



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 496 OF 2013

PLATINUM CAR HIRE & TOURS LIMITED.....APPELLANT

- V E R S U S -

JAMES KEYA.....RESPONDENT

(Being an appeal from the judgment and order of Hon. (M/S) Gichobi, Resident Magistrate delivered on 6th September, 2013 in Nairobi CMCC 1385 of 2008)

JUDGEMENT

1) Platinum Car Hire & Tours Ltd, the appellant herein, filed an action against James Keya, the respondent herein, before the Chief Magistrate's Court vide the plaint dated 4th march 2008. In the aforesaid plaint, the appellant sought to be paid a sum of kshs.80,000/= as excess charges following the respondent's "Excess Liability Waiver" arising from an accident which allegedly occurred along Keroka-Kisii road on 26th April 2007 involving motor vehicle registration no. KAW 374J hired by the respondent for his use and as a result of the accident the motor vehicle got damaged.

2) The respondent filed a defence and denied the appellant's claim.

The suit proceeded for hearing before Hon. I. Gichohi, learned Resident Magistrate. At the end of the trial the learned magistrate dismissed the appellant's suit thus provoking the filing of this appeal.

3) On appeal, the appellant put forward the following grounds:

i. The learned magistrate erred in failing to find that the evidence tendered by the plaintiff was uncontravated by the defendant and sufficient to find in favour of the appellant.

ii. The learned magistrate further erred in arriving at a decision that was wholly against the weight of the evidence produced.

iii. The learned magistrate erred in finding that exhibit 1 originated from G.O.K. and as a result doubted the authenticity of the document.

iv. The learned magistrate erred in failing to analyse the exhibits before her and failing to consider the evidential value of the exhibits.

v. The learned magistrate erred in arriving at a misdirected judgment not supported by any evidence.

vi. The learned magistrate erred in law and fact by doubting the authenticity of exhibit 1 despite the plaintiff explaining the alteration thereon.

4) When the appeal came up for hearing this court directed the appeal to be disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have further considered the rival written submissions. Though the appellant put forward a total of six (6) grounds those grounds may be determined on one main ground that is to say that the learned Resident Magistrate erred when she dismissed the appellant's suit yet the appellant had tendered credible evidence which were not controverted by the respondent.

5) It is the submission of the appellant that it presented reliable evidence which remained unshaken nor controverted. It was argued that the respondent did not call and or adduce evidence in support of his case despite filing a defence.

6) The appellant further argued that it produced as an exhibit in evidence the driving licence of its driver which the respondent did not

object. The appellant also submitted that it produced the police abstract form which indicated the occurrence of the accident.

7) In short, the learned Resident Magistrate was accused for failing to evaluate the evidence before her which were not challenged.

8) The respondent was of the contrary view that the appellant miserably failed to prove his case on a balance of probabilities. It was pointed out that the learned Resident Magistrate considered the evidence presented by the appellant and found the same to be unreliable and proceeded to reject the same. It was also pointed out that no police abstract form was produced hence there was no prove of the occurrence of the accident.

9) The record shows that the appellant summoned Stanley Makunge (PW2), its sales and marketing manager to testify in support of its case while the respondent(defendant) closed his case without calling for any witness. PW1 produced as an exhibit the self-drive agreement on rental of a car the appellant had executed with the respondent

10) PW1 stated that they were informed that the car was involved in a road traffic accident along Kisii-Keroka road whereof motor vehicle registration no. KAW 374J was extensively damaged. He stated that he was aware the accident was reported to the police and that an abstract was taken out. PW1 stated that the agreement expressly stated that in the event of an accident occurring the respondent would be liable to pay ksh.80,000/= on excess liability waiver.

11) PW1 further told the trial court that the appellant incurred a sum close to kshs.80,000/= in repairing the aforesaid motor vehicle. The appellant's case was closed before the police abstract was produced. The appellant did not also summon a witness to establish who was to blame for the accident. The learned Resident Magistrate considered the agreement produced by the appellant and found it unreliable due to some apparent alterations which were not explained nor countersigned.

12) The trial magistrate also came to the conclusion that there was no evidence tendered by the appellant to prove the occurrence of the accident. It was even pointed out that the police abstract was never produced.

13) With respect, the learned Resident Magistrate came to the correct decision after analysing the evidence presented before her. The appellant (plaintiff) had failed to prove his case on a balance of probabilities. Therefore, it did not matter whether or the respondent had controverted the evidence presented. The appellant did not discharge the burden of proof.

14) In the end, I find no merit in this appeal. The same is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 31st day of May, 2019.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent