



Ryce East Africa Limited aka Ryce Motors & another v Juma (Civil Appeal E023 of 2022) [2024] KEHC 11326 (KLR) (30 September 2024) (Judgment)

Neutral citation: [2024] KEHC 11326 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E023 OF 2022
AC MRIMA, J
SEPTEMBER 30, 2024**

BETWEEN

RYCE EAST AFRICA LIMITED AKA RYCE MOTORS 1ST APPELLANT

MUTAI TUEI 2ND APPELLANT

AND

JARED ISEME JUMA RESPONDENT

(Being an appeal from the Judgment and decree of Hon. S. K. Mutai (Senior Principal Magistrate) in Kitale Chief Magistrates Civil Case No. 217 of 2020 delivered on 4th July, 2022)

JUDGMENT

Background:

1. There is no doubt that an accident occurred on 11th June, 2020 involving Motor vehicle registration number KBZ 740F make Isuzu Pick Up [hereinafter referred to as ‘the Pick Up’] belonging to the 1st Appellant herein, Ryce East Africa Limited, and Motor cycle registration number KMEN 834S make TVS [hereinafter referred to as ‘the Motor Cycle’] then ridden by the Respondent herein, Jared Iseme Juma.
2. Through the Complaint dated 11th September 2020, the Respondent herein instituted Kitale Chief Magistrates Civil Case No. 217 of 2020. It was his case that the Appellants were wholly negligent and responsible for causing the accident.
3. The Appellants challenged the suit through the Statement of Defence dated 5th March 2021. They denied the Respondent’s claims and asserted that if indeed there was an accident, it wholly happened on account of the Respondent’s negligence.



4. The suit was eventually fully heard and determined. The Respondent [then Plaintiff] testified as PW1 and called one witness being No. 81540 Cpl. Beatrice Adenyo then attached to Kitale Traffic Base who produced a Police Abstract in respect of the accident. She testified as PW2.
5. The Appellants testified through the 2nd Appellant who was driving the Pick Up at the time the accident occurred.
6. In its judgment rendered on 4th July 2022, the trial Court found the Appellants wholly liable and assessed general damages for pain, suffering and loss of amenities at Kshs. 600,000/= with special damages at Kshs. 6,550/= and costs of the suit.

The Appeal:

7. The Appellants were dissatisfied with the trial Court's assessment of both liability and quantum.
8. Through the Memorandum of Appeal dated 15th July 2022, the Appellants urged the following grounds of appeal: -
 1. That the learned trial magistrate erred in law and fact in holding the appellant 100% liable for negligence without taking into account the evidence on record.
 2. That the learned trial magistrate erred in law and fact by failing to apportion liability on the basis of contributory negligence on the part of the respondent.
 3. That the learned trial magistrate erred in law and fact in failing to consider the submissions by the appellant on both issues of liability and quantum.
 4. That the learned trial magistrate erred in law and fact in using the wrong principles in the assessment of damages payable to the respondent thereby arriving at an erroneous decision.
 5. That the learned trial magistrate erred in law and fact in awarding excessive amount in damages in view of the injuries pleaded and proved.
9. The Appellant urged his case further through written submissions dated 10th July, 2023.
10. In making their case that the suit ought to have been dismissed with costs, the Appellants submitted that there was no proof that the Appellants were liable for the accident. Several decisions were referred to in support.
11. On a without prejudice basis, the Appellants further submitted that the quantum awarded was way beyond reasonability going by the injuries sustained and recent Court decisions. Decisions were cited in buttressing those submissions.
12. The Appellants urged this Court to allow the appeal and dismiss the suit.
13. The Respondent challenged the appeal through written submissions dated 11th October, 2023.
14. It was his case that the trial Court did not err in its finding on liability. He went through the evidence in demonstrating that indeed the Appellants were wholly to blame for the accident. Several decisions were referred to in support.
15. Referring to other decisions, the Respondent submitted in support of the awards on damages.
16. The Respondent urged the Court not to upset the trial Court's findings as the Appellant had failed to demonstrate how the trial Court was misguided.



