



**Olanga v Peter & another (Civil Appeal E799 of 2022)
[2024] KEHC 14783 (KLR) (Civ) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14783 (KLR)

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

CIVIL

CIVIL APPEAL E799 OF 2022

LP KASSAN, J

NOVEMBER 27, 2024

BETWEEN

PATRICK OLANGA APPELLANT

AND

DAVID NJERU PETER 1ST RESPONDENT

PATRICK KARIUKI 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of the Chief Magistrate Court at Nairobi delivered on 30th September 2022 by Hon. Rawlings Musiega (SRM) in CMCC NO. 4654/2020)

JUDGMENT

1. This is an Appeal from the Judgement of Honourable Rawlings Musiega dated 30th September 2022 in which the Plaintiff Suit which is in the nature of road traffic accident was dismissed mainly because the Plaintiff did not prove negligence on the part of the Defendant. I have read the proceedings and submissions on record and wish to note the following;

1. Evidence;

PW2 is a Police officer who testified that according to the Officer who visited the scene, both the vehicle and the Motorcycle were from town towards Donholm and on reaching Majengo Mutindwa junction, the Minibus slowed down due to traffic jam and the Motorcycle which was behind over sped, failed to control and hit the minibus from the rear right side and the rider fell down. He added that as per the OB, the Motor Cycle was blamed for the accident. PW2 is the Plaintiff witness who contradicted the Plaintiff testimony because according to his evidence, the Vehicle which was ahead of him made an emergency break and a U turn resulting into a head on collision. PW1 however admitted in cross examination that his plaint



and statement did not mention that the Motor Vehicle made a U turn creating a possibility of an afterthought. DW1 was the driver of the Motor vehicle which was ahead of the Plaintiff's Motor Cycle. He corroborated PW2 testimony and denied making a U turn. He added that since the road was a 2 way, it was impossible to make a U turn.

2. Weight of the Evidence;

PW2 evidence corroborated DW1 evidence. They both testified that the Motor cycle which was being driven by PW1 hit DW1 Motor cycle from the right rear side. PW2 being the Plaintiff's witness was not declared as hostile. The plaintiff assertion that there was a head on collision cannot challenge the corroborated evidence.

3. Presumption of duty of care;

Generally, rules require that motorists must keep distance in order to avoid accidents or hitting the car in front. This rule can only be deviated from in exceptional circumstances. Both PW2 and DW1 testified that the Motor Vehicle slowed down due to Jam. In fact, PW3 testified that the OB indicated that the driver of the Motor Vehicle slowed down near Majengo Mutindwa junction due to traffic Jam. Naturally Motorist are expected to slow down when nearing Junctions. This evidence was not challenged. I see no reason as to why the Plaintiff who was behind the Motor vehicle could not have broken comfortably to eschew the accident unless he did not keep distance. It is likely that the Plaintiff was driving at high speed as alleged by PW2.

2. The upshot of the above is that the trial Magistrate was right in not finding the defendant liable and consequently the Appeal is dismissed with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF NOVEMBER 2024.

L. KASSAN

JUDGE

In the presence of:

Kisiangani for Appellant

Kabita for Respondent

Carol – Court Assistant

