



**Sanlam General Insurance Co. Ltd v M'Mbura (Civil Appeal E054 & E098 of 2024
(Consolidated)) [2025] KEHC 340 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E054 & E098 OF 2024 (CONSOLIDATED)
EM MURIITHI, J
JANUARY 23, 2025**

BETWEEN

SANLAM GENERAL INSURANCE CO. LTD APPELLANT

AND

JULIUS KIAMBATI M'MBURA RESPONDENT

*(Being an appeal from the Judgment of Hon. J. M. Njoroge
(CM) delivered on 27/3/2024 in Meru CMCC No. E423 of 2021)*

JUDGMENT

1. The Respondent herein, who was the Plaintiff in the trial court, sued the Appellant by an Amended Plaint dated 8/2/2023 seeking a declaration that the Appellant is fully liable to compensate him for the loss and damage occasioned to Motor Vehicle Registration No. KBG 560 F Mercedes Benz Actros as a result of the accident which occurred on 25th May, 2021 and all other related and/or associated costs and damages, payment of Ksh.4,958,000, general damages for loss of user of Motor Vehicle Registration No. KBG 560 F Mercedes Benz Actros from 25th May, 2021 till the date of compensation, costs of the suit plus interests. He pleaded that on or about 21st March 2021, the Appellant offered him a Policy Cover No. 111/51001/2020/00037 in respect of his motor vehicle Registration No. KBG 560 F Mercedes Benz Actros 6 × 4 (11946 CC), whereby the value of the vehicle as ascertained by the Appellant's appointed valuer AA Kenya was Ksh.4,850,000 as per its Pre-Insurance Vehicle Inspection Report. The windscreen was valued at Ksh.40,000 and radio cassette/CD player at Ksh.20,000. The motor vehicle was comprehensively insured against, inter alia, all damages that may be occasioned to it as a result of an accident and he duly paid the agreed annual premiums of Ksh. 276,740. On 25/5/2021, his driver was driving the said vehicle along Mitunguu – Kathwana road in Meru County when he swerved off the road to avoid hitting a vehicle which had overtaken him, thereby causing it to roll thus extensively damaging it. The vehicle was subsequently towed to the Appellant's Deem Auto Garage, inspected by a Police Motor Vehicle Inspector and a Certificate of Examination and test of vehicle



issued on 27/5/2024 vide VT No. 100794. The Appellant was notified of the accident immediately and he duly filed the Appellant's Motor Vehicle Accident Report Claim. The Appellant's Motor Vehicle Inspector inspected the vehicle and opined that it was so extensively damaged that it could only be written off. The Appellant's investigators investigated the claim and ascertained that it was genuine. He was taken aback when the Appellant, vide a letter dated 28/7/2021 unreasonably and unlawfully indicated that it could only pay pre-accident value of Ksh. 3,090,000 and towing charges of Ksh. 48,000 yet under the insurance cover, he was entitled to a total of Ksh. 4,958,000. The Appellant declined to pay the admitted sum pending determination of the contested sum insisting that he had to execute a discharge indicating that he had no further claim against it. He lost user of the vehicle from 25/5/2021 and has suffered great loss and hardship. He was using his said vehicle for his transport business and he has been constrained to source for alternative transport at a cost of Ksh. 10,000 per day.

2. The Appellant denied the claim through its amended statement of defence dated 17/11/2022, and prayed for its dismissal.
3. In its impugned judgment, the trial court made orders that:

“The court makes a finding that as at the date of the accident, the motor vehicle was under the insurance cover, issued by the defendant and a declaration as such then follows...The sum payable under the contract is the sum insured being the value of the motor vehicle. The sum due should therefore be: - a) Motor vehicle pre-accident value – Kshs. 4,850,000/=, b) Windscreen – Kshs. 40,000/=, c) Radio cassette – Kshs. 20,000/=, d) Towing charges – Kshs. 48,000 total – Kshs. 4,958,000. The court shall address the issue of general damages for loss of user...I therefore disagree disagree with defendant's submissions that the plaintiff should have purchased another motor vehicle or sought alternative transport for a short period to enable him purchase another motor vehicle. The plaintiff having taken out an insurance cover held legitimate expectation that the insurer would promptly compensate him to enable him continue his business or purchase an alternative vehicle. The plaintiff has leased the alternative motor vehicle with effect from 26.5.2021. The upshot is that the plaintiff's suit is hereby allowed as prayed together with costs and interest.”

