said mechanics issued out a receipt to the respondent using the assessment report and without actually working on his car.

36. Whatever the case may be, it is clear that the receipt from Ziwani Jua Kali Engineering Works association is for another vehicle, being Motor Vehicle registration no. KAW 998W and not the suit vehicle, KAH 998W. It was therefore an error for the learned trial magistrate to have awarded the respondent special damages using the said receipts.

37. Regarding the Kshs. 500 fees for the Motor Vehicle search from NTSA, the respondent adduced a receipt from the organization showing that he had conducted the said search. He is therefore entitled to the said amount.

38. Flowing from the foregoing, it is evident that whereas the respondent proved that his vehicle was involved in an accident that resulted in material damage to his vehicle, he was unable to adduce credible evidence to show that he incurred the amount of Kshs. 319,000 to repair the said vehicle. The respondent has only proved that he incurred an amount of Kshs. 500 for the motor vehicle search from NTSA.

39. Given the foregoing, I hereby set aside the award of Kshs. 319,000 delivered on 14th December 2023 by the trial court and substitute it instead with an award of Kshs.500.00 as this is the only amount that the respondent has proved by way of credible evidence.

40. Each party shall bear their own costs both in this appeal and at the lower court.

41. Thirty (30) days stay of execution orders to apply.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH OCTOBER, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....No Appearance

For Respondent....Maina HB Mr Anyanzwa

Court Assistant...Brian