



**Habtu v Kagai (Civil Appeal E486 of 2022)
[2024] KEHC 11845 (KLR) (Civ) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E486 OF 2022**

**AM MUTETI, J
SEPTEMBER 26, 2024**

BETWEEN

SEMERE HABTU APPELLANT

AND

GEORGE KIBUNJA KAGAI RESPONDENT

*(Being an appeal from the Judgment of the Small Claims Court at
Milimani in SCC No. E 379 OF 2022 delivered on the 24th June 2022)*

JUDGMENT

Introduction

1. The appellant in this appeal seeks to have the learned Honourable Magistrates decision set aside on the basis that: -
 - a) The Respondent did not establish his case to the required standard of proof on a balance of probabilities.
 - b) The learned Honourable magistrate erred in law and fact by finding the Appellant 100% Liable for the accident considering that there was a multiple collision.
 - c) The learned Honourable Magistrate erred in in law by dismissing the Appellants claim for repairs.
 - d) The learned Honourable Adjudicator erred in disregarding the Authorities cited by the Appellant.



Analysis

2. The Respondent in this matter filed a claim following a road traffic accident involving motor vehicles KCQ 148 N and KBZ 033 W.
3. According to the Respondent he was lawfully driving motor vehicle KCQ 148 N when the Appellants motor vehicle rammed into it thereby causing extensive damage to his motor vehicle.
4. The learned Honourable Adjudicator relying on the grounds and pleadings filed by the parties found the Appellant 100% liable for the accident and proceeded to award the Respondent the sum of Ksh. 208,900/= in damages plus interests and costs.
5. The Appellant in his written submissions raises two issues for determination.
The two being :-
 - a) Whether the Respondent proved his case to the required standard and ;
 - b) Whether this court should exercise its unfettered discretion and set aside the judgment.
6. The Respondent on his part has also filed his written submissions strenuously opposing he Appeal.
7. The Appellant maintains that the Respondent did not prove his case on a balance of probabilities.
8. According to him the Respondent ought to have persuaded the Adjudicator that the Appellant was responsible for the accident.
9. In support of that submission the Appellant has placed reliance on the case of William Kabogo Gitau Vs. George Thuo & 2 Others [2010] 1KLR 526 and Palace Investment Ltd Vs. Geoffrey Kariuki Mwendu & Another [2015] eKLR
10. The Appellant contends that for the Respondent to succeed he ought to have presented evidence that would lead the court to think that more probably that not the Appellant was to blame for the accident.
11. I have looked at the documents filed by the respective parties in support of their respective cases before the Adjudicator.
12. The Respondent in his witness statement stated that he got a telephone call informing him with that his motor vehicle had been rammed into from the rear by Motor Vehicle KBZ 033W.
13. According to the Respondent the police blamed the driver of the motor vehicle KBZ 033 W and he sought to prove that fact by relying on the police Abstract issued to him.
14. The Respondent further stated in his statement that an assessment of the damage to his motor vehicle was done and the assessor put the estimated damage at Ksh 213,900. the cost for repairs.
15. The assessment report of Dante Technical Agencies dated 9th December 2020 was placed before the Adjudicator plus a summary of the agencies charges.
16. The Appellants driver simply denied liability blaming it on the defectiveness of the motor vehicle KCQ 148 N.
17. This court has anxiously perused the record to ascertain whether there was any evidence presented by the Appellant to support the allegations made by driver.
18. The court finds that the allegation of defectiveness of the motor vehicle KCQ 148 N was not supported by any material evidence and as such remained unsubstantiated allegations.



19. The duty of this court as a first appellate court is well settled in the case of *Selle Vs. Associated Motor Boat Co. Ltd & Others* [1968] E A 123, in which the court held:-

“ this court is not bound to necessarily to accept the findings of fact by the court below. An Appeal to this court.... is by way of a retrial and the pprinciples upon which this court acts in such an appeal are well settled. Briefly put they are that this court must consider the evidence, evaluate 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”.

20. This court has reviewed the documents relied on by the adjudicator and I am inclined to agree with the finding of the learned Honourable Magistrate on both Liability and quantum.

21. The Appellant has not demonstrated how the learned Honourable Magistrate misdirected herself on the burden of proof.

22. As indicated earlier the allegation that the Respondent's motor vehicle had defective brakes was not proved thus the same could not be a basis for the Honourable court to apportion on liability between the drivers of the motor vehicles.

23. I have considered that the Respondents motor vehicle was hit from the rear. It would have required sound and credible evidence for the Appellant to persuade the court that the motor vehicle KCQ 148 N was to blame. The evidential burden lay on the appellant to prove that the Respondents motor vehicle was defective thus the reason for the accident.

24. The Appeal on Liability therefore fails.

25. On quantum the Honourable adjudicator exercised her discretion and in this court's view, the exercise of discretion was judicious and not susceptible to review. The Learned adjudicator disallowed the Respondent's claim for loss of income and restricted herself to the actual damage suffered.

26. In the end I find that the adjudicator did not misdirect herself on the law and arrived at the correct findings of fact in view of the evidence presented before her.

27. I decline to disturb the finding of the court and dismiss the Appeal with costs to the Respondent.

28. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024.

HON. A.M MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

Ms Mwanja for the Respondent

Ms Wantiru holding brief Oduk for the Appellant

