REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NO. 8 OF 2020

JTK (Suing at the Father of WR-Minor)..APPELLANT

VERSUS

BONAYA GODANA..1ST RESPONDENT

JOHN MBUTHIA..2ND RESPONDENT

(Being an appeal against the Decree and judgment delivered on 21st day of July, 2017

by Hon. E. Agade Resident Magistrate at Kangundo, in Civil Suit No.98 of 2015)

BETWEEN

JTK (Suing at the Father of WR-Minor)..PLAINTIFF

VERSUS

BONAYA GODANA..1ST DEFENDANT

JOHN MBUTHIA..2ND DEFENDANT

JUDGMENT

1. This appeal was provoked by the judgment of **Hon. E. Agade** (RM) in **Kangundo RMCC No. 98 of 2015** delivered on 21st July, 2017 by which the Learned Trial Magistrate dismissed the Appellant's suit with no orders as to costs on the basis that the Appellant had not proved negligence against the Respondents herein.

2. The Appellant's suit was initiated by way of a Plaint dated 29th May, 2015 on behalf of a **WR** (Minor) in which the Appellant sought general and special damages plus costs and interest arising from a road traffic accident that was pleaded to have occurred on 6th November, 2014 along Soweto-Masimba involving PW3 and motor vehicle registration number KBN 393F which it was alleged was owned by the 1st Respondent but was being driven by the 2nd Respondent.

3. It was pleaded that on the material day, PW3 fell down while boarding motor vehicle registration number KBN 393F. According to the plaint, the accident was a s result of the negligence of the 2nd Respondent and the particulars of negligence were pleaded which inter alia were that the 2nd Respondent set motor vehicle registration number KBN 393F in motion while PW3 was boarding in total disregard of PW3's safety hence causing PW3 to fall while boarding the motor vehicle. As a result, PW3 sustained injuries particulars whereof were itemised. It was pleaded that the 1st Respondent was vicariously liable for the acts of the 2nd Respondent.

4. In support of his case, the Appellant called **PW.1 Sgt. Boru Buke Juma** attached to Kayole Traffic Base on traffic duties who testified that a report was made of a road traffic accident which took place on 6th November, 2014 along Soweto-Masimba Road between motor vehicle registration number KBN 393F and **WR** (Minor), aged 17 years old. It was his evidence that he was standing in for the Investigating Officer, **PC Osodo** who was transferred to Kisii Traffic Base. From the police abstract which he exhibited, PW1 confirmed that the case was

pending investigations.

5. In cross-examination PW.1 stated that he was neither the Investigation Officer nor did he visit the scene of the accident and that he was only summoned to appear and produce the P3 Form and police abstract. Though he did not have the Occurrence Book extract or police file, he insisted that there was an accident on 6th November, 2014 which was booked in the Occurrence Book. He could not however explain the circumstances under which the accident occurred.

6. **PW.2, Dr. Cyprianus Okoth Okere**, examined **WR** and confirmed that he sustained a comminuted fracture of the base of the right first metatarsal and a chip fracture fragment of the anterior portion of the right calcaneal bone. PW3 was treated at Mama Lucy Kibaki Hospital. According to him he was complaining of recurrent pain on the right foot. On examination he found that PW3 right foot was calcaneus and base of the first metatarsal was slightly tender on the deep palpation. In his opinion, PW3 sustained a comminuted fracture of the base of the first metatarsal bone and a chip fracture fragment of the anterior portion of the right calcaneal bone and assessed the degree of permanent incapacity at 5% which he classified as grievous harm.

7. In arriving at his decision, PW.2 relied on the X-ray request form, Mama Lucy Kibaki Hospital notes, P3 Form and Police Surgeon form. He explained that comminuted fracture means the bone was shattered into pieces and the Chip fractures fragment means a small portion at the tip of the bone has been cut off. PW.2 produced the medical report dated 6th March, 2015.

