



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL APPEAL 41 OF 2007**

**PETER KINGORI GITHINJI.....1<sup>ST</sup> APPELLANT**  
**CESARE KIBE KIMONDO.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**CHINGA TEA FACTORY COMPANY LIMITED.....RESPONDENT**

*(Being appeal against the judgment of E. J. Osoro, Senior Resident Magistrate in Nyeri Chief Magistrate's Civil Case No. 818 of 2005 delivered on 10<sup>th</sup> May 2007)*

**RULING**

The subject matter of this ruling is the Notice of Motion dated 25<sup>th</sup> October 2010 in which the Appellants herein are seeking an order of review of this court's judgment pronounced on 17<sup>th</sup> September 2010. The Motion is not contested by the Respondents.

It is the submission of the Appellants that there is an error apparent on record. The Appellants herein namely: **Peter Kingori Githinji and Cesare Kibe Kimondo** have pointed out that they were both involved in a road traffic accident while on board motor vehicle registration No. KAA 881p ON 23<sup>rd</sup> July 2002 along Mukurwe-ini-Othaya road. The aforesaid motor vehicle was the property of Chinga tea Factory co. Ltd., the respondent herein. Peter Kingori Githinji, filed **Nyeri C.M.C.C. No. 818 of 2005** while Cesare Kibe Kimondo filed **Nyeri C.M.C.C. No. 819 of 2005** to claim damages from the respondent for the injuries they each sustained as a result of the accident. When the suits came up for hearing before E. J. Osoro, learned Senior Resident Magistrate, learned counsels appearing for the parties in both suits recorded a consent order to taken evidence in respect of liability in Nyeri C.M.C.C. No. 818 of 2005 and to use that as the test case for **Nyeri C.M.C.C.C. No. 819 of 2005**. It would appear that the parties treated that consent order as an order consolidating the two suits. The learned Senior Resident Magistrate heard the 'consolidated suit' and dismissed it on 10<sup>th</sup> May 2007. The Appellants herein were aggrieved hence they were prompted to file this appeal. The appeal was heard and determined on 17<sup>th</sup> September 2010. The gist of this Court's judgment was that the order dismissing the suit was set aside. The issue touching on liability was determined whereof the Respondent herein was held wholly responsible for the accident. This Court treated the appeal as if it was solely filed by Peter Kingori Githinji. That in my view is an error which is apparent on the face of record. The judgment of 17<sup>th</sup> September 2010 should be amended to include the name of Cesare Kibe Kimondo as the 2<sup>nd</sup> Appellant. In his Complaint, Cesare Kibe Kimondo had indicated that he suffered the following injuries:

(i) ***Blunt injury to the right knee.***

- (ii) Blunt injury to the chest and ribs.**
- (iii) Blunt injury to the hips.**

In her judgment, the learned Senior Resident Magistrate awarded Cesare Kibe Kimondo Ksh.50,000/= as general damages which amount was similar to that of Peter Kingori Githinji. After a careful re-consideration of the appeal, this court set aside the award and raised the figure to Ksh.120,000/=. I will equally do the same in respect of the case of Cesare Kibe Kimondo.

In the end I allow the Motion dated 25<sup>th</sup> October 2011 and order this judgment be reviewed and amended as follows:

- (i) That the heading be amended to include Cesare Kibe Kimondo as the 2<sup>nd</sup> Appellant.**
- (ii) The appeal be allowed in terms of the appeal by Peter Kingori Githinji i.e. that is to say that the Respondent is found to be wholly liable for the accident and that the 2<sup>nd</sup> Appellant be awarded Ksh.120,000/= as general damages with costs of the appeal and the suit.**

*Dated and delivered at Nyeri this 23<sup>rd</sup> day of September 2011.*

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Mugambi for Respondent and no appearance Wahito for the Appellant.