



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO. 2044 OF 1999

NATION NEWSPAPER LIMITED PLAINTIFF

VERSUS

DANIEL WATHUKU NJATHA DEFENDANT

JUDGMENT

On the 4th of September 1997, a motor vehicle Registration KAE 132N belonging to M/s Nation Newspapers Ltd was lawfully driving along Mombasa road as one heads towards the airport. The said vehicle was an Isuzu Mini bus. As the said vehicle approached a building known as Electronic link on the left, the defendants vehicle registration KAE 472E entered into the highway from a “u turn” right side road. The defendant then emerged into the lane of the first vehicle belonging to the plaintiff. An accident collision occurred.

The plaintiff sued the defendant in negligence and claimed the material loss to its vehicle.

A) LIABILITY

On the 25th day of September 2002, the parties entered into a written consent which was duly minuted by the deputy registrar on the issue of quantum. The said deputy registrar signed the minute on the 4th of October 2002 and is so permitted to do so under order 48 of the Civil Procedure Rules.

In this consent, the parties conceded to liability at 60% against the defendant and 40% against the plaintiff.

The matter was set down for assessment of damages.

B) QUANTUM

I: Special Damages

The plaintiff amended the plaint to claim the following Special Damages.

- a) Repair Costs Ksh.568,135/-
- b) Assessor fee Ksh. 9,280/-
- c) Investigators fee Ksh. 8,684/-

d) Police abstract Ksh. 100/-

Total Ksh. 589,849/-

a) Repair Costs Ksh.568,135/-

The plaintiff stated that the repair cost, as provided for by the assessor was Ksh.52,685/10 and according to M/s Kenya Loss Assessors and Surveyors Ltd, estimation of work to be carried out. This was inclusive of the 16% VAT. The assessor had a schedule of all the repairs required to be done. Each item duly itemized that was to be replaced. Although the total had not been added up, this court added up the total and came to a figure of Ksh.307,973/-.

When the vehicle was taken to repairs at M/s Top Job Motors the actual cost of repair amounted to Ksh.489,772/-. The insurance company's representative PW4 deducted a claim for a motor starter which was not provided for and VAT 16%.

The advocate for the plaintiff in his submission conceded that the correct figure for repairs is in fact Ksh.489,772/10. I would have awarded Ksh.307,973 as the sum that was estimated without 16% vat as the M/s Top Job had no vat number.

The said sum was said to have been paid as per the disbursement voucher No.9703395. There has unfortunately been no receipt to support this claim. As a result I am not inclined to make award.

b) Assessors fee Ksh.9,280/-

The assessor submitted his fee of Ksh.9,280/-. This was by way of an invoice. A disbursement voucher was issued No.9703394. There is though no receipt issued to KENINDIA Assurance Company of receipt of this payment. I would reject this payment.

If I am required to say what my award would be, I would have awarded Ksh.9,280/-.

c) Investigators fee Ksh.8,684/-

The investigators gave a fee note of Ksh.16,034/-. The same appeared to have been approved and the disbursement voucher 9800617 actually reflects a sum of Ksh.16,034/-.

What was pleaded in the plaint was Ksh.8,684/-. A party is bound by his pleading. The said plaintiff cannot claim an amount above what has been pleaded.

I would have awarded Ksh.8,684/- only.

As there is no receipt from the Seismo Services I reject this claim.

d) Police abstract Ksh.100/-

From the documents tendered I see no receipt from the Government as proof of payment of Ksh.100/-. I hereby reject this claim as not proved.

Obiter Dictum

Locus

The issue of locus was not an issue in this case. I would nonetheless incline to mention it. The plaintiff is described as M/s Nation Newspapers Ltd. The assessors, the investigator and the insurance company representative describe the plaintiff as the M/s Nation Printers and Publishers Ltd.

These are two and distinct companies, though they may be related.

This suit appears to be that of Nation Printers and Publishers. I should not make a finding for a company not party to the suit. I would dismiss this suit.

In Summary

a) Material loss claim

b) Collision between this vehicle

c) Liability

Agreed) 60% against the defendant

40% against the plaintiff

d) Dismissed due to lack of proof of payment by way of a receipt by the payer.

Possible award

Special Damage

i) Repair costs Ksh.307,973/-

ii) Assessors fee Ksh. 8,641/-

iii) Police abstract Nil

Total Ksh.325,894/-.

I would have awarded interest from the date of filing suit.

The suit on quantum stands dismissed with costs to the defendants.

Dated this 28th day of January 2004 at Nairobi.

M.A. ANGA'WA

JUDGE

Mbugua & Mbugua Advocates for plaintiff

M. Opondo & Co. Advocates for the defendant