



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 3845 of 1994**

EDWARD MURIUKI KIMATHI..... PLAINTIFF

VERSUS

KARORI MUNENE..... 1ST DEFENDANT

FRANCIS MAINA KIUNGE..... 2ND DEFENDANT

ROY TRANSPORTERS LIMITED..... 3RD DEFENDANT

HENRY MBUYA MURIUKI..... 4TH DEFENDANT

JAMES MWANGI..... 5TH DEFENDANT

JUDGEMENT

On 21/11/2003, Ojwang, J. entered judgment against the defendants on liability. The defendants did not attend Court at the hearing before Ojwang J. Secondly, on 8/12/2005 when this matter was listed before this Court for formal proof, all the defence counsels and their clients did not show up despite service having been effected through post. It is uncontested. The plaintiff filed an affidavit of service by Nyeri Kiagayu Kahunyo, filed in Court on 8/12/2005 confirming service by post.

The plaintiff Edward Muriuki testified as P.W.1 and he averred that his motor vehicle Reg. No. KYW 007 was involved in an accident with motor vehicle KXW 318 and KAA 903C as a result of which his vehicle was damaged. The damage to his vehicle was assessed by PW2, Patrick Wachira Mambo of Top Assessors and Investigations on 29/9/2003. He found the following; damage to the right front corner, and the following were damaged parts: right front bumper, bar, and the parts listed in his report Ex.3 were replaced. The vehicle was re-sprayed. He assessed the damage at Kshs.106,845/=. The repairs were then carried out by Mathira Esso Service Station and Garage and the invoice and receipts are dated 23/9/2003 and 31/10/2003 respectively. The plaintiff obtained an abstract from the Police which cost Kshs.100/= and copy of records of motor vehicle KAA 903C for Kshs.100/=. The plaintiff also said that he incurred a loss of about Kshs.3500/= per day for 3 weeks when the vehicle was under repair and the assessor was paid a total of Kshs.15,000/= for previous attendances while the attendance fee for the hearing date is Kshs.5000/=.

As regards the claim for Kshs.3,500/= per day for 21 days, the plaintiff did not demonstrate what the vehicle earned daily before it was damaged. Since there is no proof of the loss of user of Kshs.3000/= per day, but there is evidence of damage and the fact that the plaintiff must have been inconvenienced when the vehicle underwent repairs, I will award the plaintiff a global sum of Kshs.30,000/= (Thirty Thousand) as general damages for loss of user. Since there is no evidence to the contrary, the plaintiff will be entitled to Kshs.106,845.05 as costs of repairs, two abstract reports for Kshs.200/=: Kshs.10,000/= for the assessor's Court attendance on two occasions.

The plaintiff will therefore have judgment as follows:

| | |
|--------------------------------|------------------------|
| 1. General damages | Kshs. 30,000.00 |
| 2. Cost of repairs | Kshs.106,845.00 |
| 3. Police abstract | Kshs. 200.00 |
| 4. Court attendance – assessor | <u>Kshs. 20,000.00</u> |
| TOTAL | Kshs.157,045.00 |

Plus cost and interest at Court rates.

Delivered and Dated this 18th day of February 2010.

R.V.P. WENDOH

JUDGE

Present:

Ms Masinde holding brief for Mrs. Kahunyo – Plaintiff

Wangai Nyuthe – absent

Muturi: Court Clerk