



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL 303 OF 2006

SAMMY MBUGUAAPPELLANT

VERSUS

SIMON IRUNGU KIBE.....RESPONDENT

*(From the Judgment and orders of H. A. Omondi Mrs. Chief Magistrate,
Milimani CMCC NO. 7581 of 2003)*

J U D G M E N T

The Respondent/ Plaintiff, in a plaint dated 30/7/2003, claimed against the Appellant/Defendant, general damages, special damages and loss of earning and diminished earning capacity, all arising out of a road traffic accident on 19/12/2002, at Utalii Drift, along Nairobi – Thika road.

The plaintiff had testified during the hearing, that he was in a low speed, uphill at the said Utalii Drift when the Defendant in high speed approached from the rear on the same lane and rammed into plaintiff's motor vehicle registration number KVK 236. The impact which he claimed was heavy, occasioned extensive damage to plaintiff's motor vehicle and also seriously injured the plaintiff. He at the same time testified that the Defendant's motor vehicle registration number KAE 838 K, was so heavily damaged on the left hand front side, that it was later on assessment, treated as a write off. The plaintiff's motor vehicle also sustained massive damage on the rear right hand side which had been rammed into.

The plaintiff also testified that before the accident occurred he had suddenly seen the Defendant's motor vehicle through the rear mirror, approach in high speed with intention to overtake the plaintiff who was driving at low speed on the left lane. It was then that the defendant suddenly rammed into the right side of his vehicle. The impact squeezed the plaintiff between the steering wheel and engine. That he was pulled out by good Samaritans before the police came and took him to hospital in an ambulance summoned by them because the plaintiff's injuries were serious. He blamed the Defendant for the negligence that caused the accident.

The Defendant also had testified. He said he was driving his motor vehicle KAE 838K on the material date at the material time and place. He said he was driving on the right lane behind a slow-moving lorry

before he changed to the left lane and started to overtake the lorry. That is when he suddenly saw a stationary motor vehicle on the left lane to which he had crossed. He applied emergency breaks to prevent ramming into the motor vehicle but it was too late since he actually rammed into it. He blamed the driver of the said motor vehicle because it had been parked in the middle of road without any warning signs to other road users. The said vehicle according to the Defendant, did not show any tail lights. The impact of the crash squeezed the driver of the other motor vehicle, who turned out to be the plaintiff, between driver's seat and the steering wheel while the base of the vehicle fell to the ground. The Defendant's vehicle on the other hand, had the radiator and engine seriously damaged and was later to be towed away. The defendant blamed the plaintiff for the accident on the basis that the motor vehicle had no rear lights which could warn those coming from the rear and that it was stationary.

In her Judgment the honorable Trial Magistrate found that the Defendant was entirely to blame. She found that he was driving at high speed at night and that he changed lanes suddenly and without a proper look-out as to whether the near lane to which he crossed was clear and safe. She also found that it was the Defendant who rammed into the Plaintiff's motor vehicle which was in motion and not stationary as claimed by the Defendant. She further found that the massive impact of the crash meant that the Defendant was driving fast. The evidence of the motor vehicle assessor, PW2, corroborated the above findings.

I have carefully reconsidered and re-evaluated the evidence on the record. I find also that the Appellant/Defendant was solely to blame. I find that the Plaintiff's vehicle was not stationary but was moving, although in a low speed because it was uphill and because it carried heavy load. The Appellant admitted that he was the one who changed lanes. He should have done so with due care and attention by first ascertaining that the lane he wanted to cross to was clear and safe. He failed to do so.

I have further considered the appeal grounds touching on whether proper pleadings were made and strict proof of the same, achieved during the hearing especially on special damages. I am satisfied that the Plaintiff/Respondent, had properly pleaded and sufficiently proved the special items of damages.

Concerning the level of quantum of damages, I am also satisfied too that Kshs. 800,000/= awarded as general damages for the injuries proved was not excessive. The level of general damages suggested by the Appellant in the cases cited are on the lower side considering the time when the cases were decided and the rate of inflation since then. Indeed similar cases with similar injuries or less have since attracted even twice and higher awards. In the circumstances I find no merit in disturbing the awards made by the honorable trial Magistrate.

The result is that this appeal shows no merit. It is dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 22nd May 2012.

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D A ONYANCHA

JUDGE