8. In cross-examination PW.2 explained that he carried out physical examination on PW3 though he did not conduct x-ray. He however relied on the report from the police surgeon which had been filed in by a police doctor from Mama Lucy Kibaki Hospital and the X-ray Request. Though he assessed the injuries at 5% which is a minimal disability, it was his evidence that once you get a fracture it does not return to its normal condition and that some people don’t heal completely. In his evidence, the fracture is on the toe and the heel. According to PW.2 if PW3 was a runner he could nolonger ran the way he used to.

9. **PW.3 WR**, the Minor testified that he was hit by motor vehicle registration number KBN 393F on 6th November, 2014 at the stage. According to him, he was waiting to board and that when he flagged the vehicle it stopped. As he was entering the vehicle, the conductor told the driver of the vehicle to drive and his leg was injured when the vehicle started to move. He stated that he reported the accident to a police station. PW.3 blamed the driver of the vehicle for failing to wait for him to enter and sit and the driver instead started to move before he could board the vehicle. According to him had the driver waited, he would not have been injured. As a result of the injuries, he did not go to school for the whole month and that his toes were no longer straight.

10. In cross-examination he testified that as he wanted to board the vehicle the conductor instructed the driver to drive the vehicle whereby he fell and was trodden on his leg by the rear left tyre. He insisted that he was at the stage when the vehicle stopped. He denied that he tried to jump on a moving vehicle and insisted that the vehicle stopped when he flagged it and as he boarded the vehicle moved. According to him, the vehicle had stopped for about two minutes at the stage where he was the only person. PW3 insisted that as a student, careful when boarding the vehicle since he understands road traffic rules and abided thereby.

11. **PW.4 JK,** the Appellant and PW3’s father was at work when he was informed via a phone call that PW3 was involved an accident at Patanisho stage. Upon arriving there, he found PW3 son lying on the ground. He took PW3 to Mama Lucy Kibaki Hospital whereby he was treated and discharged.

12. At the close of the Appellant’s case the Respondents called **DW.1 PC Kyalo Munyao** an officer from Kayole Police Station who testified that he was not the Investigating Officer. In his evidence, he relied on the Occurrence Book No.16 of 06/11/2014 relating to a road traffic accident report which occurred on 6th November, 2014 at about 1745 hours along Soweto Masimba Road within Kayole Estate involving motor vehicle registration number KBN 393F Isuzu Mini Bus which was being driven by one **John Mbuthia Njoroge** and a young male aged 17 years namely **WR**. According to the said report, the driver alleged that he was driving towards Masimba direction when **W** emerged from the left side of the road at Patanisho and tried to board a vehicle while in motion but unfortunately missed the door step and fell down sustaining an injury on his right leg bruises on the left hand. The said **W** was taken to Mam a Lucy Kibaki Hospital where he was treated and discharged. According to the witness, the case was still under investigation and it could not be confirmed who was to blame though from the report in the Occurrence Book which he produced, the victim was to blame.

13. In cross-examination, DW.1 stated that according to the report, PW3 was not a passenger since he had not yet boarded the vehicle. In his evidence, at Patanisho Masimba there was no stage and the report indicated that the vehicle was in motion. According to him, PW3 missed the door step but he was not aware why PW3 that happened but stated that it was due to the fact that the vehicle was in motion.

14. In her judgement the Learned Trial Magistrate found that the accident did indeed occur on 6th November, 2014 but found that there was no independent eye witness as to ow the accident occurred. However, according to the court although there was evidence that the owner of the vehicle was the 1st Appellant, there was no evidence of delegation of duty or task hence vicarious liability was not proved. She also found that there was no evidence linking the 2nd Respondent with the accident as none of the witnesses mentioned him. She was therefore of the opinion the negligence could not be imputed on the owner of the vehicle without showing who the driver was. According to her there was no evidence of the speed at which the vehicle was being driven. She was however of the view that had the Appellant proved the case, she would have assessed the damages at Kshs 480,000.00 in general damages.

15. In this appeal, the Appellant has set out the following grounds:

> ***(i) That the learned trial magistrate erred in law and in fact by finding that the Appellant had failed to prove his case on a balance of probabilities.***
>
> ***(ii) That the learned trial magistrate erred in law on failing to assess the quantum of damages awardable.***

(iii) That the learned trial magistrate erred in law and fact by dismissing the Appellant suit in its entirety and against the weight of the evidence adduced at the trial.