Analysis:

17. From the foregoing appreciation of the disputants' respective cases, the issues that arise for determination are as follows;
 - i. Whether the trial Court assessment of liability was in order.
 - ii. Whether the trial Court assessment of quantum of damages was reasonable.
18. I will hence consider the issues sequentially, but first the Court's role in this appeal.
19. This Court is called upon to reconsider the evidence on record, evaluate it and reach its own conclusion. (See *Selle & Ano. vs. Associated Motor Boat Co. Ltd* (1968) EA 123). This Court, nevertheless, appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni – versus- Kenya Bus Service Ltd* (1982-88) 1 KAR 278, *Abdul Hammed Saif v Ali Mohamed Sholan* (1955) 22 E.A.C.A. 270 and *Kiruga –versus- Kiruga& Another* (1988) KLR 348 among others.
20. On the basis of the foregoing guidance, this Court now looks at the two main issues in this appeal.

Liability:

21. As stated above, an accident occurred on 11th June, 2020 at Kipsaina area along Kitale-Kapenguria Road.
22. In that accident, the 2nd Appellant was the driver of the Pick Up whereas the Respondent was the rider of the Motor Cycle.
23. In such a case, the first port of call in determining who was to blame for the accident, is to ascertain the capacity of the 2nd Appellant and the Respondent to drive vehicles or to ride motor cycles on any road respectively.
24. Part IV of the [Traffic Act](#), Cap. 403 of the Laws of Kenya provides for driving licences. Section 30(1) states as follows: -
 30. Drivers to be licensed
 - (1) No person shall drive a motor vehicle of any class on a road unless he is the holder of a valid driving licence or a provisional licence endorsed in respect of that class of vehicle.
25. Section 30(7) of the [Traffic Act](#) provides for the penalties on contravening Section 30(1) of the Act. It states as follows: -
 - (7) Any person who contravenes or fails to comply with this section shall be guilty of an offence and liable—
 - (a) on first conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three months; and
 - (b) on each subsequent conviction to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.



26. Section 2 of the [Traffic Act](#) defines a "driver" to mean any person who drives or guides, or is in actual physical control of, any vehicle or cattle on any road. A 'motor vehicle' is defined as any mechanically propelled vehicle, excluding any vehicle running on a specially prepared way such as a railway or tramway or any vehicle deriving its power from overhead electric power cables or such other vehicles as may from time to time by rules under this Act be declared not to be motor vehicles for the purposes of this Act.
27. A "motorcycle" is defined as a motor vehicle with less than four wheels the weight of which unladen does not exceed eight hundred weights.
28. It is, therefore, the correct legal position that a Motor cycle is a motor vehicle under the [Traffic Act](#). As such, any rider of a motor cycle must be licenced under the law as to lawfully manage a motor cycle on any road.
29. In this case, there was no evidence of the Respondent's legal capacity to ride the Motor cycle. No driving licence was tendered in evidence. The upshot is that the Respondent was not legally allowed to ride the Motor cycle on any road. In fact, he was to be accordingly charged.
30. Since the Respondent was not allowed to ride the subject Motor cycle, then the matter must come to an end as against him.
31. This Court finds that it would have proceeded to deal with the issue of liability in this case if the Respondent had a driving licence just as the 2nd Appellant. The only other time this Court would have dealt with the issue of liability is if the Respondent was instead a pillion passenger or otherwise carried on the Motor cycle, but was not him as the rider without a driving license.
32. It is, therefore, this Court's finding that the suit was not proved as required in law. The findings on liability and quantum cannot, hence, stand.
33. If, however, this Court had dealt with the issue of liability and found the Appellants liability to any degree, it would have, nevertheless, reduced the general damages to Kshs. 300,000/= given the injuries sustained and the comparable awards as cited by the parties. However, the suit is unsuccessful.

Disposition:

34. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 thereby mostly being away from the station. Apologies galore.
35. Having said as much, the following final orders hereby issue: -
 - a. The appeal is merited. It is hereby allowed.
 - b. The judgment in Kitale Chief Magistrates Civil Case No. 217 of 2020 rendered on 4th July, 2022 is hereby set-aside and is substituted with an order dismissing the suit with costs.
 - c. Costs of this appeal to be borne by the Respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 30TH DAY OF SEPTEMBER, 2024.



A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

No appearance for Miss. Were, Counsel for the Appellant.

No appearance for Miss Masinde, Counsel for the Respondent.

Chemosop/Duke – Court Assistants.

