

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 51 OF 2008

MEDIPLAST LIMITED. 1ST APPELLANT

BEDFORD MBAKA MWENDA. 2ND APPELLANT

VERSUS

MFI OFFICE SOLUTIONS LIMITED. RESPONDENT

(From the Judgment and Decree of Hon. Ileri, Resident Magistrate in Nairobi CMCC no. 7452 of 2003)

J U D G M E N T

The trial court in Milimani CMCC No. 7452 of 2003 made a finding of fact and law that the Appellant was negligent and was to blame in a motor accident, along Mombasa Road in Nairobi on 30th January, 2001, involving KAL 690E and KAH 128A. The court awarded Ksh.135,387/- as special damages against the appellants and in favour the Respondent. That is what aggrieved the Appellant who then filed this appeal to this court.

Examination of the grounds of appeal hinge upon the fact that the trial court in essence, failed to be persuaded by the facts forming the evidence adduced by the Appellant and his witnesses. He also complained that the Respondents evidence did not prove the special damages awarded to them.

I have carefully perused the evidence. There is denial that the accident to occurred as pleaded by both parties. The main and only issue before the court on liability was whether it was the Appellant's motor vehicle registration No. KAH 128A which independently and without being pushed by the vehicle of a third party, being registration number TZD 9531.

The facts are admitted even by the Appellant that this vehicle rammed into the Respondents motor vehicle registration number KAH 128A. The Appellant however, claimed that he was rammed into and pushed from behind by TZD 9531. He filed Third Party proceedings to join the driver of the TZD 9531 whom he claimed had after the accident been charged in a different traffic accident and found guilty. However, he failed to produce the court proceedings or evidence to be alleged Third Party Traffic case. The result was that the lower trial court found no evidence upon which to exculpate the Appellant from the liability arising from the accident in question.

I have properly perused the evidence on the record and the judgment of the trial magistrate. I find that the honorable magistrate considered all the evidence on record including that of the Appellant's/Defendant's side before he came to the conclusions he reached. The trial magistrate was in the best position to judge the credibility of the witness because he saw and heard them. The Hon. Magistrate's conclusions have not been said to be unlikely or outrageous. He is not accused of having taken account of matters that she ought not to have taken account of or she has not been accused of not taking into account what she ought to have taken into account.

In the above circumstances, this court finds no legal grounds upon which it can interfere with conclusions of fact that the trial court reached.

Turning to the issue of special damages this court's view is that the trial court acted on sufficient

evidence. PW 2, Johnstone Kinuthia, a motor vehicle assessor testified that he inspected the Respondent's damaged motor vehicle and listed the damaged parts which required purchase giving the open market prices of such parts. PW 3 Collins Nyaema and PW 4 Jito Ahisola confirmed the fact that the motor vehicle KAL 690E was repaired by Top Job Motors and that it did cost Ksh.130,980/-. This evidence was not much controverted and the trial court was entitled to rely on it as it did not award the damages it did.

In the above circumstances, this appeal shows little merit. It is hereby dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 22nd day of September, 2014.

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D A ONYANCHA

JUDGE