The Appeal

4. On appeal, the Appellant vide its memorandum of appeal filed on 17/4/2024 set out 12 grounds of appeal as follows:
 - “1. The Learned Trial Magistrate erred in law and fact in awarding Kshs. 4,958,000/= in Special damages for the value of the motor vehicle registration number KBG 560 F which are inordinately high and wholly unsupported by the applicable judicial precedents, therefore the same are erroneous and have occasioned a miscarriage of justice.
 2. The learned trial Magistrate erred in law by failing to consider provisions of Section 156 (1) of the *Insurance Act* that provides: “No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received and further the Hon. Magistrate erred in fact and law by failing to hold that the premiums were paid after the accident occurred and therefore the Respondent ought not to be indemnified by the Appellant.
 3. The learned trial Magistrate erred in law and fact by awarding loss of user which was pleaded as general damages. The Respondent did not specifically



plead the actual amount on loss of user and thus, the Hon. Magistrate ought to have declined the said prayer.

4. The learned trial Magistrate erred in law and fact by granting prayer (c) on Plaint, that is ambiguous, vague and uncertain. It is equivocal the amount payable on loss of user which parties can only speculate and therefore loss of user which is not quantified cannot be enforced.
5. The learned trial Magistrate in allowing prayer (c) on Plaint, awarded loss of user for unlimited period of time which is contrary to the principles set out by the Court of Appeal in *David Bagine v Martin Bundi* (1997) eKLR where the Court held that Damages for loss of user of a chattel can be limited (if proved) to a reasonable period and therefore the Hon. Magistrate erred both in law and fact.
6. The learned Magistrate erred in law and fact by awarding loss of user which is a consequential loss, and the same was expressly excluded under General Exceptions (Clause 5 (a)) of the Insurance Contract (policy document).
7. The learned trial magistrate erred in law and fact by giving a declaration that the appellant is wholly liable to compensate the respondent's loss of motor vehicle registration number KBG 560 F.
8. The Honourable learned trial magistrate erred in law and fact by awarding the costs of the suit to the respondent.
9. The learned trial magistrate erred in law and fact by awarding damages for loss of user an award which is wholly unsupported by the facts of the case, the evidence tendered by the parties, the principles of law and the applicable judicial precedents, therefore the same are erroneous and have occasioned a miscarriage of justice.
10. The Learned Trial Magistrate erred in law and fact by failing to consider the Appellant's authorities in their submission on quantum hence arriving to an erroneous decision.
11. The Honourable trial magistrate erred in law and fact in failing to consider the Appellant's documents that were filed and produced in court.
12. The learned trial magistrate's judgment as a whole is not supported by the evidence that was tendered in court by the parties."

Duty of Court

5. This being a first appeal, this court is required to consider the evidence adduced, evaluate it and draw its own conclusions bearing in mind that it did not hear and see the witnesses who testified. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123). Also in *Williamson Diamonds Ltd and another v Brown* [1970] EA 1, the court held that: "The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion."



