

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 16 of 2002

DANIEL GICHOHI MWANGI.....APPELLANT

VERSUS

SAMUEL KAHURA NGANGA.....RESPONDENT

JUDGMENT

This an appeal from the judgment of J. S. Kaburu, Senior Principle Magistrate delivered on 24th January 2002 in Nakuru CMCC 1047 of 1998 in which he found the plaintiff who is the appellant in this appeal 70% liable and ordered him to pay the defendant/Respondent 210,330/- net of contribution being general damages for injuries and material damage the respondent suffered in the accident. No issue is taken on the amount awarded. This appeal is therefore only on the issue of liability.

The Appellant contends that the trial court had no good reason of rejecting Sergeant Makhoka's evidence more so when it was the evidence of the Respondent's witness which supported his case. He further argued that if he was to blame as testified by Sergeant Makhoka that should have been noted in the police abstract report. He also cast aspersions on the evidence of PW3 whom he said was plucked from the streets as his name was in the police abstract report.

I have considered these submissions and the evidence on record. This being a first appeal I am required by law to re-evaluate the evidence on record and satisfy myself that the court's decision is based on the settled principles and credible evidence. - **Mwanasokoni Vs Kenya Bus Service Ltd & Others [1982-88] 1 KAR 870I**. Having done that I find that the defendant was consistent and so was his witness, Charles Gicheha, DW3 and the court had good reason for rejecting the evidence of Sergeant Makhoka. The sketch plan produced was very rough and does not even show the distance from the road verges to the point of impact. If this was a rough sketch plan drawn at the scene of the accident it is not clear why Sergeant Makhoka did not draw a fair one when he got back to his office. I also cannot find any good reason to say that Charles Gicheha, DW3, was not at the scene of accident and did not witness it occur. His evidence was that the plaintiff was attempting to avoid a slit deposit on his side of the road when he swerved to the defendant's side. The plaintiff said nothing about that deposit.

Having carefully considered the evidence on record I find no reason to fault the decision of the trial court and I therefore accordingly dismiss this appeal with costs to the Respondent. As agreed by the parties this judgment will apply to Civil Appeal No. 23 of 2003.

DATED and delivered at Nakuru this 3rd day of November 2008.

D. K. MARAGA

JUDGE.