



REPUBLIC OF KENYA



KENYA LAW
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**Omocha Enterprises Limited & another v Mwebi (Civil Appeal
E114 of 2024) [2025] KEHC 6553 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 6553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E114 OF 2024
DKN MAGARE, J
MARCH 25, 2025**

BETWEEN

OMOCHA ENTERPRISES LIMITED 1ST APPELLANT

RICHARD ONKUNDI ONCHARI 2ND APPELLANT

AND

ONDIEKI KELVIN MWEBI RESPONDENT

*(An Appeal from the Judgment and Decree of Hon. C.A. Ocharo, Chief
Magistrate dated 11.6.2024 arising from Kisii CMCC No. E366 of 2021)*

JUDGMENT

1. This is an Appeal from the Judgment and Decree of Hon. C.A. Ocharo, Chief Magistrate dated 11.6.2024 arising from Kisii CMCC No. E366 of 2021.
2. The Memorandum of Appeal raises the following Grounds:
 - a. The Trial Court erred in awarding the Respondent Ksh. 247,000/= in special damages for repair costs without evidence.
 - b. The Trial Court erred in law and fact in awarding the Respondent excessive Ksh. 372,000/= for loss of user for 62 days without evidence.
 - c. The Trial Court erred in law and fact in shifting the burden of proof to the Appellants
 - d. The Trial Court erred in law and fact in over-relying on the Respondent's evidence and submissions but which was not relevant to the case.
 - e. The Trial Court erred in failing to consider the Appellants' submissions.



3. The Plaintiff dated 19.3.2021 claimed repair costs and incidental expenses arising from an accident that occurred on 13.12.2020 in which the Appellant's Motor Vehicle Registration Number KBL xxxM is said to have negligently rammmed into the Appellant's Motor vehicle registration No. KCQ xxxB along Kisii- Migori Road at Riamasangara Area.
4. The claim is in respect of the damage to the Respondent's motor vehicle. The Respondent as Plaintiff set forth particulars of negligence for the accident motor vehicle. The Plaintiff pleaded damaged parts and replaced parts. The total cost of parts replaced was pleaded as Ksh. 180,000/-. The following was also pleaded:
Costings
 - i. Cost of parts 228,000/-
 - ii. Labour Ksh. 12,000/-
 - iii. Painting Ksh. 20,000/-
 - iv. AC Gas Refilling Ksh. 3,500/-
 - v. Miscellaneous Ksh. 5,000/-Subtotal Ksh. 304,000/-
Add Vat @ 14% Ksh. 42,560/-
Grand Total Ksh. 346,560/-
5. It was pleaded that the Respondent's motor vehicle used to earn Ksh. 8,000/- daily and remained out of use for 62 days hence loss of user.
6. The Appellants entered appearance and filed Defence dated 22.4.2021 denying the particulars of negligence and injuries pleaded in the Plaintiff.
7. The Trial Court heard the parties and proceeded to render Judgement in which the Court awarded the Plaintiff as follows:
 - a. Cost of repairs Kshs. 247,000/=
 - b. Loss of user Kshs. 372,000/=Total Kshs. 619,000/-.
8. Aggrieved by the lower court's finding, the Appellant lodged this Appeal and set forth the following grounds:
 - a. That the learned trial magistrate erred in law and fact in awarding the Respondent a sum of Kshs.247,000/= as special damages for repair costs without sufficient evidence supporting the finding.
 - b. That the learned trial magistrate erred in law and fact in awarding the Respondent a sum of Kshs.247,000/= as an approximate cost of repairs which is excessive in the circumstances hence amounting to an erroneous estimate of the loss suffered by the Respondent.
 - c. That the learned trial magistrate erred in law and fact in awarding Respondent a total sum of Kshs.372,000/= as loss of user an amount which was excessive hence unjustified.



- d. That the learned trial magistrate erred in law and fact in awarding loss of user for a period of 62 days contrary to the Respondent's assessor's report which provided that the repairs were to take a maximum of 5 days.
- e. That the learned trial magistrate erred in law and fact in making a finding that the suit motor vehicle remained in the garage for repairs for a period of 62 days without any evidence supporting that finding.
- f. That the learned trial magistrate erred in law and fact in shifting the burden of disapproving the Respondent's averments and/or allegations on the alleged 62 days the motor vehicle allegedly stayed in the garage for repairs to Appellants contrary to the clear provisions of law.
- g. That the learned trial magistrate erred in law and fact in adopting a sum of Kshs.6,000/= as an amount and/or income the Respondent lost per day for a period of 62 days without any evidence supporting that finding.
- h. That the learned trial magistrate erred in law and fact in over relying on the evidence of the Respondent which was not corroborated hence arriving at an erroneous decision.
- i. That the learned trial magistrate erred in law and fact by over-relying on the Respondent's submissions and legal authorities which were not relevant and without addressing his mind to the circumstances of the case.
- j. That the learned trial magistrate erred in law and fact in failing to consider the Appellant's submissions and legal authorities relied upon in support to the defence thereof.
- k. That the learned trial magistrate's decision albeit, a discretionary one was plainly wrong.
- a. .