(iv) That the learned trial magistrate erred in law and fact by dismissing the suit against the Appellant due to his misdirection and wrong exercise of discretion on the evidence tabled before him.

(v) That the learned trial magistrate erred in law and in fact by considering irrelevant matters not before the honourable court.

16. The Appellant therefore seeks the following reliefs:

(a) The Appeal be allowed

(b) The Judgment and decree of the learned magistrate be set aside and or varied as the court may deem fit.

(c) The Plaintiff suit in Kangundo Principal Magistrate court civil case No.98 of 2015 be allowed and the Defendant be held 100% liable for the accident.

(d) The Honourable court be pleased to award general damages and special damages to the Appellant commensurate to the injuries suffered.

(e) The cost of appeal and that of the Honourable court be awarded to the Appellant with interest from the date of filing the lower court.

Determination

17. I have considered the submissions of the parties in this appeal. This being a first appellate court, it was held in **Selle vs. Associated Motor Boat Co. [1968] EA 123** that:

> **"The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."**

18. Therefore, this Court is under a duty to delve at some length into factual details and revisit the facts as presented in the trial Court, analyse the same, evaluate it and arrive at its own independent conclusions, but always remembering, and giving allowance for it, that the trial Court had the advantage of hearing the parties.

19. However, in **Peters vs. Sunday Post Limited [1958] EA 424**, it was held that:

> **"Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law an appellate court has jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstances that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given…Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion. The appellate court may take the view that, without having seen or heard the witnesses it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question…It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not be disturbed. This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgement of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong."**

20. It was therefore held by the Court of Appeal in **Ephantus Mwangi and Another vs. Duncan Mwangi Civil Appeal No. 77 of 1982**

[1982-1988] 1KAR 278 that:

> **“A member of an appellate court is not bound to accept the learned Judge’s findings of fact if it appears either that (a) he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”**

21. In this appeal, it is clear that the determination of this appeal revolves around the question whether the appellants proved his case on the balance of probabilities. That the burden of proof was on the appellants to prove their case is not in doubt. In **Evans Nyakwana vs. Cleophas Bwana Ongaro (2015) eKLR** it was held that:

> **“As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(i) of the Evidence Act, Chapter 80 Laws of Kenya. Furthermore the evidential burden … is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person…The appellant did not discharge that burden and as Section 108 of the Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side.”**

22. The question then is what amounts to proof on a balance of probabilities. **Kimaru, J** in **William Kabogo Gitau vs. George Thuo & 2 Others** [2010] 1 KLR 526 stated that:

> **“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”**

23. In **Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another (2015) eKLR**, the judges of Appeal held that:

“Denning J. in Miller Vs Minister of Pensions (1947) 2 ALL ER 372 discussing the burden of proof had this to say;-

> **“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties…are equally (un)convincing, the party bearing the burden of proof will loose, because the requisite standard will not have been attained.”**

24. Therefore, the Appellant had the duty of proving the facts constituting negligence on the part of the Respondent even if the appellant chose to remain silent.

25. In this case PW3 testified on how the accident took place. According to him, he was in the process of boarding the *matatu* when the driver drove off as a result of which he fell and his foot was crushed. That was the only evidence on record by an eye witness. Both the evidence of PW1 and DW1 were from police officers who themselves did not investigate the accident but relied on the records of the investigations which were conducted by their colleagues.

