



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 342 of 2003

MAXERL N. WAMAI APPELLANT

VERSUS

LIMURU DAIRY FARMERS CO-OPERATIVE SOCIETY..... 1ST RESPONDENT

SIMON CHEGE WMANIKI 2ND RESPONDENT

JUDGMENT

1. Civil appeal
2. Subject material loss claim – Tort
3. Motor vehicle collision between two vehicles
 - i) Liability 50%: 505
 - ii) QuantumSpecial damage/material loss
Plaintiff Ksh.248,190.50
Defendant Ksh.248,107.50
Balance to plaintiff Ksh.82/50
4. Plaintiff appeals.
5.
 - i) On liability – magistrate erred
 - ii) Respondent – no interfere by court unless trial come failed to take into account facts.
 - iii) Held further evidence of the sketch plaint and police who visited scene.

iv) Police Evidence re taken and company collision in middle of road at a bend. No one changed.

6. Finding: Liability of 50%: 50% be confirmed as judgment of court.

Appeal dismissed with costs.

7. Case law – Nil

8. Advocates:

W. Nyuthe of Wangai Nyuthe & Co. Advocates for the plaintiff- present

A.W. Wachira of E.M. Wachira & Co. Advocates for the defendant/respondent – present

I: Appeal

1. Two motor vehicles collided along the Ngecha junction at Kavuku when both vehicles sustained material loss damage.

2. The original/appellant Maxerl Wamai is the owner of Nissan mini van matatu Registered KAC 1674 whilst the 1st defendant M/s Limuru Dairy Farmers Co-operative Society are the registered owner of a Suzuki four wheel drive vehicle Reg. KAB 283E. Their authorized driver, Simon Chege Mwaniki has been sued as the second defendant.

3. The appellant sued the 1st and 2nd defendant in tort of negligence for material loss. The 1st and 2nd defendant sued by way of counter-claim.

4. The parties were heard after trial before the Senior Resident Magistrate at Limuru. The case was remitted for retrial of independent witness to be duly recorded which was subsequently so done.

II: The appeal

5. An award by the subordinate court on liability was given at 50% against each of the parties. As to quantum a sum of Ksh.248,190/- was awarded to the defendant Ksh.248,107/50 to the plaintiff. This in effect meant that the total decretal sum after judgment to the plaintiff amounted to Ksh.82/50 only. The plaintiff appealed. There was no cross appeal.

6. The facts of the case is that the appellants vehicle was being driven down hill where there was a slight corner along and near the Ngecha – Kavuku junction. The respondent vehicle on the other hand was being driven up hill at a speed when it approached the corner it took a wide curve. There was napier grass along the corner that blinded his view and gave him a blind corner. The weather was wet and the rain drizzling a head on collision occurred.

7. The evidence of the police performing traffic (PW5) duties informed the court from the file of 8 August 2001 which he personally investigated stated that on receiving a report of the two vehicles being involved in an accident he visited the scene and took measurements. He drew a sketch map of the scene.

8. The road was 4 miles in width. The motor vehicle “KAC 1674 lay about 17 meters from the centre line. There was a bend on the right side facing Ngecha directions.”

9. There was a sharp bent. No one was changed and or at fault to be so changed.

III: Arguments

10. The appellant argued that the person to blame is the defendant who took a wide corner to cover up the hill and collide with his vehicle. The plaintiff who was traveling down hill therefore wished this court to defend the defendant/respondent to blame.

11. The respondent argued that this court should not interfere with the finding of the lower court.

IV: Finding

i) Liability

12. A collision occurred between two vehicles the impact was found to be at the centre of the road. There are case law that state where collision occurs on the middle of the road blame ought to be apportioned at 50% to 50% ratio on liability.

13. I would accordingly hold and support the liability at 50% to be borne by each party.

ii) Quantum

14. The trial magistrate approved this equally to both parties. It therefore means the defendant are to pay Ksh.82/50 to the applicant/plaintiff.

15. I am not inclined to interfere with the Magistrates finding on this case one each quantum and liability.

16. I dismiss this appeal with costs to the respondent.

Dated this 19th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

W. Nyuthe of Wangai Nyuthe & Co. Advocates for the plaintiff- present

A.W. Wachira of E.M. Wachira & Co. Advocates for the defendant/respondent - present

