

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. E047 OF 2025

SAMUEL KARIUKI NGUGI.....
APPELLANT

VERSUS

AMOS ONAMI INDATA.....**RESPONDENT**

**(Appeal from the judgement and decree of Hon. EA Nyaloti,
Chief Magistrate, CM, in Busia CMCC No. E043 of 2024, of 17th
June 2025)**

JUDGEMENT

1. The suit, at the primary court was by the respondent, against the appellant. It was a material damage claim, arising out of a motor traffic accident, which had occurred on 25th May 2023, along the Kisumu-Busia Road, involving motor vehicles belonging to the 2 parties. The respondent attributed negligence on the part of the driver of the motor vehicle owned by the appellant. He claimed special damages, of Kshs. 47,000.00, and Kshs. 2,200,000.00, being the value of his vehicle, which had been damaged beyond repair. There were also claims for loss of income, costs and interests. The appellant resisted the claim and attributed negligence on the part of the respondent.
2. A trial was conducted. The respondent testified and called a witness. The appellant did not adduce evidence. Judgment was delivered. on 17th June 2025. Liability had been settled, vide a consent, recorded on 24th April 2025, at 85:15. The respondent was awarded a total of Kshs. 3,097,750.00, broken down into: Kshs. 2,200,000.00, material loss, less salvage of Kshs. 600,000.00; Kshs. 2,000,000.00 for loss of income; and Kshs. 47,000.00 special damages. The decretal amount was subjected to 15% contribution.

3. The appellant was aggrieved hence the instant appeal. The grounds revolve around reliance on an incomplete and inconclusive assessment report; the award of loss of income amounting to double compensation; the award of loss of income not being sufficiently proven by way of actual earnings; evidence was not evaluated in total; principles for award of damages being misapplied; and the judgment being defective for offending Order 21 rule 4 of Civil Procedure Rules.
4. Directions were taken, on 24th September 2025, for canvassing of the appeal by way of written submissions. Both sides did file written submissions, which I have read, and noted the arguments made.
5. The appeal turns on only 2 principle issues, proof of the material damage and the award of loss of user. The others are lesser.
6. Was the material damages proved? The amount claimed, as material loss of the said damaged vehicle, was Kshs. 2,200,000.00. Reliance was placed on an accident assessment report, dated 8th June 2023. It described the nature of the damage, by identifying the items damaged, or found missing, or vandalized, after the accident. The list was of 22 items, some of which were said to have been smashed, crashed, broken, dented, buckled, shattered, torn, cracked, burnt and damaged. The conclusion was that the damages were severe and extensive, and that repairs to restore the vehicle back to its pre-accident condition, would be uneconomical. The loss or damage was described as total. The report placed the pre-accident value at Kshs. 2,300,000.00, and the value of the salvage at Kshs. 600,000.00. At the trial, the maker of the report, being a motor vehicle valuer, testified, and was cross examined by the appellant.

7. Was the material damage or loss established? Yes, it was. The respondent adduced evidence on the damage to the vehicle, and the opinion of the motor vehicle valuer on whether it would have been economical to repair it. The salvage and pre-accident values of the vehicle were also stated. The appellant did not adduce any evidence, and, therefore, that tendered by the respondent was not controverted by other evidence to the contrary.
8. On loss of user of the vehicle, upon the occurrence of the accident, which was claimed as loss of income in the plaint, was pleaded at Kshs. 6,000.00, per day. At trial, the respondent asserted that that was what he earned per day, and, therefore, that was what he lost. No material damage was presented. The trial court awarded Kshs. 2,000,000.00, but without evaluating how that figure was arrived at. The argument, made by the appellant, in the appeal, is that that award ought not have been made, asserting that an award of loss of user or profit, would amount to double compensation.
9. The appellant has cited decisions of the High Court, on loss of user, in such cases as *Permuga Auto Spares & Another vs. Margaret Korir Tagi* [2015] eKLR, *Raymond Muindi Simon vs. Takaful Insurance of Africa* [2019] eKLR, and *First Assurance Company Ltd vs. Bekko* [2024] KEHC 1636 (KLR), where it had been held that, where a vehicle is declared a write-off or total loss, a claim for loss of user ought not be entertained, for granting into would amount to double compensation.
10. On his part, the respondent has submitted that such awards have been made in other cases, such as *Samuel Kariuki Nyangoti vs. Johan Distelberger* Nairobi CACA No. 59 of 2010; *James Nyaga vs. Attorney General* [2023] KEHC 26484 (KLR) and *Mombasa Maize Millers Limited vs. Kibunei Kipkosgei* [2022] KEHC 15429 (KLR), where it was said that,

with respect to commercial vehicles, loss of user does not amount to double compensation, where awarded together with an award for material damage.

