



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL SUIT NO. 2526 OF 1993**

**JACINTA WANJALA MWATELA ..... PLAINTIFF**

**VERSUS**

**THOMAS MWALUKO ..... DEFENDANT**

**JUDGMENT**

On the 18th of October, 1992 at about 7.00 p.m. the plaintiff was lawfully driving her newly imported motor vehicle registration No. Nagoya 47H I 8869 Nissan, along the Nairobi-Mombasa road when at Mungu in Taita Taveta District the defendant negligently collided with her motor vehicle whilst driving vehicle registration KUQ 271 causing the Plaintiff injury and damages to her vehicle. The Plaintiff filed suit against the defendant on the 24.5.93 (Plaint dated the 21.5.1993). The defence filed suit and denied that the accident was caused or contributed by him as alleged in the Plaint. The parties then came for hearing for 10 and 11.6.97 but the case was not confirmed.

On the 18.5.98 the parties entered into a consent on liability. Judgement for the plaintiff against the defendant at the ratio of 20:80% liability which was recorded.

They further entered into consent on: “

- i) General Damages
- ii) Pain, Suffering & Loss of Amenities Ksh.160,000/-
- iii) Special Damages for Ksh.25,116/-
- Medical expenses & Medical report
- Pre accident value on the motor vehicle
- before the payment of duty less Salvage
- nature Ksh. 386,180/-
- iv) Assessment report Ksh. 2,800/-
- v) Break down charges Ksh. 5,500/-
- vi) Costs of Police abstract &
- traffic proceeding Ksh. 124/-

Total Ksh.579,720/- subject to contributory negligence at 80%- 20% as already recorded.

Osiemo, J''

Signed

Emphasis my own.

The parties were not able to agree on two aspects of the case.

This they set down in their new issues being:- “whether the plaintiff is entitled to recover from the defendant 135,082 being import duty and vat paid on the motor vehicle together with a sum of Ksh.10,000/- being fees for letters of release.”

b) Whether the plaintiff is entitled to recover damages for loss of user and if so how much

c) What order to be made as regards interest and costs.”

The plaintiff then gave evidence and stated how her personal vehicle had been stolen. She then decided to import the motor vehicle, subject matter of this case. She paid the import duty and V.A.T together with Ksh.10,000/- through her agents.

As she drove the vehicle between Mombasa and Nairobi, there she had an accident. She claimed to be entitled to be paid the said sums of moneys together with loss of user.

Her advocate recommended a figure of Ksh.1,000/- per month for 90 days namely Ksh.90,000/-.

The advocate for the defendant stated that the plaintiff is not entitled to be awarded the duty. This is because she did not produce the assessment report to know the exact pre-accident nature. In fact in their consent the pre accident nature was recorded as Ksh.386,180/- which is the active figure. If duty and V.A.T. is included it is double payment.

When asked why he did not request the plaintiff prior to the trial for further and better particulars as to the assessment report (asked by this court) the advocate stated it was the plaintiff to prove her case.

I noted in the consent the payment of the assessment report. The advocate for the plaintiff was well aware of this and should have asked to inspect the same but did not.

I do not think that this is a double payment. The plaintiff paid the duty and tax together with the letter of release she has no vehicle and has not utilised the amount paid due to the accident.

I hereby find that the plaintiff is entitled to the said duty, tax, and letter of release amounting to Ksh.135,082 and Kshs.10,000/- respectively. I hereby enter judgement of the plaintiff on this amount together with interest from the date of filing this suit, and costs. As for loss of users the plaintiff claims 1,000/- per day. The advocate for the defendant rightly stated that there was no basis on how she came to the figure of Ksh.1,000/- and in fact 90 days as recommended by her advocate which was exaggerated.

By loosing the use of the vehicle the plaintiff is entitled to loss of user. She requires to inform this court how she came to the figure of Ksh.1,000/-? Did she hire a motor vehicle and for how long? None of this was in evidence.

I would reduce this figure to 100/- a day - if she had to use transportation for it to be equivant to that of an average local transportation.

A figure of 90 days is reasonable in such circumstances. I hereby award loss of user at Ksh.9,000/-. I award costs and interest from the date of this judgement.

Summary:

*Special Damages*

Duty and miscellaneous	Ksh.135,082/-
	Ksh. 10,000/-
	Ksh.145,082/-
General Damages Loss of user	Ksh. <u>9,000/-</u>
Total Ksh.	<u>Ksh. 154,082/-</u>

Interest on Special Damages from date of filing suit.

Interest on General Damages from the date of judgement.

Dated this 13th day of May, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE