

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 6 of 1999

BROADWAYS BAKERY LIMITED.....APPELLANTS

Versus

JEREMIAH MUHINDI GIKOMBO.....RESPONDENT

(Being appeal from the Judgment of the senior Principal Magistrate, Embu in his Civil Case Number 477 of 1999 delivered on 15th January 1999)

JUDGMENT

The Respondent's claim in the lower court was for compensation for damage to his motor vehicle registration number KVN 831. This vehicle was damaged in an accident with the 1st Defendant's car registration number KUZ 763. The Respondent claimed that the accident was as a result of the negligence of the Appellant. He claimed for special damages of Ksh. 104,103/=. He also claimed for general damages for non user of his motor vehicle.

The Respondent in his evidence stated that the accident occurred as a result of the negligence of the Appellant who on being charged with the offence of careless driving pleaded guilty. The Respondent had his car assessed for the damage by Huduma Garage. They assessed the damage to be the value of Ksh.136,945/=. The Respondent produced before court that assessment. The Respondent also in evidence claimed to have been earning Ksh3,000/= per day in the use of his motor vehicle. He however, failed to prove that loss by documentary evidence. The Appellant in evidence through the 2nd Defendant admitted that the accident did occur but attributed it to the Respondent's negligence saying that the Respondent overtook his vehicle and proceeded to stop without any indication. As a result the Appellant's vehicle knocked the Respondent's vehicle at the back. He admitted pleading guilty to the criminal charge. The Appellant's vehicle was repaired at the cost of Ksh.30,000/=. The Appellant called a witness who described himself as a surveyor/engineer. He had prepared a report of the assessment of the repairs required on the Respondent's vehicle which showed that the repairs would cost Ksh75,718/=. He said that the vehicle had a pre-accident value of Ksh.130,000/=.

The trial court in its judgment made a finding that the Appellant having pleaded guilty was conclusive evidence that he was the one negligent and therefore caused the accident to happen.

The Appellant in ground No. 3 in their Memorandum of Appeal stated that the plea of guilt was not a bar to their claim for contribution in the counter claim. They had made a counter claim for 40,000/=. I am of the view that the lower court was correct in its finding that the entry on the Appellant's own plea was conclusive in determining the one who was negligent and who caused the accident. It ought to be noted that the entry of guilt was not after the trial but it was on his own plea. That ground of appeal therefore does fail. The lower court awarded judgment to the Respondent for Ksh.75,718/= in respect of the damage to the motor vehicle. It further awarded the Respondent for loss of user at the rate Ksh.1,000/= per day for three weeks. The total award for loss of user was Ksh.21,000/-. The 1st ground in the Memorandum of Appeal attacks this award. It however, should be noted that it was the Appellant's own expert witness who gave the value of the Respondent's repair at Ksh75,718/=. The Respondent in his evidence said he had not repaired the vehicle because he lacked the money to do the repairs. In those

circumstances one cannot expect the Respondent to have produced receipts before court. That ground of appeal therefore is rejected.

Ground No. 2 attacks the award of loss of use. The court does accept the argument of the Appellant on this ground. It is correct that there was no proof produced by the Respondent. That on the claim for loss of use being in the nature of special damages could only be granted on documentary proof being produced before court. Accordingly that ground of appeal does succeed. On the Appellant's counter claim raised in grounds No. 4, 5 and 6 the court finds that the lower court having made a finding on the party that was negligent in causing the accident the Appellant could not succeed in its counterclaim. As stated before the lower court was correct in its finding that the Appellant's plea of guilt was conclusive in determining who was negligent. Accordingly the Appellant's counter claim could not succeed and the lower court's finding cannot be faulted. The court therefore finds in this judgment that it is only the award of loss of use of Ksh.21,000/= which will succeed in this appeal. The lower court judgment is therefore set aside to that extent only. The Respondent is awarded $\frac{3}{4}$ of costs of this appeal.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 2nd day of November 2007.

By: M. S. A. MAKHANDIA

JUDGE