**Karmali v Shah**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 26 May 2000

**Case Number:** 178/97

**Before:** Akiwumi, Tunoi and Bosire JJA

**Sourced by:** LawAfrica

**Summarised by:** H K Mutai

*[1] Evidence – Documentary evidence – Documents produced by Plaintiff and not challenged by*

*Defendant – Weight to be placed on such documents – Whether such documents can form basis for*

*judgment in Plaintiff’s favour.*

**Editor’s Summary**

On 21 June 1994 the Appellant’s vehicle was involved in an accident with a vehicle belonging to the

Respondent. The Appellant then filed suit against the Respondent on the basis of negligence on the part of the Respondent’s driver claiming damages for, *inter alia*, loss of user for the three weeks it took to repair the vehicle. The parties subsequently agreed that the Respondent be liable for the cost of the police abstract and investigator’s fees as well as 80% of the proved damages. At the trial, the only witness to testify was the Appellant’s general administrator who gave evidence to establish the average monthly income earned by the vehicle and produced various documents to back its claim in respect of loss of user. The hearing was then adjourned by consent to 21 April 1997 for assessment of damages. On that date, the Respondent applied for an adjournment of the hearing but the application was denied. Counsel for the Appellant then made his submissions to which no submissions in reply were recorded. On 15 May 1997, the trial Judge dismissed the Appellant’s claim for special damages for loss of user on the ground that the Appellant had failed on a balance of probability to prove his claim for loss of use and income. On appeal.

**Held** – The documents produced by the Appellant were not challenged and provided *prima facie* evidence of the special damages suffered. The fact that the documents were produced by the Appellant did not mean that they were unreliable. Additionally, the circumstances of the case as a whole including the Respondent’s behaviour in not really caring what happened in the case showed that the trial Judge erred in rejecting the unassailed documentary evidence of the Appellant. Accordingly, the appeal would be allowed and the Respondent ordered to pay the proved special damages less the 20% agreed contributory negligence.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Mbogo and another v Shah* [1968] EA 93