Evidence

6. PW1 Julius Kiambati N'Mbura, the Respondent herein adopted his statement dated 14/10/2021 as his evidence in chief and produced the demand letter, letter dated 28/7/2021, copy of log book, accident report claim form, police abstract, certificate of examination, inspection report, receipt dated 26/5/2021, printed list of documents dated 13/1/2022, contract, copy of bank cheque, certificate of insurance and bank receipt as exhibits in court.
7. On cross examination, he stated that, "The road traffic accident was on 25/5/2021. On 21/4/2021 I took out the policy and paid the amount Kshs. 276,740/- as the premium on 26/05/2021. I paid for the premium after the accident. I paid by way of a Cheque. I had given the agent the Cheque before the accident. The motor vehicle is valued Kshs. 4,850,000/-. The valuation was carried out in April, 2021. I have a policy document but not in court."
8. On re-examination, he stated that, "The policy was effective at the time of the accident. I gave the cheque to the agent in April, 2021. This is a bank Cheque. The grace period to for one month by which the motor vehicle is inspected to confirm value."
9. PW2 PC Nelson Njoka testified that, "I am attached at Katwana police station the road traffic accident on 25/05/2021. Police abstract – PEXH 5. Certificate of motor vehicle examination – PEXH 6."
10. On cross examination, he stated that, "The motor vehicle was insured by Sanlam Insurance Company. The driver was injured. Nobody was to blame for the accident. The examination report shows the damages to the motor vehicle. The motor vehicle was written off."
11. PW3 Nizon Karanja Njoroge testified that, "I stay at Kitale Kipsongo and I am a transporter. I know lease agreement (MFI 10) dated 26/05/2021 – PEXH 10."
12. On cross examination, he stated that, "Lease period was until the Plaintiff got another motor vehicle. He pays Ksh. 10,000/- per day. It is not indicated that payment was daily."
13. DW1 Mercy Kinyua, the Appellant's Legal Officer testified that, "I rely on my statement dated 20/04/2023 as my evidence and list of documents dated 17/11/2023 – DEXH 1, 2, 3. The pre-accident value is Kshs. 3,315,000/- salvage value is Kshs. 1.5 Million. We could pay Kshs. 1.8 Million. We declined to pay. We didn't issue a 10 months insurance cover date of loss is dated 25/05/2021, and premium was settled on 26/05/2021 a day after the date of loss. There was no active policy at the time of loss. The company declined the claim. For all accidents, we have to do a valuation. PEXH 12 is a bank receipt advice. The date of policy is 19/03/2021 and a cheque issued on 26/05/2021. There is a possibility that the dispute is not the certificate as it is not ours. Bank receipt advice is from our company. On the date of the accident, there was no contract."
14. On cross examination, she stated that, "DN is a financial term. The insurance certificate shows it was issued by the Defendant. The details correspond with the defendant's. We have not reported of any forgery. I don't issue policies. This is a forgery. We have not conducted investigations. The motor vehicle is the one as per certificate of insurance. The receipt is by Joseck Insurance Agencies who is our agent. I don't know when the cheque reached Joseck or if the cheque was post dated. The cash was paid to the Defendant. The receipt is issued after the accident. We didn't write to say the premium was received late. I don't know if the Plaintiff is a new client or number of his fleet. Valuation was done after the accident. Insured amount is 4.8 Million. NTSA certificate is dated 27/05/2021, shows that the motor vehicle was written off. Policy was issued on 21/05/2021. This doesn't confirm existence of a policy. It shows a certificate has to be displayed. I have not produced anything to invalidate the certificate. I



don't associate with details of the insurance certificate. In PEXH 2, letter of agency, the Defendant doesn't give a proposal."

15. On re-examination, she stated that, "The certificate is invalid due to the particulars. We issue certificates for one month instalments policy per policy. The Plaintiff issued the cheque. We may or may not be bound by the Certificate of insurance. There was no valid contract. Consideration was paid after the accident."

Submissions

16. The Appellant cites James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR and Butt v Khan (1978) eKLR on the duty of the appellate court and when to interfere with judicial discretion in assessment of damages. It urges that it was not required to fulfil any insurer obligations under the policy with regard to a period when the prerequisite contractual condition of paying all premiums due was not satisfied. It urges the court to find that the insurance policy was not perfected by payment of premiums prior to raising a claim, and cites Solle v Butcher (1949) ALL ER 1107 and Nizar Hasham Virani v Shamsudin Gulamhusein Naji (2020) eKLR. It urges that it is not liable to compensate the Respondent for an accident caused by his own negligence, and cites Florence Mutheu Musembi and Geoffrey Mutunga Kimiti v Francis Kareng'e (2021) eKLR. It urges that it only duty bound to settle the market value of the vehicle as shown under section 1 clause 1 of the policy document. It urges that loss of user can only be awarded as special damages and not general damages, and cites David Bagine v Martin Bundi (Ibid). It urges that loss of user is part of consequential loss that is expressly excluded under policy document thus unrecoverable, and cites Joseph Maingi Thuo v Occidental Insurance Co. Ltd (2019) eKLR. It urges that the award of loss of user is unreasonable and contrary to the principle of restitution in integrum, and cites Macharia v Kiruthi (Civil Appeal 023 of 2023 (2024) KEHC 2685 (KLR) April 2024. It urges that the Respondent was required to mitigate his loss by either purchasing another vehicle or acquiring alternative transport for a short period instead of making an open-minded claim for loss of user, and cites African Highland Produce Limited v John Kisorio (2001) eKLR. It urges that the Respondent is a man of means but of questionable motives, and his failure to act in mitigation is absurd, unreasonable and ousts him from a position of victim to a position of a schemer seeking unjustified gain. It urges the court to find that the Respondent breached his obligation to mitigate his loss and is therefore not permitted to recover any sum under loss of user. It faults the trial court for making an award for loss of user which is twice the principal debt, and thus within the ambit of the in duplum rule, as defined in Mugure & 2 others v HELB (2022) eKLR. It urges that the ruling on review dated 10/7/2024 and the subsequent decree are illegal and void since the same were issued by the trial court during the period when this court was seized of the matter on appeal, and cites Republic v Advocates Disciplinary Tribunal Exparte Apollo Mboya (2019) KEHC 10910 (KLR). It urges that any award of general damages is speculative and inflated to provide a windfall benefit, and therefore awarding interest would amount to double compensation which violates the constitutional principle of doing justice to each party, and prays for the appeal to be allowed with costs.
17. The Respondent urges that he has proved beyond peradventure that the policy status as at 21/3/2021 read renewed, and the Appellant is estopped from denying liability when it never refunded the premiums or cancelled the policy, and cites Panchuad Freres SA v ET General Grain Co. (1970) 1 Lloyd's Rep 53 and Amirah Hassanali Mohammed Mapara v Commissioner of Insurance Insurance Kenya Limited (Interested Party) (2020) eKLR. He urges that by issuing the policy and accepting the cheque, the Appellant created a valid expectation of coverage and could not unfairly benefit from the premium while denying coverage on a technicality. He urges that the Appellant's conduct of purporting to settle the claim at a lesser sum is proof that his claim was valid. He cites Samuel Kariuki



