

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL APPEAL NO. 128 OF 2010

PIUS WASIKE.....APPELLANT

VERSUS.

EQUITORIAL NUTS PROCESSERS.....RESPONDENT

[An appeal from Judgment in Original Webuye PMCC 54/2008 delivered on 16.9.2010 by E.C. Cheron - Principal Magistrate].

JUDGMENT

The appellant who was the Plaintiff in the Magistrates court said the Respondent who was the defendant by Amended Plaintiff dated 19.1.2008. He prayed for general damages for pain and suffering and loss of amenities from injuries sustained in a road traffic accident along Kitale Webuye road on 31.10.2017. He averred that the accident involved him as a pedestrian and Motor vehicle Reg. No. KAT 569E Toyota Pickup owned by the Respondent. As a result of the accident he sustained closed injuries on the back, right shoulder and chest.

The Respondent/Defendant filed statement of defense denying the claim and in particular that it was the owner of Motor vehicle Reg. No. KAT 569E Toyota Pick-up. After the hearing of the plaintiff case the defendant did not call any witness and closed its case. The learned trial magistrate by Judgment dated 16.9.2010 dismissed the suit.

Dissatisfied with the Judgment the appellant preferred this appeal on the following grounds;

1. ***THAT*** the learned magistrate erred in fact and in law in dismissing the plaintiff's claim only on the ground that the plaintiff had not produced a certificate of search in respect to the respondent's motor vehicle registration number KAT 569E Toyota Pick-up.
2. ***THAT*** the learned magistrate erred in fact and in law in failing to note that the appellant produced an original copy of the police abstract which clearly showed that the defendant was the registered owner of the motor vehicle registration number KAT 569E Toyota Pick-up.
3. ***THAT*** the learned magistrate erred in fact and in failing to appreciate that an official search is not inclusive evidence of ownership.
4. ***THAT*** the learned magistrate erred in fact and law in relying on evidence that was not present on record as the issue of ownership was never raised in the proceedings.
5. ***THAT*** the learned magistrate erred in fact and in law in failing to consider the nature of the claim which was a determination on negligence and if the defendant was liable to pay the appellant damages as a result.

By consent parties, on the question of liability, they adopted the decision in ***Bungoma H.C.C.A 129/2010 Paul Khisa -Vs- Equitorial Processors***, where in an appeal arising from the same accident Aroni – J set aside the Judgment of the trial court and found the Respondent 100% liable. The issue for determination in this appeal is therefore on quantum. The appellant as a result of accident sustained following injuries;

1. Closed injuries on the back right shoulder and chest.

These were soft tissue injuries which were treated by analgesics. Upon examination there was no evidence of permanent incapacity on general damages. I find an award of Kshs.60,000/= will be adequate compensation. I therefore allow the appeal, and award the appellant Kshs.60,000/= general damages. Kshs.7,901/= special damages all totaling Kshs.67,901/= and costs of the suit in the lower court and this appeal.

Dated at Bungoma this 26th day of February, 2020

S.N. RIECHI

JUDGE.