



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 58 of 2006

PHILIP MUNGAI..... APPELLANT

VERSUS

KINDARUMA LIMITED.....RESPONDENT

J U D G M E N T

On 15/1/2004, the Plaintiff's/Appellant's motor vehicle Registration No. KZH 143 was parked outside his shop along Kenyatta Highway within Embu Township. The lorry Registration KAG 267 L said to belong to the Defendant/Respondent Kindaruma Limited, was being driven nearby. The same is said to have rammed into the plaintiff/appellant's motor vehicle resulting in some extensive Damage as shown in the assessor's report and the photographs exhibited before the trial court. The motor vehicle was towed to the police station. The lorry driver was arrested and prosecuted for the offence of careless driving. He was convicted and fined for the traffic offence.

Subsequently, the plaintiff filed the civil suit before the Senior Resident Magistrate's Court Embu claiming special damages amounting to Ksh.85,142.

The defendant filed a defence in which it denied inter alia that it was the registered owner of motor vehicle Registration No. KAG 267 L and put the plaintiff/appellant to strict proof thereof. The matter proceeded to hearing and in a well reasoned Judgment the learned trial magistrate found the case not proved on a balance of probabilities and dismissed the same with costs to the defendant.

Being aggrieved by the said Judgment and order of dismissal, the plaintiff filed this appeal. He relies on 8 grounds all of which I do not nonetheless find necessary to replicate for the purposes of this Judgment.

In my considered view, I can and will dispose of this appeal on 2 grounds i.e ground 2 and 3 which are as follows:-

2. The learned magistrate erred in law and facts

3. The learned magistrate law and fact in

The learned magistrate did analyse the facts and law surrounding these 2 grounds in detail in his Judgment.

Both counsel made oral submissions for and against the said Judgment. Counsel for the appellant did not deny that they did not tender the evidence of ownership of the lorry in question before the trial court. According to counsel for the appellant;

“ The respondent never tendered any evidence to

controvert the evidence that the said motor vehicle did not belong to him.”

It is evident however, that in paragraph 3 of his statement of defence, the respondent had denied ownership of the said motor vehicle. This cast the burden on the appellant to prove indeed that the said lorry belonged to the defendant. That was very easy to do. All they needed to do was go to the registrar of motor vehicles and get a certificate of motor vehicle ownership at a nominal fee of 50/= This was not done and as at the time the case was reserved for Judgment, there was no evidence that the Respondent herein was the registered owner of the said lorry. This led the learned trial magistrate to make the following observation

“Under Section 8 of the Traffic Act, a person in whose name a vehicle is registered is deemed to be the owner of the vehicle unless the contrary is proved. Do the testimonies of PW1 and PW2 offer proof that the motor vehicle registration number KAG 267L was at the material time registered in the name of the defendant? No. I say no because the plaintiff did not produce a certificate signed by registrar of motor vehicles as required. As such, there is no proof that the vehicle in question was registered in the name of the defendant,”

The learned trial magistrate went on to consider the High Court and Court of Appeal authorities which both deal with this point. The correct exposition of the law on this point is clearly set out in the case of **THURANIRA KARAUARI -VS- AGNES NCHECHE** as hereunder:

“ The plaintiff did not prove that the vehicle which was involved in the accident was owned by the defendant. As the defendant denied ownership, it was incumbent on the plaintiff to place before the Judge a certificate of search signed by the Registrar of Motor Vehicles showing

the registered owner of the lorry.”

The above case was on all fours with our present case. The Defendant/Respondent expressly denied the ownership of the lorry in paragraph 3 of the plaint. It behoved the Plaintiff/Appellant to rebut that evidence by production of the certificate from the Registrar of motor vehicle. In the absence of the said certificate, the issue of ownership remained unresolved and therefore uproved on a balance of probabilities.

I need not say more. I reiterate the finding of the subordinate court that liability which is the starting point of every case of this nature was not proved. The issues of vicarious liability and the amount of damages proved are secondary. The claim was a nonstarter in the absence of proof of ownership.

Having considered all the evidence before me and the law applicable, I find and hold that the learned trial magistrate did not err either in law or in fact in arriving at his decision to dismiss, the plaintiffs claim. My finding is that this appeal lacks merit.

The same is hereby dismissed with costs to the Respondent.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 25th day of May 2010.

In presence of:- Mr. Okwaro for Appellant.