Nyangoti v Johaan Distelberger (2017) eKLR, UAP Insurance Company Limited v Maina & another (Civil Appeal E078 of 2021) (2024) KECA 392 (KLR) (12 April 2024) and Martin Gicimu Kamanga v Board of governors, St. Anne's Juniro School, Lubao (2021) eKLR that loss of user cannot strictly be viewed as a special damage because the court requires a party to provide an evidential basis for it to base its award for loss of user. He urges the court to view the act of hiring another vehicle as a mitigating factor instead of claiming the profits he would have claimed had his transport business not paralyzed for the entire time, and cites *Ward v James* (1965) 1 ALL ER 563 at 571. He urges that the cost he incurred arose from the Appellant's delay in indemnifying him and not from the accident itself, and cites *Nyaga v Attorney General (On Behalf of the Ministry of Environment, Water and Natural Resources)* (Civil Appeal E019 of 2023) (2023) KEHC 26484 (KLR). He urges that the clarification slip of the judgment by the trial court was within the purview of section 99 of the [Civil Procedure Act](#) and did not amount to review thereof, and cites *Republic v Attorney General & 15 others, Ex-Parte Kenya Seed Company Limited & 5 Others* (2010) eKLR.

Analysis and Determination

18. The issues for determination are threefold whether there was a valid insurance cover at the time of the accident, whether the award of Ksh. 4,958,000 was inordinately high and whether damages for loss of user were awardable in this case.
19. The Appellant appears to have abandoned the fault on the trial court's failure to consider its submissions and authorities, and this court will not belabour the issue any further.

Validity of the insurance cover/policy

20. This issue is not hard to crack. The Respondent restated on cross examination that, "On 21/4/2021 I took out the policy and paid the amount Kshs. 276,740/- as the premium on 26/05/2021...I paid by way of a Cheque. I had given the agent the Cheque before the accident. The motor vehicle is valued Kshs. 4,850,000/-. The valuation was carried out in April, 2021."
21. DW1 testified that, "The pre-accident value is Kshs. 3,315,000/- salvage value is Kshs. 1.5 Million. We could pay Kshs. 1.8 Million. We declined to pay. There was no active policy at the time of loss. The company declined the claim. For all accidents, we have to do a valuation. PEXH 12 is a bank receipt advice. The date of policy is 19/03/2021 and a cheque issued on 26/05/2021. On the date of the accident, there was no contract." She acknowledged on cross examination that, "The insurance certificate shows it was issued by the Defendant. We have not reported of any forgery. The motor vehicle is the one as per certificate of insurance. The receipt is by Joseck Insurance Agencies who is our agent. I don't know when the cheque reached Joseck or if the cheque was post dated. The cash was paid to the Defendant. The receipt is issued after the accident. We didn't write to say the premium was received late. Valuation was done after the accident. Insured amount is 4.8 Million. NTSA certificate is dated 27/05/2021, shows that the motor vehicle was written off. Policy was issued on 21/05/2021. It shows a certificate has to be displayed. I have not produced anything to invalidate the certificate."
22. The court cannot accept the Appellant's contention that the late payment of the insurance premium invalidated the policy because if that were the case, then the prudent thing to do would have been to reject the payment and cancel the policy. The Appellant cannot be permitted to have its cake and eat it by reaping the benefits of the premium paid under the very policy it insists was invalid and void ab initio. Needless to state, the Certificate of Insurance was to commence on 21/5/2021 and expire on 20/3/2022. The accident occurred on 25/5/2021 during the period which the insurance cover was valid and therefore the fact of the alleged belated payment of the premium was immaterial and inconsequential.



