



**Mutonga v Mwadime (Civil Case E029 of 2025) [2025] SCC 7 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] SCC 7 (KLR)

**REPUBLIC OF KENYA  
IN THE SMALL CLAIMS COURT AT VOI  
CIVIL CASE E029 OF 2025  
FM MULAMA, RM  
JULY 18, 2025**

**BETWEEN**

**JOSEPH NJOROGI MUTONGA ..... CLAIMANT**

**AND**

**HERMAN NGOLO MWADIME ..... RESPONDENT**

**JUDGMENT**

1. The claim arises out of an accident that occurred on 4/4/2025. The claimant avers that on the material day the claimant's driver was lawfully driving motor vehicle registration number KCV 375R along Voi-Taveta Highway travelling from Mombasa towards Taveta and upon reaching Mnara town the claimant's driver slowed down as there were rumble strips ahead and it is when the respondent's motor vehicle registration number KDG 834V was recklessly and negligently driven at an excessive speed that he caused it to ram into the claimant's motor vehicle on the rear causing it extensive damage.
2. The claimant has pleaded particulars of negligence as contained at paragraph c(i to vii) and also seeks to rely on the doctrine of res ipsa loquitur and now claims for compensation for the damage as well as loss of user.
3. The respondent on the other hand denies the claim and liability and in fact states that it is the claimant who actually is to be blamed for the accident and has asked the court to dismiss the claim.
4. The matter was heard viva voce to assess quantum after parties agreed on the issue of liability as shall be seen shortly and further filed submissions which have been duly considered.

**Issue For Determination.**

- a. Whether the Respondent is liable for the accident.
- b. What is the quantum of damages awardable if



- c. Who bears costs of the claim.

### **Analysis And Determination.**

- a. Whether the respondent is liable for the accident.
5. By consent of parties on 27/6/2025, liability was apportioned in the ratio of 85:15 in favour of the claimant as against the respondent and the said consent is now an order and judgment of court on liability.
- b. What is the quantum of damages awardable if any.
6. As regards material damage claims, it need not be proved that the expenses were actually incurred but a mere demonstration of the extent of the damages/loss incurred and how much it would cost to return the thing complained of to its position prior to the accident.
7. In *Nkunene Diary farmers co-op society Ltd & another vs Ngacha Ndeyiya*(2010) eKLR cited in the case of *Haulage Services Ltd vs Complast Industries Ltd & another* (2015) eKLR the court of appeal 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 condition it was in before the damage complained of. An accident assessor gave details of the part 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.”
8. From the decision above it is clear to me that all the claimant needs to do is to show the extent of the damage and what it would cost to restore the damage to its original position. This is addition to the now cliché that special damages must not only be specifically pleaded but also strictly proved.
9. The claimant has pleaded with specificity and particularity what it wants the court to award as compensation. He has thus pleaded Kshs.660,550/= as the total amount that would return him to a position he was in before the accident.
10. The amount of Kshs.660,550/= is broken down as follows; repairs of Kshs.353,000/=, assessment report Kshs.7,000/=, certificate of search costs of Kshs.550/= and loss of user for Kshs.300,000/=
11. On the proof of repairs amounting to Kshs.353,000. On cross examination the motor assessor stated that he estimated the costs to be Kshs.238,400/= broken down as Kshs.160,900 towards the purchase of spare parts and kshs.77,500/= for labour. The assessor in re exam clarified that the figures were an estimate and not the actual prices for the spare parts and labour costs.
12. The claimant in his testimony stated that the costs of repairs and labour went over and above what was estimated by the assessor and that he actually purchased all the items and he incurred the amount of Kshs.353,000 and he produced a receipt for the same dated 2/5/2025.
13. I have considered the rival positions held by the claimant and the respondent vis a vis the assessment report. The respondent seems to propose that the court adopts the figures in the report and not what the claimant has claimed.
14. In the ordinary sense of things and as admitted by the assessor, his assessment was made on estimation of the market value of the items sought to be replaced. This is ordinarily what happens however, the



rubber meets the road when it gets to actual purchase of the items whose prices are not static but dependent on market forces.

15. In the circumstances I am convinced that the claimant indeed incurred the expenses as evidenced by the receipt dated 2/5/2025 and accordingly I allow the claim of Kshs.353,000/=
  16. On the assessment report costs/fees, it was the evidence of the assessor that he charged Kshs. 5,000/= and issued a receipt to which he produced in evidence. I award Kshs.5,000/= and not Kshs.7,000/= as pleaded.
  17. The costs for certificate of search has been proved by way of receipt and it is allowed as prayed.
  18. On the prayer for loss of user, the claimant in his pleadings has asked for 30 days at the rate of Kshs.10,000/= and it is his contention that the vehicle having been grounded for 30 days he is entitled to the 30 days this is despite the report estimating that the repairs would take 14 days. I similarly adopt the reasoning on the prices of spare parts with the necessary modifications.
  19. It is trite that what the assessor gave was a mere estimation of what in his view was the number of days the vehicle would require to be repaired. He admitted not to have repaired the vehicle or have expertise in such repairs and as such what he did falls within the strict sense of estimation and/or approximation and as such I will adopt the actual number of days the vehicle was grounded which is 30 days.
  20. The respondent in his submissions opines that the claimant failed to mitigate damages and ensure that the spare parts were obtained for the assessed sum which as I have held was a mere estimation. I do not think the claimant would have done anything to ensure that the spare parts would fit within the estimated amount since prices of such parts depend on market forces and not estimation of assessors. The assessor infact admitted those were not actual costs but mere estimations. I need not say more.
  21. Contrary to submissions by the respondent at no point in the proceedings did the claimant admit that he obtained parts higher than those available in the open market. The claimant for instance gave an example of the boot which as per the report was to cost approximately Kshs.45,000/= but when he went to purchase by himself, the cheapest he got fetched Kshs.95,000/= in essence the prices in open market which were the actual prices were more than what the assessor estimated.
  22. I have read and appreciated the authorities cited by the claimant on this issue and I have nothing useful to add.
  23. I have perused the worksheets for the motor vehicle and I agree with the claimant that an average of Kshs.10,000/= per day is reasonable as that is what was earned per day or even more as I have seen days where the claimant used to take home after expenses Kshs.12,400/= and Kshs.11,600/= among other figures. In the end the loss of user as claimed is allowed and awarded accordingly.
- c. Who bears costs of the claim?
24. The claimant having been successful in the matter and that costs follow events he is awarded costs of the claim.

### **Conclusion And Disposition.**

25. The upshot of the foregoing I make the following final orders;
  - a. The claim contained in the statement of claim dated 26<sup>th</sup> May 2025 is allowed in the following terms.

Liability 85:15



Special damages Kshs.658,550/=

Total Kshs.559,767.50/=

- b. The claimant is awarded costs and interests from the date of filing until payment in full.
- c. Let the file be closed forthwith.

26. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT THIS  
18<sup>TH</sup> DAY OF JULY 2025**

**F.M. MULAMA**

**ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Fathiya Loo.

Ms. Wanja H/B Mugo for the Claimant

Mr. Ngechu for the respondent.