11. It would appear that the courts could be conflicted on the position. However, the latter position that it would not be double compensation, should hold sway, as it would appear to be a position held by both the High Court and the Court of Appeal. As decision of the Court of Appeal would bind me, I shall hold that the trial court was justified to award compensation for loss of user.
12. It has been argued that where loss of user is claimed, there ought to be concrete proof of it, before the court awards it. However, loss of user is not in the nature of special damages, where the loss ought to specifically pleaded and specifically proved. It is in the nature of general damage, provable on a balance of probability. See *Jackson Mwabili vs. Peterson Mateli* [2020] eKLR. In *James Nyaga vs. Attorney General* [2023] KEHC 2684 (KLR), the court settled on Kshs. 2,000.00, as daily income, as a multiplier, to assess that loss. In *Martin Gicimi Kamanga vs. BOG St. Annes Junior School Lubao* [2021] eKLR, the court settled on 6 months as a suitable multiplicand.
13. The trial court did not lay a basis, for the assessment of loss of user, along the lines in the cases cited above. It would appear that the figure of Kshs. 2,000,000.00 was pleaded from the air. The court should have identified a suitable multiplier and multiplicand, for the purpose of that assessment. I persuaded, following *James Nyaga vs. Attorney General* [2023] KEHC 2684 (KLR), that the multiplier of Kshs. 2,000.00 would be reasonable, and by *Martin Gicimi Kamanga vs. BOG St. Annes Junior School Lubao* [2021] eKLR, for a multiplicand of 6 months. The calculation would be Kshs. 2,000.00 x 7 days x 4 weeks x 6 months, making a total of Kshs. 336,000.00.

14. There is the ground that the judgment was defective, for failure to comply with Order 21 Rule 4 of the Civil Procedure Rules. That provision sets out guidelines on what should be contained in a judgment, being a concise statement of the case, the points for determination, the decision and the reasons for the determination. That is a summary of what the case is about, the issues for determination, an analysis and reasons for the determination.
15. The judgment, that was delivered on 17th June 202, by the trial court, had summaries of the pleadings in the plaint and of the proceedings, and the determination. There was no identification of the issues to be determined. There was no analysis of the pleadings, evidence and the applicable law. No reasons were given for the determination. There was no full compliance with Order 21 Rule 4 of the Civil Procedure Rules.
16. Order 21 Rule 4, of the Civil Procedure Rules is, subsidiary legislation. It is not substantive law; it is procedural. It falls within the class of rules of procedure that Article 159 of the Constitution overrides. There is a decision of the court. The trial record has pleadings, and proceedings were conducted, founded on those pleadings. Testimonies were given, and recorded, and documentary material was placed on record. There was adequate material, upon which the trial court could make a decision. A decision was made. The fact that no analysis was made of the pleadings, testimonies and material, ought not be fatal to the decision. Where that decision is placed before an appellate court, upon an appeal being proffered, the trial record would provide adequate material for an evaluation of the decision.
17. However, I need to point out that that practice, of making decisions which are not based on analysis of the

material presented, or on any form of discernible reasoning, should not be tolerated. The parties would expect that the trial court would justify or account for its final decision, by way of a recitation of the material upon which the decision is based, an analysis of that material as against the applicable law, and reasons for the conclusions that led up to the decision. Without such, the parties would be left wondering how the decisions were arrived at, and begin to suspect that the trial court did not apply its mind to what was before it.

18. Overall, it is my finding that the appeal succeeds only on one limb, that relating to loss of user. The award of Kshs. 2,000,000.00 is, accordingly, hereby set aside, and substituted with an award of Kshs. 336,000.00, whose workings I have set out above. Each party shall bear their own costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 10TH DAY OF FEBRUARY
2026.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

**Mr. Oduor, instructed by Wachira Wekhomba & Associates,
Advocates for the appellant.**

**Mrs. Odoyo, instructed by Peres Odoyo & Company,
Advocates for the respondent.**