23. This court thus finds that the Respondent proved on a balance of probabilities that there existed a valid insurance cover at the time of the accident and the Appellant was therefore liable.

Award of Ksh. 4,958,000

24. This sum, as assessed by the Appellant's appointed valuer AA Kenya represented the pre-accident value, the cost of the radio cassette and windscreen, and that is what the trial court awarded. After certification by its trusted garage, Deem Auto Garage that the vehicle was extensively damaged and it could only be written off, the Appellant was obligated to settle the pre-accident value which was Ksh.4,958,000.
25. The court finds that the award of Ksh.4,958,000 was supported by the evidence led and therefore justified.

Loss of user

26. It is not lost to this court that an award for loss of user by a trial court amounts to exercise of judicial discretion. An appellate court would not readily interfere with the trial court's exercise of discretion unless it is shown that the court applied wrong principles of law; took into account irrelevant factors; failed to take into account a relevant factor or the award is inordinately high or low as to represent an erroneous estimate. (See Catholic Diocese of Kisumu v Sophia Achieng Tete (2004) eKLR).
27. In Samuel Kariuki Nyangoti v Johaan Distelberger [2017] eKLR, cited by the Respondent, the Court of Appeal stated that:

“In personal injury cases, the loss of business profits and loss of future earning capacity are usually in the nature of general damages. The loss of use of a profit making chattel such as a lorry or matatu through an accident is similarly a claim in general damages. The standard of proof in such claims is on balance of probabilities and the principle of restitutio in integrum is applied in such cases.”

28. The Respondent pleaded that he was compelled to use alternative mode of transport consequent to the Appellant's adamantness to settle the claim. On its part, the Appellant contends that the award for loss of user was manifestly erroneous and unjustified, since it was pleaded and proved without the anticipated specificity and strictness required in special damages.
29. As in Bungoma Line Sacco Society Limited v Super Bargains Hardware (K) Limited (2021) eKLR (D. Kemei J), this court finds that the Respondent was entitled to an award for lost use of his motor vehicle because of the Appellant's deliberate inaction, negligence and blatant refusal to indemnify him in good time to purchase another motor vehicle, even after the genuineness of the claim had been ascertained by its investigators.
30. In Matunda Fruits Bus Services Ltd v Moses Wangila Wangila & another [2018] eKLR, the court (Joel Ngugi J. as he then was) held that:

“The Appellant claims Kshs. 1,280,000.00 as loss of user. This was calculated using a figure of Kshs. 40,000/- per day for 32 days. To prove the damages under this heading, the Appellant produced Manifests for a given period in January- February, 2007...

25. However, it is not entirely clear to me why it took 32 days to repair what would appear, in the context of a Public Service Vehicle, to be minor repairs. A party injured through the negligent actions of another has a duty to mitigate



damages through prudent preventative action. The duty to mitigate should have kicked in here for the Appellant to ensure that the bus would be repaired as quickly as possible. In my view, a claim for loss of use must be for a reasonable period of time which is strictly necessary for the repairs to be made on the damaged vehicle. In most cases, absent exceptional circumstances, such reasonable period should not exceed fifteen days. In the present case, no exceptional circumstances were shown. I will, therefore, cap the number of days over which the Appellant can claim loss of use of the motor vehicle to fifteen days.”