Evidence

9. PW1 was the Respondent. He testified that the Appellants hit his car while at Gesonso Junction. The motor vehicle was damaged and people injured. He relied on his witness statement dated 15.3.2021 and documents of the same date as well as further bundle of documents dated 12.10.2022 produced in court.
10. It was the Respondent's further case that the motor vehicle used to make Ksh. 7,000-8,000 per day and stalled for 62 days following the accident.
11. When cross-examined, the Respondent stated that the motor vehicle had third-party cover with Directline Assurance and not comprehensive insurance. It was repaired at Ngara. He was not paying VAT separately.
12. PW2 was one Wycliffe Nyakundi Miruka. He was driving the Respondent's motor vehicle at the time of the accident. He heard a loud bang, and his vehicle rolled after the accident. The Appellant's motor vehicle was on the Highway. It did not stop to give way.
13. PW3 was Vincent Joseph, a mechanic. He relied on the motor vehicle assessment report dated 23.12.2020. He assessed the Motor vehicle and listed the damaged parts, totaling Ksh. 180000/-. They also assessed labour charges of 304,560. On cross-examination, the wipers and rims were not part of the inspection report, and the tail lamps were also not. They repaired the roof panel at Ksh. 40000, and the cost of spraying was Ksh. 150,000. They did not purchase any doors.



14. PW4 was No. 87122 PC Inter Saoko of Gesonso Traffic Base. He testified that the Appellant's motor vehicle registration no. KBL xxxM failed to give way to the Respondents' motor vehicle registration no. KCQ xxxB, hence the accident. He relied on the police abstract and OB extract. On cross-examination, he did not have the police file. He had not produced the sketch plan, and the matter was pending under investigation.
15. The Appellants called DW1, Richard Onkundi. He stated that he was the driver of the KBL xxxM. he collided with the matatu. He was joining the main road.

Submissions

16. The Appellants filed submissions dated 6.1.2025. it was submitted that the damages for repair and loss of user were unjustified. They were special damages and ought to have been specifically pleaded and strictly proved. Reliance was placed inter alia on Linus Fredrick Msaky v Lazaro Thuram Richoro & Another (2016) eKLR. On the mitigation of loss suffered, reliance was placed on African Highland Produce Limited v John Kisorio (2001) eKLR to submit that the Respondent failed in the duty to litigate loss.
17. It was submitted that the trial court erred in assessing special damages constituting the cost of repairs based on receipts that did not bear revenue stamps. Reliance was placed on Easy Coach Ltd v Emily Nyangasi (2017) eKLR
18. The Respondent submitted that the Respondent proved material loss and repairs to the required standard. Reliance was inter alia placed on HCA No. 154 of 2005 Nkuene Dairy Farmers Cooperative Society Ltd v Ngacha Ndeiya (2010) eKLR to submit that special damages in a material claim damage need not be shown to have actually been incurred as the claimant was only required to show the extend of the damage and what it would cost to restore the damaged item to as near as possible to the condition it was before the accident.

Analysis

19. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.
20. In the cases of Peters vs Sunday Post Limited [1958] EA 424 , the court therein rendered itself as follows:-

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”

21. In Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123, this principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in



mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

22. This Appeal concerns the award of damages for repair costs and loss of user. The issue is whether the Learned Magistrate erred in assessing the damages pleaded and proved by the Respondent.
23. Before proceeding, it is important to address the prodigious nature of the memorandum of appeal. The same raises only 2 issues. the memorandum of appeal raises ancillary, repetitive, matters that are a waste of judicial time. the kind of memorandum of appeal is anathema to the provision of Order 42 Rule 1 of the Civil Procedure Rules provides as hereunder:

“Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading. (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

24. The Court of Appeal had this to say about compliance with Rule 86 of the Court of Appeal Rules (which is *pari materia* with Order 42 Rule 1 of the Civil Procedure Rules) in the case of *Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat* [2020] eKLR: -

“We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See *Abdi Ali Dere v. Firoz Hussein Tundal & 2 Others* [2013] eKLR) and *Nasri Ibrahim v. IEBC & 2 Others* [2018] eKLR. In the latter case, this Court lamented:

“We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs.” The 18 grounds of appeal presented by the appellant, *Robinson Kiplagat Tuwei* against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues...”