26. The learned trial magistrate however took issue with the fact that the Appellant’s evidence was not corroborated by the evidence of the investigations agencies. There is however no rule of law or practice that in road traffic accidents, for a claim to succeed it must be supported by the evidence of investigative agencies since. A person who gets injured in a road accident in my view is entitled to succeed in his claim for damages notwithstanding that the accident was never reported if he can prove to the required standards that the accident did occur. Whereas the failure to do so may weaken his case where the defence rebuts his evidence, it does not necessarily follow that where there is no report of an accident, his case must fail. I must point out however, that the contents of the police abstract as extracted from the records held by the police is merely evidence that a report of an accident was made. It is *prima facie* evidence of the occurrence of the accident and the particulars of those involved. It can however be rebutted. Similarly, the fact that an accident is not reported does not necessarily mean that no such accident occurred. Proof of negligence, being on a balance of probabilities, does not solely depend on the evidence of the investigation officer or report of the accident to the police though such report may corroborate the other available evidence. Negligence, however, can be proved notwithstanding the fact that the accident in question was never reported to the police since there is no nexus between a report of an accident to the police with proof of negligence. While such report and the steps taken thereafter may be proof of the occurrence of the accident in question, where there is independent evidence proving that an accident took place and that it was caused by the negligence of the defendant, the failure to call the investigations officer is not necessarily fatal in accident claims. In **Peter Kanithi Kimunya v. Aden Guyo Haro [2014] eKLR** it was held:

> **“A police abstract is not proof of occurrence of an accident but of the fact that following an accident, the occurrence thereof was ‘reported’ at a particular police station**.”

27. In this case, from the judgement of the learned trial magistrate, it is clear that what influenced the decision was the fact that the 1st respondent, the owner of the vehicle as not evidentially linked to the duty that the vehicle was performing at the time of the accident in order to make him vicariously liable. The Court of Appeal in **Mwona Ndoo Vs. Kakuzi Ltd. (1982-1988) 1 KAR 523** held that:

> **“But once it is conceded that (i) the servant was doing something in his working hours, (ii) on his employer’s premises and**

(iii) that his act had a close connection with the work which he was employed to do, then the onus (in the sense of evidential burden) shifts to the employer to show that the act was one for which he was not responsible. In other words, it is presumed that the vehicle is being used for his master's purpose if the servant has authority to use it at all."

28. In this case, the learned Trial Magistrate having found that the 1st Respondents was, based on the evidence and the law deemed as the registered owners and/or beneficial owners of the suit vehicle, the burden of proof shifted to the 1st Respondents to prove that the same was not being driven for his purpose. In **The Commissioner of Transport vs. T R Gohil [1959] EA 936**, it was held that:

"It is sufficient to plead that the driver was a servant of the defendant. The presumption then arises that the defendant is responsible for any negligence on the part of his servant. If the servant was not driving in the course of his employment, this would absolve the defendant from liability but this fact being peculiarly within the knowledge of the defendant and one that it might be very difficult if not impossible for a plaintiff to establish need not be pleaded."

29. The Appellant having pleaded that the 1st Respondent was vicariously liable for the acts of his driver, that was sufficient plea since vicarious liability is a rule of evidence.

30. In this case the evidence before the court was that PW3 was in the process of boarding the vehicle when the vehicle was driven off. In this case, the Respondents did not call any evidence to rebut the Appellant's evidence as to how the accident occurred. The consequences of a party failing to adduce evidence were restated in the case of **Motex Knitwear Limited vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No. 834 of 2002**, **Lesiit, J** citing the case of **Autar Singh Bahra and Another vs. Raju Govindji, HCCC No. 548 of 1998** where it was held that:

"**Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the defence rendered by the 1st plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail."**

31. Again in the case of **Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001** the learned judge citing the same decision stated that it is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is uncontroverted and therefore unchallenged.

32. In the case of **Karuru Munyororo vs. Joseph Ndumia Murage & Another Nyeri HCCC No. 95 of 1988, Makhandia, J** (as he then was) held that:

"The plaintiff proved on a balance of probability that she was entitled to the orders sought in the plaint and in the absence of the defendants and or their counsel to cross-examine her on the evidence, the plaintiff's evidence remained unchallenged and uncontroverted. It was thus credible and it is the kind of evidence that a court of law should be able to act upon".

33. In **Janet Kaphiphe Ouma & Another vs. Marie Stopes International (Kenya) Kisumu HCCC No. 68 of 2007** **Ali-Aroni, J.** citing the decision in **Edward Muriga Through Stanley Muriga vs. Nathaniel D. Schulter Civil Appeal No. 23 of 1997** held that:

"In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations…Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence".

34. Similarly, in the case of **Interchemie EA Limited vs. Nakuru Veterinary Centre Limited Nairobi (Milimani) HCCC No. 165B of 2000, Mbaluto, J**. held that where no witness is called on behalf of the defendant, the evidence tendered on behalf of the plaintiff stands uncontroverted.

35. If one is still in doubt as to the legal position reference could be made to the case of **Drappery Empire vs. The Attorney General Nairobi HCCC No. 2666 of 1996** where **Rawal, J** (as she then was) held that where the circumstances leading to the deliveries of goods are not challenged and stand uncontroverted due to the failure by the defendant to adduce evidence, the standard of proof in civil cases (on the balance of probabilities) has been attained by the plaintiff.

36. I associate myself with the decision of **Wambilyangah, J** in **Mgao vs. Wokabi & Another Mombasa HCCC No. 165 of 1990 [1993] EA 685** in which he expressed himself as hereunder:

"The scenario of getting into a moving bus or matatu by a passenger is very common in this country. A prudent driver of a public vehicle should easily foresee that some passengers may be hampered by all sorts of factors, whether personal or otherwise from speedily jumping into the vehicle; and so it behoves him to be patient and allow them enough time to safely get into the vehicle. He should ensure that all his passengers are safely aboard or have safely alighted before he drives from that stage…I find as a fact that the driver in the present case failed to observe those fundamental rules. Instead he hastily and negligently drove off from the stage without checking that more passengers were still struggling to get in: and that is how or why the plaintiff was injured. So the 1st defendant's liability is assessed at 100%; and the 2nd defendant as his employer is vicariously liable."

37. I also agree with the position adopted by **Aburili, J** in **Mary Njeri Murigi vs. Peter Macharia & Another [2016] KLR** that:

> **"A person who is driving a vehicle is under a duty of care to other road users. The vehicle is a lethal weapon and due care is expected of the driver who is in control thereof."**

38. DW1's evidence, which was based on information given by the driver of the vehicle, was that the appellant attempted to board when the vehicle was in motion. The person who gave this information was never availed to testify so that he could be subjected to cross-examination. As a result, his evidence was not in consonance with that of the Appellant. While the Appellant's evidence was that the accident occurred while he was boarding the vehicle, the report he relied on stated that the Appellant was attempting to board a moving vehicle. It would have been prudent in the circumstances to have availed the person who made the report to testify in the case. A partisan report made to the police, in my view, cannot be the basis of a successful challenge of evidence given on oath and subjected to cross examination such as the evidence of PW3 in this case.

39. The Court of Appeal in **Ephantus Mwangi and Another vs. Duncan Mwangi Civil Appeal No. 77 of 1982 [1982-1988] 1KAR 278** held that:

> **"A member of an appellate court is not bound to accept the learned Judge's findings of fact if it appears either that (a) he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."**

40. By arriving at a finding based on hearsay evidence by those to whom the information was not even transmitted, and where the person who gave the information was, for unknown reasons availed for cross-examination, the Learned Trial Magistrate clearly failed to take account of the particular circumstances and probabilities material to the estimate of evidence and arrived at an incorrect decision in dismissing the suit.

41. In the premises, this appeal succeeds, the decision dismissing the case is hereby set aside. Judgement is hereby entered jointly against the 1st and 2nd Respondents jointly. As for the damages, there is no basis upon which I can interfere with what was proposed by the learned trial magistrate which I find reasonable in the circumstances. Accordingly, I award the Appellant Kshs 480,000.00 as general damages with interest at court rates from the date of the judgement in the lower court till payment in full. As regards court attendances fees, those are disbursement sand not special damages and the same ought to be dealt with during the taxation or assessment of costs. I however award Kshs 3,000/- being the cost of medical report. The same to attract interest at court rates from the date of filing suit till payment in full.

42. The Appellant will have the costs of the proceedings in the lower court and in this appeal.

43. Orders accordingly.

JUDGEMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31ST DAY OF MAY, 2021.

G V ODUNGA

JUDGE

Delivered the absence of the parties.

CA Geoffrey