

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 216 OF 2010

MACKSON KAINGU.....APPEALLANT

VERSUS

1. GALU SAFARIS LTD

2. KAYDEE CONSTRUCTION CO. LTD.....RESPONDENTS

J U D G M E N T

Introduction

1. In this appeal there is great difficulty presented by either badly typed ruling dated 17/9/2001 or incomplete record of the judgment or just sheer lack of candour by consent of the parties.

2. On 19/2/2010 the trial court delivered a judgment between the parties and said at the appurtenant section:

“Evidence shows that the 2nd defendant’s driver was speeding and did not keep any proper distance causing the vehicle to run onto the rear of the vehicle the plaintiff was in. The 1st defendant’s driver also slowed down and attempted to change lanes. That was equally negligence in the circumstances. He Plaintiff was a mere passenger whose actions did not contribute the occurrence of the Road Traffic Accident. That being stood over, I found the defendants to be equally liable”.

3. It is said by the 2nd Respondent and not denied by the Appellant, that upon the judgment being pronounced the 2nd Respondent giving the judgment the interpretation that equally meant 50:50, paid its portion of the judgment. That payment was accepted without demurer by the Appellant only to turn around and demand that the 2nd Respondent pays the whole judgment.

4. That demand prompted the 2nd Respondent to run to court and seek an order for review by the application dated 20/4/2010. That application was expressed to be premised on Section 3A and 80 as well as Order XLIV Rule 1 and at prayer 3 asked the court to review the decree and, “to direct to what extent each of the defendants is liable”. There seems not to have been filed any response to the application dated 20/4/2017 but the parties did file submissions to be found at pages 116 – 125 for the Appellant and pages 126 – 133 for the Respondent of the Amended Record of Appeal.

Rendition

5. I do find that any court is by didn’t of sections 1A, 3 , 3A and 80 of the Civil Procedure Act entitled in appropriate circumstances to revisit its decision to meet the ends of justice by interpretation or clarification of the orders parties are unable to give a unanimous interpretation.

6. In the instant case, the court was fully entitled to proceed the way it did proceed even if not by way of review but by way of interpretation of what it intended in its judgment by the words “I find the defendant to be equally liable”.

7. In the end, the appeal lacks merit and the same is hereby ordered dismissed with costs to the Respondent.

Dated and delivered at Mombasa on this 23rd day of **June 2017**.

HON. P.J.O. OTIENO

JUDGE