Rentworks EA Limited & another v Thiongo (Civil Appeal E045 of 2023) [2025] KEHC 5464 (KLR) (25 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5464 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL APPEAL E045 OF 2023

SM MOHOCHI, J

APRIL 25, 2025

BETWEEN

RENTWORKS EA LIMITED .... 1ST APPELLANT

PAUL NGANGA MUCHIRI .... 2ND APPELLANT

AND

TITUS KIARIE THIONGO .... RESPONDENT

JUDGMENT

1. The court determined on a balance of probability that the Respondent matatu was earning Kshs 3,000/- and that the ninety (90) period it took to repair the vehicle was upon the Appellants.
2. The Appellants have contended that the award was erroneous for lack of sufficient proof. This court however finds that the trial court considered the bundle of daily Matatu Records(receipts) as a basis and that on a balance of probability the same would suffice.
3. The jurisprudence on loss of user has evolved and an award of general damage is not supposed to return the Respondent to the original position but is a form of compensation for loss suffered. The award is discretionary and can only be disturbed if the same is based on a wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it erroneous.
4. The conditions for interference with general damages was discussed by the Court of Appeal in the case of *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR, where the Court of Appeal held that;

> " ...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that

the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval by this Court in *Butt v. Khan* [1981] KLR 349 when it held as per Law, J.A that:'An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low".

5. With regards to the motor vehicle assessment report and the ten (10) days identified as sufficient duration to repair the motor vehicle of which the Appellants argue would be the period for computation of the loss of user, this court is guided by the case of *Matunda Fruits Bus Services Ltd v Moses Wangila Wangila & another* [2018] eKLR, the court (Joel Ngugi J. as he then was) to the extent that,

" held that:

"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."

6. This court finds the trial court acted on the wrong principles of law in the computation of loss of user period at 90 days which was unsound and without basis as the delay in repair of the matatu was never occasioned by the Appellants but rather the Respondent himself who indicated he had no money and eventually the Sacco had to pay for him. To this extent this court is of the rational view that the period be capped at fifteen days.

7. The upshot of the above is that Appeal is found to be of merit and is allowed on the following terms;

   a. The review judgment dated 22nd February 2023 is hereby set aside and is accordingly varied as follows

   b. Judgment is hereby entered against the Respondents as follows

      Damages for material loss Kshs 369,190/-

      Damages for loss of user Kshs 45,000/-

      Total Kshs 414,190/-

      Less 20% Plaintiff contribution Kshs 82,838/-

      Total Award Kshs 331,252/-

8. The Costs for this Appeal are awarded to the Appellants

   It is so Ordered.

DELIVERED, DATED AND SIGNED AT NAKURU ON THIS 25TH OF APRIL, 2025.

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MOHOCHI S.M.

JUDGE