25. The court abhors repetitiveness of grounds of appeal which tend to cloud the key issue in dispute for determination by the court. In the case of *Kenya Ports Authority v Threeways Shipping Services (K) Limited* [2019] eKLR , the court of appeal observed that : -

“Our first observation is that the memorandum of appeal in this matter sets out repetitive grounds of appeal. The singular issue in this appeal is whether Section 62 of the *Kenya Ports Authority Act* ousts the jurisdiction of the High Court. We abhor repetitiveness of grounds of appeal which tend to cloud the key issue in dispute for determination by the Court. In *William Koross V. Hezekiah Kiptoo Kimue & 4 others*, Civil Appeal No. 223 of 2013, this Court stated:



“The memorandum of appeal contains some thirty-two grounds of appeal, too many by any measure and serving only to repeat and obscure. We have said it before and will repeat that memoranda of appeal need to be more carefully and efficiently crafted by counsel. In this regard, precise, concise and brief is wiser and better.”

26. The Appellant submitted that the lower court misapprehended evidence and ended up to an erroneous award of cost of repairs and loss of user without regard to the documentary evidence produced in Court. Fact-finding is primarily the duty of the lower court, and once evidence is presented before it on the basis of which it could arrive at a finding one way or the other, as was held in *Job Obanda vs. Stage Coach International Services Limited & Another* Civil Appeal No. 6 of 2001, it is not for the appellate court to set aside the trial court’s exercise of discretion and substitute its own simply because if it had been the trial court it would have exercised the discretion differently.
27. The Respondent proved to the required standard that the 1st Appellant’s motor vehicle registration no. KBL xxxM hit the Respondent’s motor vehicle registration KCQ xxxB. The court awarded 100% liability for the Respondent and there being no appeal on this finding, the court will not delve into this parameter.
28. The Respondent was under duty to prove the damage pleaded in respect of his motor vehicle. In *David Bagine v Martin Bundi* [1997] eKLR, the Court of Appeal cited the judgment by Lord Goddard CJ. in *Bonham Carter v Hyde Park Hotel Limited* (1948) 64 TLR 177, where he that:
- [The] Plaintiffs must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.
- in *Attorney General of Jamaica v Clerke (Tanya) (nee Tyrell)*, Cooke, J.A. delivering the judgment of the court stated that special damages must be strictly proved; the court should be very wary to relax this principle; that what amounts to strict proof is to be determined by the court in the particular circumstance of the case and the court may consider the concept of reasonableness.
29. The Appellant’s position was that the initial motor vehicle inspection report from the police station did not include some of the items listed in the Assessor’s report as damaged. The items excluded were submitted as follows:
- i. Rear wiper Ksh. 2000
 - ii. RH Rear side panel Ksh. 25,000
 - iii. Window glasses Ksh. 10000
 - iv. 1 tail lamp Ksh. 5000
 - v. RH Front door glass Ksh. 2500
 - vi. Front windscreen wipers Ksh. 2000
 - vii. Rear Bumper Ksh. 15000
 - viii. RH Rear rim Ksh. 4500
- Total Ksh. 66000



30. The Appellants also argued that the loss of the user for 62 days was not proved as the loss of the user was a special damage that ought to have been specifically pleaded and strictly proved. In this regard, it was submitted to the Appellants that the loss of user was not even pleaded in the Plaint.
31. On this court's reevaluation, it is settled that in a material claim, the claimant ought not prove by way of receipts all the expenses incurred. It is enough for the claimant to produce evidence that the item damages would require a given amount of money to be restored, as near as possible, to its prior form. The Respondent called the Accident Assessor who produced the Assessment Report dated 23.12.2020.
32. The Appellant did not produce any contrary Report. The lower court believed the assessment report produced by the Respondent. This court finds reason to doubt the said report also, as supported by the photographs produced in evidence. The Court of Appeal faced similar circumstances stated as follows in *Nkuene Dairy Farmers Co-op Society Ltd & another v Ngacha Ndeiya* [2010] eKLR:

...In our view special damages in a material damage claim need not be shown to have actually been incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item to as near as possible the condition it was in before the damage complained of. An accident assessor gave details of the parts of the respondent's vehicle which were damaged. Against each item he assigned a value. We think the particulars of damage and the value of the repairs were given with some degree of certainty. In *Ratcliffe v. Evans* [1892]2QB 524 Bowen L.J. said:

“The character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pendency.”

