



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL CASE 1469 OF 1998**

**CALTEX OIL (K) LTD ..... PLAINTIFF**

**VERSUS**

**AUTO SPRING MANUFACTURES LTD .....DEFENDANT**

**JUDGMENT**

On the 25th day of November, 1999 at about 10.00 p.m. at night, a collision occurred between two vehicles. As a result of the said collision both vehicles were damaged.

The plaintiff, a limited liability company sued the defendant for damages. The defendant in turn filed defence and a counter-claim. When the suit came up for hearing the defence withdrew their counter-claim.

A brief background of the facts of this case is as follows:-

PW1 was an employee of the plaintiff. He was assigned motor vehicle Registration KAC 927R to use in the course of his employment.

On the material day of the 25.11.95 he was travelling from his home area in Machakos District. At about 10.00 p.m. he noted the defendants vehicle travelling at a high speed. The said vehicle went in a zig zag manner and left its side of the lane and knocked his vehicle. Efforts to break the plaintiff's vehicle was fruitless and a collision occurred.

The plaintiffs sued the defendant in damages. The defendant did not come to court to give evidence.

Who then is to blame for this accident?

**A) LIABILITY**

From the evidence by PW1 I am satisfied that the defendants vehicle was travelling in a zig zag manner thereby causing a collision between the two vehicles.

I find that the defendant to blame for this accident in negligence and on a balance of probability and thereby find liability for the plaintiff at 100% against the defendant.

**B) QUNATUM**

## I) Special Damages

PW1 sustained no bodily injury. The vehicle though is alleged to be a write off. The plaintiff called PW2 one Johnson Kinuthia said to be a motor vehicle assessors. The said witness had no qualification as an assessor and stated that he learnt this work in the garages. He informed the court that he prepared a report and the same was signed by his directors. The report was put in by consent.

This report made a list of all the fault and damage found in the said vehicle. A lump sum figure of Ksh.800,000/- was given as the pre-accident value and Ksh.150,000/- as the salvage value. The excesses was said to be Ksh.20,750./-.

From the said report the damage to the front effected the classis.

This report does not specify the cost of each item. This has to be tabulated and the total added. The figure arrived at should exceed the value of motor vehicle. As such I have no figure before me to show whether the costs of repairs – being the total amount of repairs and costs inclusive of labour would amount to. All the assessor has given is the pre-accident value. The law requires that the costs of repairs be disclosed. This amount be deducted from the value of the motor vehicle to arrive at whether or not the repairs would be economical or not. If the cost of repairs is more than the value of the vehicle then the vehicle is written off.

I see no where in this report that the vehicle be written off. As such I would find that the plaintiff has not proved to this court that the vehicle be written off.

Further if the vehicle perchance was indeed to be written off, the salvage value is to be disclosed by proof of sale of the salvage to court. The sale price is then deduced from the pre-accident value of the vehicles to give the net price due to be recovered.

I hereby dismiss this claim as having not been proved as per law.

### ii) Assessors fee Ksh.3,105/-

Ext P4 was produced being the assessment fee bill from M/s Allied Assessors Ltd. This is a bill. It is not proof of payment but it is proof that work has been rendered but not paid for. The invoice No.439/95 required to be supported by a receipt form M/s Allied Assessors Ltd as proof that they indeed were paid this amount.

I note with interest that the bill does not include the requisite taxes to be paid.

Thus, in order to prove that the assessor has been paid – the assessor raises a fee note which is duly stamped as having been received by the payee. The payee pays the bills with a voucher. The claimant, herein the assessors, on receipt of being paid issues his receipt to the payee. It has been brought in evidence, in similar cases before me, that assessors say they would do several jobs and get a lump sum payment at a particular time. This lump sum payment must in all respect be supported with a receipt.

I decline to make award on this claim and dismiss the same.

### iii) Towing Charges Ksh.1,000/-

There was produced before court, an invoice for towing charges from “Rayat Motor to KenIndia yard” in the sum of Ksh.1,000/- “M/s Light breakdown” who issued the invoice have not confirmed by way of a receipt that they have been paid. An invoice is not proof of payment as earlier stated but proof that services has been rendered.

I decline to make award and reject this claim.

d) Police abstract Report Ksh.100/-

None of the witness spoke of any fee for Ksh.100/- that involves the police abstract report. There has been no Government of Kenya receipt issued. I reject this claim as having not been proved. The same is hereby dismissed.

I hereby dismiss the claim under Special Damages as having not been established on proof of payment

In Summary:

- 1) Material loss damage
- 2) Collision between two vehicles
- 3) Claim for value of vehicle less salvage
- 4) Held assessors report is in adequate Prof of payment not established
- 5) Liability 100% against the defendant.

This suit is hereby dismissed on quantum with costs to the respondent/defendant.

Dated this 28th day of January, 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Mbugua & Mbugua Advocates for the plaintiff

A.G.N. Kamau & Kamau advocates for the defendant