31. The Respondent produced a leasing agreement to show that he used alternative motor vehicle for his transport business for the entire period from 25/5/2021 to 27/3/2024, which is approximately 3 years. He has however not exhibited any receipts to show how the payments were done and PW3 was at pains to explain whether payment was done daily or at all. It is not disputed that the Respondent lost use of his motor vehicle and was inconvenienced to a point where he sought alternative mode of transport.
32. In the Court of Appeal decision of *Timsales Limited v Up & Down Saw Mills (Kenya) Limited* [1985] KLR 557 discussed the need for mitigation of damage in similar 1974 case where the respondent lent a portable cross-cut saw to the appellant, and upon failure to return it in good order, sued for the return of the saw in good working condition, damages and interest, and claimed Shs.30 per day for loss of user of the saw until the appellant returned the saw about two years later, and the trial Judge gave Judgment for the respondent for damages at the rate of Shs.30 per day from the day following the borrowing of the saw until the day of its return, the return of the saw in working condition or its replacement with a new saw and interest on the sum awarded. The Court held that the period of more than two years allowed by the trial judge as the period in which the respondent could envisage the return of its machine and therefore not purchase a replacement was unreasonably long and therefore wrong. Consequently, it was wrong and exaggerated to award damages up to the time of the return of the machine by the appellant.
33. Madan Ag. CJ, with whom Kneller and Hancox JJA agreed, held at p.560:

“It should have been clear to the plaintiff that the defendant was doing nothing about returning the machine, repaired or otherwise, notwithstanding the plaintiff’s letter dated February 12, 1974 which conveyed a clear warning about the damage that was being incurred. The damage however could only be allowed for a reasonable period. In my view, the plaintiff therefore ought to have mitigated the damage by purchasing another machine, say after the expiry of ninety days, which I consider to be a reasonable period during which time the plaintiff could expect the defendant to return the machine. The period of more than two years envisaged and allowed by the learned judge for the machine to be returned during that period was unreasonably long, therefore wrong. The plaintiff should have purchased another machine at the expiry of ninety days for Shs 1,500, accepting its price for it as against the defendant’s quotation of Shs.903 for it. It is irrelevant that the machine was returned to the plaintiff more than two years later. It had not been returned to him when he became entitled to acquire an alternative machine. To allow damages up to the time of return of the machine two years and more later, as the learned judge did, with respect, was clearly wrong and exaggerated.”
34. In order to mitigate the loss, the Respondent in this case leased out another vehicle at a daily rate of Ksh.10,000 from 25/5/2021 till the date of the judgment on 27/3/2024. If the case had taken 10 years to conclude to judgment, would the daily rate of hire at 10,000/- have been payable for the 10 years?



The law on mitigation of damages must impose an upper limit for which such damages are recoverable considering the nature of duty to mitigate in the particular circumstances of the case.

35. In this case, it would be expected that the Respondent would secure alternative transport after a reasonable time, which this Court fixes at one year or 12 months from the date of the accident causing the loss. As it is, in this case the loss of user award of Ksh.10,200,000 is more than double the value of the Respondent's vehicle valued at Ksh.4,958,000. The law is clear that the Respondent was under a duty to mitigate the loss. It was incumbent upon the Respondent to mitigate the loss through reasonable and appropriate preventative action.
36. This court finds that the award of Ksh.10,200,000 was inordinately high in the circumstances because the Respondent had little regard for his duty to mitigate the loss. The Respondent pleaded that he was engaged in the transport business in generality without giving clear and concise particulars of what the same entailed and how much he made therefrom.
37. There was, therefore, no justification for the daily cost of Ksh.10,000 to hire an alternative vehicle in the absence of any proof thereon. The court must find that any loss after 12 months of the accident is not recoverable on the ground of failure to mitigate. The court finds that a reasonable sum of $\text{Ksh.}5,000 \times 30 = \text{Ksh.}150,000 \times 12 \text{ months} = \text{Ksh.}1,800,000$ would sufficiently compensate the Respondent for his loss of user.
38. Costs follow the event and as the successful party, the Respondent was entitled to costs of the suit in accordance with section 27 of the *Civil Procedure Act*.
39. The correction of the slip (under the slip rule) by the trial court vide the ruling of 10/7/2024 as envisaged under section 99 of the *Civil Procedure Act*, was meant to give effect and clarity to the actual intention of the court, as opposed to reviewing, redoing or amending the judgment.

ORDERS

40. Accordingly, for the reasons set out above, the Appellants' appeal is allowed in the following terms:
 1. The sum of Ksh.10,200,000 damages for loss of user is set aside and substituted with an award of Ksh.1,800,000.
 2. The other awards made by the trial court remain unchanged.
 3. The Appellant shall have costs of the appeal.

Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF JANUARY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Oteko for the Appellant.

Mr. Brian Mwirigi for the Respondent.