...Motor vehicle parts are sold in shops. We think an assessor would be in a position to know their cost. The prices may vary from one shop to another but the prices are nonetheless ascertainable even without purchasing the item and fixing it on the damaged vehicle. Motor vehicle parts are common items and any price which the assessor might have given could be counter checked and either accepted or disproved. The appellants having not questioned those prices must be taken to have accepted the report as representing the correct market prices of the various parts which were shown on the Assessor's report. The experience of the Assessor was not challenged and we think Onyancha J. was right in describing him as an expert, and his report as being opinion evidence. The court had the right to accept or reject his opinion if the circumstances so dictated. The respondent, to our mind, particularized his claim in the plaint and called acceptable evidence to prove the same and we have no basis for faulting both the trial and first appellate courts in the concurrent decision they came to.

33. This court holds and find that Respondent presented evidence in the Assessor's Report that was not controverted. The motor vehicle assessor was an expert, and in the absence of a contradictory expert opinion, this court is persuaded that there is no basis, in light of the evidence in the assessor's report and



the accompanying photographs, that the motor vehicle was not damaged to the extent pleaded and the repair cost incurred as proved by the Respondent and found the lower court. The learned magistrate correctly considered the cost of sliding door and roof panel of Ksh. 20,000 and Ksh. 42,000 as well as Kshs. 42,560 was pleaded as VAT, which she discounted from the award on the cost of repairs. The Appeal under this head fails.

34. On the loss of user, the same is a special damage that must be specifically pleaded and strictly proved. The rule is strict and somewhat mathematical. The court has to discern the pleaded damages and proceed to find proof. It is not based on estimates. The Court of Appeal in *Jogoo Kimakia Bus Services Ltd vs. Electrocom International Ltd* [1992] KLR 177 where it was stated that:

“The law on damages stipulates various types of damages. The distinction between general and special damages is mainly a matter of pleading and evidence. General damages are awarded in respect of such damages as the law presumes to result from the infringement of a legal right or duty. Damages must be proved but the claimant may not be able to quantify exactly any particular items in it. Special damages are the precise amount of pecuniary loss which the claimant can prove to have followed from the particular facts set out in the pleadings. They must be specifically pleaded.”

35. Special damages are thus very specific and constitute liquidated claim which must be pleaded and proved. This court’s task thus entails whether the trial court failed to award special damages that were pleaded and proved. In *Joseph Kipkorir Rono vs. Kenya Breweries Limited & Another Kericho HCCA No. 45 of 2003*, Kimaru, J held that:

“In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred...Special damages and general damages are used in corresponding senses. Thus in personal injury claims, ‘special damages’ refers to past expenses and lost earnings, whilst ‘general damages’ will include anticipated loss as well as damages for pain and suffering and loss of amenities... Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses. Regarding proof of loss, while it is true that that it is trite law that special damages must not only be specifically pleaded but also strictly proved, what amounts to strict proof must depend on the circumstances that is to say, the character of the acts producing damage, and the circumstances under which those acts were done. See *Nizar Virani T/A Kisumu Beach Resort vs. Phoenix of East Africa Assurance Company Limited Civil Appeal No. 88 of 2002* [2004] 2 KLR 269, *Gulhamid Mohamedali Jivanji vs. Sanyo Electrical Company Limited Civil Appeal No. 225 of 2001* [2003] KLR 425; [2003] 1 EA 98, *Coast Bus Service Ltd vs. Sisco E. Murunga Ndanyi & 2 Others Civil Appeal No. 192 of 1992*.

36. It was not disputed that the Respondent’s motor vehicle was used in commercial transport of passengers. In *Samuel Kariuki Nyangoti v Johaan Distelberger* [2017] eKLR as follows:

(17) In *Wambua v Patel & Another* [1986] KLR 336, the High Court (Apaloo, J. as he then was), was faced with the problem of quantification of loss of earnings of a cattle trader who had been severely injured in a road traffic accident. Although the court in that case found that the



evidence of the plaintiff's earnings to be very poor and that he had kept no books of account nor business books and had never paid any tax, the court said at p.346 para 25:

“Nevertheless, I am satisfied that he was in the cattle trade and earned his livelihood from that business. A wrong doer must take his victim as he finds him. The defendants ought not to be heard to say the plaintiff should be denied his earnings because he did not develop more sophisticated business method”and added at p. 347 para 1 “But a victim does not lose his remedy in damages because the quantification is difficult.”

