

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO 414 OF 2001

JOSEPH KARANJA NJAU APPELLANT

VERSUS

LUCY WAIRIMU NJUGUNA RESPONDENT

JUDGMENT

This is an appeal against the Judgment of Principal Magistrate (Mrs. N. A. Owino) in CMCC No 3586 of 1999 (Milimani) delivered on July 5, 2001.

It is based on four grounds of appeal as follows:

- 1. The Learned Magistrate erred in law and in fact in failing to find that the said accident was wholly caused by the negligence of the 2 nd 3rd party Mohamed Haji Abdulahi.***
- 2. The Learned Magistrate erred in law and in fact in failing to find that at the time of the accident motor vehicle KAE 264K was under the cont rol and management of the 1 st 3rd party Henry Muiruri.***
- 3. The Learned Magistrate erred in law in failing to find that she has no jurisdiction to hear the matter the accident having occurred outside the jurisdiction of the court.***
- 4. The award was manifestly excessive and should be set aside.***

At the hearing of the appeal, Counsel for the Appellant made no submission on ground 4, relating to quantum, and I presume that the same was abandoned.

The facts are straight forward. The Plaintiff was a lawful passenger in motor vehicle registration number KAE 264K owned by the Defendant, and driven by the first 3rd Party. The lower court found that it was being driven at high speed when it overturned because of oil having been spilled on the road by a tanker owned by the second 3rd Party. After the oil spill, there were green leaves placed on the road to warn drivers of the danger ahead. However, according to the evidence before the lower court, the 1st third party ignored this warning, and despite complaints from the passengers, continued driving fast, and eventually overturned.

The Appellant's case is that the lower court should have found the 2nd third party fully to blame for the accident, which arose because of the oil spill.

Having examined the record, I disagree with the Appellant's case. The lower court's findings on facts are consistent with the evidence before it. The Court heard and saw the witnesses, and chose to believe the Plaintiff that the Defendant's motor vehicle was being driven at high speed. It also believed the Defendant's witness that the oil spill contributed to the accident, and apportioned liability at 50% each. This apportionment was fair and consistent with the evidence before the Court.

Similarly, the Court found as a fact that at the material time the third party was the driver of the Defendant who was vicariously liable for the accident.

This Court finds no basis to interfere with the decision of the Lower Court on these questions of fact.

With regard to the 3rd ground of appeal, relating to the jurisdiction of the Court, it should have been raised at the commencement of the trial in the Lower Court. There is nothing in the record of proceedings

in the Lower Court to show why the Lower Court had no jurisdiction to hear this case.

Accordingly, and for reasons outlined, this appeal is dismissed with costs.

Dated and delivered at Nairobi this 25th day of May, 2004.

ALNASHIR VISRAM

JUDGE