



- 1) Material Loss claim
- 2) Damage to motor vehicle as a result of a road traffic accident involving two vehicles
- 3) Liability: interlocutory judgment  
100% against the original 1st defendant by Deputy Registrar on 5.2.04
- 4) Quantum:

1) Special Damages	
i) Repair costs	Ksh.2.8 M
ii) Additional costs	Ksh.200,000/-
Less not proved	Ksh.580,000/-
iii) Police abstract fee	Nil
iv) Investigators charges/ fee	Ksh.40,000/-
v) Assessors fee	Ksh.10,000/-
II) Loss of user	Ksh.1.500.000/-
	Ksh.3.970,000/-
Say	Ksh.4,000,000/-

- 5) Case law  
Locus:-

- a) James Wama Muga vs Njeru Timber sales  
(Njai PDR) Nairobi.158/01
- b) Euncie Ruguru Njega v Nganga Njau  
Hccc 3150/84
- c) Richard Obiero Bwana v Egaerci & Co. Ltd.  
Hccc 4772/88 Bosire, J

- 6) Advocates:

M. Nyangera advcoa te for the plaintiff  
No appearance for the defendant

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NA IROBI  
CIVIL CASE NO 1264 OF 2003

ROY TRANSMOTORS ..... PLAINTIFF

VERSUS

JUDGMENT

Before me is a TORT case. It is a claim for material damage that arose out of a road traffic accident between two lorries that occurred along the Mombasa-Nairobi road-Mazeras area.

The vehicles, motor vehicle KAP 758W together with a trailer Mercedes Benz Actross Prime Mover, belonged to the plaintiff and the motor vehicle registration KAG 863C, a Mitsubishi Fuso Truck belonged to the defendant M/s Silkin Ltd and others the defendant herein.

According to the evidence before me, the defendants motor vehicle lorry truck was heading to Mombasa. There was a down hill gradient at a bend which road the vehicle was travelling on. It was at a high speed. It lost control and went to the lane of the on coming traffic. The plaintiff's Mercedes Benz lorry and trailer was heading towards Nairobi. On seeing the oncoming vehicle, it went off completely from the tarmac road to its left side. The on coming vehicle truck collided into the right side drivers door. The defendants vehicle was extensively damaged. The driver died. The turn boy sustained injuries. The plaintiffs driver and turn boy were unhurt and did not sustain any injury.

The plaintiff, a limited liability company sued the defendant M/s Silkin Ltd together with M/s NIC Bank being the financiers of the said vehicle. The defendant No.1 entered no appearance, nor filed defence. An interlocutory judgment was entered against them on the 5th of February 2004 by the Deputy Registrar as per the powers given to the registrar under order 48 of the Civil Procedure Act. The defendant No.2 entered appearance and filed defence denying that it was negligence for the accident. That the blame should be made to the 1st defendant.

The plaintiff set the suit down for hearing.

A) LOCUS

On the day for hearing the suit was called out, the 2nd defendant and their advocates were absent.

I nonetheless brought it to the attention of the advocate the following authorities.

a) James Wama Muga

V

Njeru timber Sales

(Njai PDR) Hccc 158/01 Nbi

b) Eunice Ruguru Njenga

V

Nganga Njau Hccc 3150/84

c) Richard Obiero Bwana

V

Egaerci & Co. Ltd Hccc 4772/88 Bosire J.

The above cases are unreported but concerns the issue of Finance Companies or Banks that loan moneys to their client who purchases vehicles on hire purchase. In such a situation a claim against the

financier does not lie. The advocate for the plaintiff on going through the said authorities conceded to this and withdrew the claim against the 2nd defendant. The 2nd defendant being absent no costs were awarded.

The effect of the said withdrawal is that no liability is attributed to the 2nd defendant.

As to the 1st defendant it is seen that they did not enter appearance or file defence. The plaintiff took precaution and served the 1st defendant at its last known postal address and the said 1st defendant was not traced. The hearing commenced for assessment of damages.

B) LIABILITY

The effect of an interlocutory judgment is that judgment on liability is final and the plaintiff need not prove this. The effect further is that liability is computed at 100% against the defendant. I accordingly confirm this liability is at 100% against the original 1st defendant.

C) QUANTUM

a) Repair costs of the vehicle

The managing director PW1, of the plaintiffs company together with the driver came to court and gave evidence

. The witness (PW1) stated that the vehicle would transport milk to Mombasa. After completing its assignment and on his way back to Nairobi the vehicle sustained damages due to the accident. It was a vehicle the company had bought, second hand. Its value being Ksh.5 to Ksh 6 million.

The estimate for the repairs done by D.T. Dobie was Ksh.2,949,718/20. This was for the costs of spare parts and labour. PW1 had complied with the notices under order 12 r 2(3) CPR. It is through the various documents that he was able to establish the actual repair undertaken. The repairs were too expensive to be done at the D.T. Dobie. The reasons being that D.T. Dobie demanded first the full amount of money to be paid for repairs. The said plaintiffs company was unable to raise the full amount due to cash flow problem. They obtained the services of Umar Auto garage who under took the work in 3 months.

The plaintiff pleaded for cost of repairs.

i) Cost of repairs.

This was particularized and itemized as per the D.T. Dobie estimate. From the records produced by the plaintiff, I find that out of the items pleaded as spare parts 10 items were not reflected as having been repaired and or paid for. These are:-

1) (3) Front bumper centre	Ksh.10,080/-
2) (18) Diesel Tank breached	Ksh.75,489/-
3) (15) RHS splash guard rear	Ksh.32,101/-
4) (17) Rear fender bottom	Ksh.10,716/-
5) (36) Splash guard centre	Ksh.26,014/-
6) (36) LHS Bumper lower centre	Ksh. 3,312/-
7) (37) RHS Bumper lower centre	Ksh. 3,312/-

8) (39) Front Grille	Ksh.33,180/-
9) (40) Radiator	Ksh.145,320/-
10) (41) Covering outer door	Ksh. 15,960/-
	Ksh.335,484/-
Rounded to nearest figure	Ksh.340,000/-

I did not see the above items on the list provided for on items paid for on supply.

Further,

Items that had been supplied and paid for the estimated that was exceeded what was pleaded was that of:-

II: 1) (35) Front bumper lower centre	Ksh.792/-
2) (38) Rear cabin panel	Ksh.179,500/-
3) (15 and 16) Door step centre and bottom	Ksh. 400/-
4) Diesel Tank Bracket	Ksh.17,850
	Ksh.2385.421/-
Rounded to near figure	Ksh.240,000/-
Add repeated items	
III) 1) (4) LHS front bumper in receipt	Ksh.7941 and 559
	Ksh.23,310/-
Rounded to near figure	Ksh.20,000/-

Items that has estimate below

The D.T. Dobie estimates

1) (7) Main RHS cover Powell	Ksh.2,520/-
2) (13) RHS door step top	Ksh. 700/-
	Ksh.3,220/-
Rounded	Ksh.3,000/-
The approximate total	Ksh.580,000/-

V) The costs of repairs was paid for by and against an invoice as follows:-

1) Rec 8029	Ksh.233,186.88
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2) Rec 7942	Ksh.683.310.60
3) Rec10298	Ksh.661,777.04
4) Rec 10180	Ksh.270886.65 (minus over charge)
5) Rec .558	Ksh.683.720/30
6) Rec 559	Ksh.270.885.65 (less double A/C) Ksh.2.803,796/20
Rounded to nearest figure	Ksh. 2.8. M
Less	Ksh. 580,000
	Ksh.2.220 M

I then turn to additional costs as per the plaint.

I do see corresponding receipts for:-

- 1) Labour charges Ksh.120,000/-
- 2) Pantry Material Ksh.28,358 was pleaded receipt Ksh.48,358/-
- 3) Jugging Charges Ksh.10,000/- was pleaded but receipt Ksh.28,358/-
- 4) Gas and solder Ksh.2,000/- was pleaded but receipt is Ksh.12,000/-
- 5) Miscel Ksh.36,000/- was pleaded
- 6) Engine machines Ksh.10,000/- was pleaded but receipt is Ksh.93,544.90/-

Total Ksh.225,358/-

was pleaded say Ksh.200,000/-

A person is bound by what they have pleaded. No claim over and above what has been pleaded can be claimed.

Thus Ksh.2.220,000/- add 200,000/ = Ksh.2.420.000/-

I) Special Damages

Others

a) Police abstract fee 100/-

A receipt of Ksh.1,000/- was produced. The witness informed the court that his company would buy the receipts in bulk. This is not good practice to my mind. The police abstracts at all times should be in the hands of the police who should issue out the same AFTER it was been filled. In this case the witness buys bulk blank police abstract (it is presumes) and fills the same as the need arises. This is an unacceptable practice. I hope that the police would reform this sector.

I decline to award this claim as I have no proof that the 1,000/-

relates and or is payment for 100/-.

b) The Investigation Charges Ksh.40,000/-

I would accept this claim as duly proved and fully documented.

c) Assessor fee ksh.10,000/-

I would accept this claim as duly proved and fully document.

d) Loss of user

The plaintiff claim 3 million shilling. This was supported by claims that the vehicles makes 1 million per month in income exhibit P17.

I find that there should always be provision for taxes and eventualities. For the three months I would find a fair award at Ksh. 1.5 million.

The eventualities are instances of when the vehicle may break down and not be on the road. For example, when production was interrupted due to mechanical repairs, the figures on income reduced by half. I find my award is fair in the circumstances.

I enter judgment for the plaintiff on the proved sum.

In Summary

1) Material loss claim

2) Damage to motor vehicle as a result of a road traffic accident involving two vehicle lorries

3) Liability 100% against original 1st defendant. Deputy Registrar date 5.2.04

4) Quantum

Special Damages

i) Repair cost Ksh.2.8 M

Additional costs Ksh. 200,000/-

Less Ksh. 580,000/- not proved

Ksh.2.420,000/-

ii) Police abstract Nil

a) Investigators charges Ksh.40,000/-

b) Assessor fee Ksh.10,000/-

iii) Loss of user Ksh.1.5 million

Ksh.1.550.000/-

add Ksh.2,420.000/-

Total Ksh.3.970,000.000/-

Final total Say                    Ksh 4.000,000,000/-

I award the costs of this suit to the plaintiff. I award the interest on Special Damages from the date of filing suit.

Dated this 16th day of July 2004 at Nairobi.

**M.A. Ang'awa**

**Judge**

**Maina Nyangena Advocate for plaintiff**

**Kiboi & Co. Advocates for the defendant**