37. The Respondent pleaded that he earned Ksh. 8000 per day and was out of use for 62 days. I have seen the recorded named as the passenger manifest and produced in evidence by the Respondent. I do not agree with the Appellants that the same must have borne a revenue stamp to be valid. It was not a receipt issued in the ordinary business as alleged. It depicted the Respondent's personal record of income that the motor vehicle registration no. KCQ XXXXB yielded to the Respondent in a given day.
38. The accident occurred on 13.12.2020. There are records of the passenger manifest predating the accident date. The lower court adopted the lower limit for earning Ksh. 6,000 per day. I have no basis to interfere with this finding.
39. The Appellants also submitted that the Respondent did not prove 62 days. The record shows that the accident occurred on 13.12.2020, and the assessment was dated 23.12.2020. The Respondent produced no evidence when the motor vehicle was repaired and returned to the road to carry out the business that had been lost following the accident. I find no basis upon which 62 days was awarded as the duration for the loss of user.
40. PW3, in his Assessment Report, stipulated that the repair works would last 5 days. It was not stated when the work started and ended. PW1 equally did not state when the 62 days that the motor vehicle was out of business ended. In his witness statement dated 15.3.2021, PW1 stated that the motor vehicle was repaired for 5 days. However, it was removed from the garage after 45 days as he had no cash to pay for spares and labor. In his further witness statement dated 12.10.2022, he stated that the motor vehicle stayed in the garage for 62 days. The Court of Appeal in *African Highland Produce Limited v John Kisorio* [2001] eKLR stated as follows as regards the mitigation of losses:

The guiding principle of law in mitigation of losses is as follows. It is the duty of the plaintiff to take all reasonable steps to mitigate the loss he has sustained consequent upon the wrongful act in respect of which he sues, and he cannot claim as damages any sum which is due to his own neglect. The duty arises immediately a plaintiff realizes that an interest of his has been injured by a breach of contract or a tort, and he is then bound to act, as best he may, not only in his own interests but also in those of the defendant. He is, however, under no obligation to injure himself, his character, his business, or his property, to reduce the damages payable by the wrongdoer. He need not spend money to enable him to minimise the damages, or embark on dubious litigation. The question what is reasonable for a plaintiff to do in mitigation of his damages is not a question of law, but one of fact in the circumstances of each particular case, the burden of proof being upon the defendant. See *Halsbury's Laws of England Vol 11, Page 289, 3rd Edn 1955.*

41. To this court, the Plaintiff failed to prove the actual number of days that the motor vehicle was out of business pending complete repair. this needed to be proved. however, there was evidence that certain number of days were required before assessment and after repair to re-assessment. in the case of *George Gichanga Karanja & another v Mwangi Nderitu Ngatia* [2018] eKLR as follows:



Though the respondent claimed in his evidence that the vehicle resumed operations after 4 months, he did not adduce any evidence to substantiate this claim. The law is that he who alleges must prove. The accident assessment report indicated that repair work was estimated to take 7 days if 8 hours a day were expended on the repair work but no clear evidence was adduced to prove with certainty the length of time that was taken in repairing the vehicle. I therefore find the 30-day period adopted by the trial court to be reasonable in the circumstances. The award of KShs.120,000 for loss of use of the vehicle is thus upheld.

42. In the circumstances, the court must, as a corollary, set aside the unjustified award of 62 days loss of use. The appropriate computation in the circumstances will be the expected completion time from the accident date on 13.12.2020 to 5 days after the Assessor's Report dated 23.12.2020. there is also a need to make provision for acceptance of the vehicle after repairs. this works out as 17 days.

43. The result is that loss of user if 17 days is most reasonable. This works out as follows:

$$\text{Ksh. } 6,000 \times 17 = \text{Ksh. } 102,000/=.$$

44. Consequently, the Appeal succeeds only to the extent that the court sets aside the award on loss of user based on 62 days and, in lieu thereof, substitutes with a sum of Ksh 102,000/= based on 17 days loss of user.

Determination

45. In the upshot, I make the following orders: -

- a. The appeal against the award on repair costs is dismissed.
- b. Judgement of the lower court on the award of damages for loss of user is set aside and substituted with an award of Ksh. 102,000/=.
- c. Each party to bear their own Costs.

**DELIVERED, DATED, AND SIGNED VIRTUALLY ON THIS 25TH DAY OF MARCH, 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kamau for the Appellant

Mr. Okemwa for the Respondent

Court Assistant- Michael

