



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.1627 OF 1995**

**NGUYO NGIBUINI ..... PLAINTIFF**

**VERSUS**

**PATRICK KIARIE NJOROGE ..... DEFENDANT**

**JUDGMENT**

The case before me is for material loss.

The Plaintiff is the owner of a motor vehicle registration KYH 330.

As his part time business he operates a distribution business whereby he distributes traditional beer for sale in Central Province of Kenya using the said vehicle and another vehicle not a subject of this suit to some extent.

The plaintiff would normally run this business from an office at Kerembegi in central Province. There he has a depot to receive the products for sale arriving from Nairobi. The said products would be thereafter be placed in a vehicle and distributed. In any one vehicle a driver, a turn+ boy and a salesman, for purposes of collecting the cash, would be deployed. Their salary would be ksh.4,500/-, Ksh.2,500/- and Ksh.3,000/- respectively.

On the material day of 4th March 1999 PW2, the Salesman stated how they had left the Kutus area on their sales and whilst along the Kutus road their vehicle was involved in an accident with a Nissan motor vehicle. He himself was rushed to the hospital.

On receiving information of the accident, PW1 travelled to the scene the following day.

It was thereafter that he confirmed that the vehicle had been towed to the police station. It was damaged. A bill of ksh.7,500/- was given to him for towing charges on the 6.4.95. It is uncertain whether this sum was paid as all the court has is an invoice.

As to the police abstract report, the plaintiff duly obtained one together with a receipt of Ksh.100/- and not Ksh.120/- as pleaded in the Plaintiff.

He then had said motor vehicle towed to Simba Colt and negotiated for the repairs. The towing charges to Nairobi amounted to ksh.10,450/- which he duly paid to the Automobile Association of Kenya. He produced a receipt to this effect.

The reasons why the plaintiff undertook to negotiate for repairs was that he had under issued for the said vehicle. Only half the amount was thus met by the insurance company. He had to top up the rest of the sum to Ksh.320,000/-. (The insurance company paid 183,000/-)

The plaintiff filed suit for Special damages only as contained in the Plaintiff. He then pleaded loss of Business as Special Damages.

This he said was at the rate of Ksh.10,000 per day.

To support his claim he produced debit notes and charges to show that he made substantial profit per day.

The advocate for the defendant questioned this by stating that the Plaintiff had no proof of how much the vehicle was earning prior to the accident.

The Plaintiff nonetheless through his advocate claimed 10,000/- per day for 132 days making a total of ksh.1,320,000/-.

I find in this case that an accident did occur whereby the plaintiff sustained material loss.

He has proved before the court the following Special damages which I grant to him:-

i) Ksh.100/- police abstract report.

ii) Towing charges Ksh.12,450/-.

iii) Ksh.137,000/- for charges paid to Simba Colt Ltd for the repairs of the vehicle vide receipt No. 56716.

As to the claim for the loss of goods at the accident scene, I find that no evidence had been deduced. PW1 himself did not in fact see or witness the accident and the aftermath. PW2 was rushed to hospital. He was unable to recall how much sale of moneys he had, or how much produce of been he carried.

It seems all he recollects was the loss of the receipt book.

The witness was most certainly nervous in the witness box and frequently wiped his brow of sweat.

I decline to make award under this claim

As to the issue of loss of user, I note that this is a matter that had not been pleaded save that it was mention as a prayer together with Special Damages.

I believe it may have been placed under a head of Damages but had not been pleaded.

On the aspect of "loss of business" the plaintiff state he made a profit of Ksh.10,000/- all he produced were debit notes to him. It is unclear whether this amount had been paid or is still owing.

I decline to make an award under this due to the lack of evidence that a profit was being made. No mention of tax is made.

I hereby enter judgement for Special Damages for

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|-------------------------------|---------------|
| i) The police abstract Report | Ksh. 100/-    |
| ii) Towing charges            | Ksh. 12,450/- |
| iii) Vehcile charges          | Ksh.137,550/- |
|                               | Ksh.149,550/- |

I award costs of this suit. I award interest of this suit from the date of filing suit. 65% is Ksh.97,207/50

Dated this 20th day of May, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE