



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NO. 51 OF 2018

NDETI MULLI.....1ST APPELLANT

ALBERT PHILLIP KATITI.....2ND APPELLANT

VERSUS

HOGLA MKANDO OMARI.....1ST RESPONDENT

JOHN KILELU.....2ND RESPONDENT

**(Being Appeals from Judgement of the Hon. Magistrate at Machakos Law Courts by Hon. Kibiru
dated 18/4/2018 from Machakos Chief Magistrates Court Civil Case Nos. 198 of 2013)**

BETWEEN

HOGLA MKANDO OMARI and JOHN KILELU

(Suing as administrators of the Estates of Joseph Mwakilili Mulonza (Deceased)PLAINTIFF

VERSUS

NDETI MULLI.....1ST DEFENDANT

ALBERT PHILLIP KATITI.....2ND DEFENDANT

KETER KIPROTICH.....3RD DEFENDANT

JUDGEMENT

1. The subject of this appeal is Machakos CMCC No. 198 of 2013, a suit instituted by the Respondents herein against the Appellants for damages arising from a road traffic accident which occurred on 18th August, 2010 in which the deceased sustained fatal injuries.
2. On 16th January, 2018, a consent judgement was entered in the said matter in which liability was entered for the Respondents against the Appellant at the ratio of 80:20 and the parties agreed that the plaintiff's claim supporting documents be admitted as evidence without calling the makers and that the parties proceed to file written submissions on quantum of damages.
3. This appeal is related to High Court Civil Appeals Nos. 50 and 51 of 2018 which appeals arise from the same cause of action. On 25th January, 2021, this Court directed the parties to file and exchange their submissions on the appeal. The matter was then listed for further orders on 24th February, 2021. On that day, the parties were directed to furnish the soft copies of their filed documents to court.
4. As at the time of writing this judgement, only the Respondent's submissions were on record in all the three appeals. The Appellant only filed the Submissions in HCCA No. 50 of 2018. Similarly, only the Respondent furnished the Court with the soft copies.

5. As the appellant failed to file the submissions which was the mode of prosecuting the appeal, there is no material on the basis of which this appeal can succeed.

6. In the premises, this appeal fails and is dismissed with costs to the Respondent. It is so ordered.

Read, signed and delivered virtually at Machakos this 31st day of May, 2021

G V ODUNGA

JUDGE

Delivered in the presence of:

Ms Odembo for the Respondent

CA Geoffrey