



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CIVIL APPEAL NO 3 OF 2015

TOTAL PLUS BUREAUAPPELLANT

AND

ROSE MAKOMBO MASANJU.....1STRESPONDENT

NIGHT FLORA alias NIGHTIE FLORA.....2ND RESPONDENT

(Being an appeal from the Judgment and Decree of the Honourable S.M. Wahome, Senior Principal Magistrate made on 15th day of December 2015 (sic) in Voi Senior Principal Magistrate’s Court Civil Suit No 150 of 2013)

BETWEEN

ROSE MAKOMBO MASANJUPLAINTIFF

VERSUS

NIGHT FLORA alias NIGHTIE FLORA.....1STDEFENDANT

TOTAL PLUS BUREAU.....2ND DEFENDANT

JUDGMENT

INTRODUCTION

1. In his judgment delivered on 15thDecember 2014, Hon S.M. Wahome, Senior Principal Magistrate at Voi Law Courts awarded the 1stRespondent herein a sum of Kshs 300,000/= general damages, pain and suffering and loss of amenities. However, he deducted a sum of Kshs 20,700/= from the 2nd Respondent’s part of the award in her favour as he had found that the 2nd Respondent had paid the 1st Respondent the said sum for treatment.
2. The Learned Trial Magistrate determined that the 1st Respondent only proved special damages in the sum of Kshs 3,000/= which he awarded her. He apportioned liability at 15%, 45% and 40% as against the 1st Respondent, the 2nd Respondent and the Appellant respectively.
3. The computation of the award was as follows:-

As against the 1st Defendant

45/100 x 300,000	= 135,000/=
Less	<u>20,700/=</u>
	114,300/=

As against the 2nd Defendant

40/100 x 300,000	= 120,000/=
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And Kshs 3,000/= as special damages together with costs and interest until payment in full.

4. Being dissatisfied with the Judgment of the said Learned Trial Magistrate, the Appellant lodged its Memorandum of Appeal dated 26th January 2015 on 30th January 2015. The grounds of appeal were as follows:-

1. THAT the Learned Senior Principal Magistrate erred in law and in fact holding that the Appellant herein forty (40%) per cent liable for the accident whereas there was clear evidence that the Appellant had parked its motor vehicle at an area designated for parking as per the Police Abstract and the police testimony.

2. THAT the Learned Senior Principal Magistrate erred in law and fact in holding that the Appellant's Motor Vehicle Registration Number KBF 964- ZD0128 was wrongfully parked thereby contributing to the accident contrary to the findings of the investigating officer and the evidence produced in court.

3. THAT the Learned Senior Principal Magistrate erred in law and fact in failing to hold the Second Respondent was wholly liable and fully liable for the accident when there was clear evidence on record that she was charged and convicted of careless driving and driving a motor vehicle without insurance.

4. THAT the Learned Senior Principal Magistrate erred in law and fact in failing to consider the written submissions filed by Counsel for the Appellant herein hence apportioning liability to a party who was not at all to blame for the accident.

5. THAT the Learned Magistrate erred in law and fact in awarding the Plaintiff the sum of Kshs 237,000/= which was quite exorbitant.

5. On 5th September 2016, both the Appellant's and the 2nd Respondent's advocates asked this court to consolidate the Appeal herein with **HCCA No 2 of 2015 Rose Makombo Masanju vs Night Flora Alias Nightie Flora & Total Plus Bureau** for purposes of disposing of the two (2) appeals as they both emanated from the same matter in the Trial Court.

6. However, the Appellant herein did not file a Record of Appeal or any written submissions herein. The Written Submissions by the 1st and 2nd Respondents were also not on this court record. If any of the said pleadings were indeed filed herein, then the same were not placed before this court before it rendered its decision. The court was therefore unable to determine this Appeal on merits.

DISPOSITION

7. For the reasons foregoing, the upshot of this court's judgment was that the Appellant's Appeal is hereby dismissed for the reason that there was no Record of Appeal. There will be no order as to costs as the 1st and 2nd Respondents did not file any documentation in respect of the Appeal herein.

8. It is so ordered.

DATED and DELIVERED at VOI this 22ND day of NOVEMBER 2016

J. KAMAU

JUDGE