



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 118 OF 1997**

**STEPHEN NJUGUNA.....PLAINTIFF**

**V E R S U S**

**JONATHAN OGOSO NYANGARA.....1ST DEFENDANT**

**HON. THE ATTORNEY GENERAL.....2ND DEFENDANT**

**JUDGEMENT**

The Plaintiff filed this claim on 20.1.97 claiming Kshs.589,017.75 in compensation from the Government in negligence arising from a motor accident.

The Plaintiff gave evidence at the hearing of this claim and produced record of proceedings in the Nairobi RMCTr. Case No. 6908 of 1996 in which Jonathan Ogosu Nyagala the driver of the army vehicle registration Number 08AF 38 Peugeot Saloon was charged with driving a motor vehicle on a public road without due care and attention Contrary to Section 49(1) of the Traffic Act Cap 403. Evidence from the records and findings of the Magistrate was that on 6.2.96 at about 10.00 a.m. along Ngong Road, Plaintiff was overtaking at a junction while he was meant to drive straight and collided with the lorry registration Number KUX 593.

The 1st Defendant was negligent in failing to exercise care, overtaking at a junction and driving on the outer lane while he was not turning on the offside.. PW1 said his lorry got extensively damaged and produced assessors and investigators reports Exh.2 and Exh.3 dated 13.2.96 showing damage and the spare parts worth Kshs.161,885/- and needing labour costing Kshs.223,919.75 to repair. The vehicles used to be used by Plaintiff for carrying stones carrying about Kshs.15,000/- per day. He was not able to work for 12 days so he claimed loss of user. In my findings; the damages proved are; -

i) Repair of the lorry as per invoice from Ms Valley Garage	Kshs.223,917.75
ii) Assessment charges	Kshs. 5,000.00
iii) Police Abstract	<u>Kshs. 100.00</u>
<b>TOTAL</b>	<b><u>Kshs.229,017.75</u></b>

As for loss of user, this is to be claimed as special damages and the law is that special damages must be proved as pleaded. Here, the Plaintiff provided under paragraph 7(d) thereof as follows “7(d) loss of user at the rate of Kshs.15,000/- per day for 21 days Kshs.315,000/-“

But at the hearing of this case, the Plaintiff himself said: -

***“I used to trade with KUX 593 carrying stones and other things for 6 days earning***

*between Kshs.10,000/- and Kshs.15,000/- per day after the accident the lorry stayed for about 12 days so I claim loss of user. I hired some other vehicle for Kshs.8,000/- and I claim that.”*

It is obvious that the pleaded claim is not supported by the evidence adduced and therefore, there is no proof over this claim as it should be and disallowed.

The award, therefore, is for Kshs.229,017.75 plus cost and interest.

**DELIVERED this 20th day of June 2003**

**A.I. HAYANGA**

**JUDGE**

**Read to Mr. Siamei for Plaintiff**

**No appearance for Defendant**

**A.I. HAYANGA**

**JUDGE**