



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 734 OF 2001

JOYCE WAMBUI BURUGU APPELLANT

VERSUS

KENYA BUS SERVICES LIMITED RESPONDENT

JUDGMENT

(An appeal from the Judgment of Hon. Mr. C. O. Kanyangi, SRM in Milimani

CMCC No 10810 of 1998 delivered on 26th September, 2001).

By a Complaint dated 11th December, 1998 and amended 2nd February, 1999 the Plaintiff (hereinafter “Appellant”) claimed damages for injuries sustained by her when she was a passenger in the Respondent’s bus registration No KAD 199J on 6th October, 1998.

According to paragraph 3 of the Complaint, the Appellant said that she “was injured by protruding iron sheets on the stair case” of the bus as she descended the bus. The trial court found that there was no evidence of any protruding iron bar or sheet on the stair case and that the Appellant simply tripped and fell off the stair case as she attempted to alight from the rear door which was meant for boarding purposes only. The trial court found that the Appellant “knew” that she was not permitted to exit through the back door, that she had used the same bus previously, and that she was aware of the danger of doing so. He delivered his judgment as follows:

“The bus was inspected and found to be in sound mechanical condition. The stairways were not found to be defective. The Plaintiff was alighting from the rear door of the bus contrary to directions given that passengers should alight using the front door. It appears that the Plaintiff was alighting from the bus when she just tipped over and fell hurting her legs. This accident cannot be attributed to the Defendant and there is no negligence proved on the part of the Defendant.”

Being dissatisfied with that Judgment the Appellant has appealed to this Court outlining the following five grounds of appeal:

- 1. The learned Magistrate erred in law and in fact in arriving at a conclusion based on unfair and unequal treatment of the evidence adduced at the hearing.***
- 2. The learned Magistrate erred in law and in fact in failing to consider and give sufficient weight to the Plaintiff’s evidence adduced at the hearing.***
- 3. The learned Magistrate erred in law and in fact in failing to find that the defendant was negligent.***

4. The learned Magistrate erred in law and in fact in dismissing the Plaintiff's suit entirely.

5. The learned Magistrate erred in law and in failing to find negligence and or contributory negligence against the defendant having found as a fact in the judgment that the Plaintiff was injured by protruding iron sheets on the stair case of the defendant's vehicle.

Essentially, therefore, the main issue in this appeal is liability. As for quantum, both parties relied on their submissions in the lower court.

Is there any basis for this Court to interfere with the findings of fact by the lower court?

Here is what the Court of Appeal said in **Makube vs Nyamuro (1983) KLR 403** :

“a court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the Judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”

Mr Mugo, Counsel for the Appellant, argued before this Court that even though the Appellant was wrong in attempting to alight the bus from the rear door, this did not absolve the Respondent from negligence. All it meant was that the Appellant contributed to her negligence, but the Respondent was to equally blame for the accident. According to him there was no evidence that injury happened because she attempted to exit from the rear door; rather she got injured because she fell down.

Mr Laibuta, Counsel for the Respondent, argued that in choosing to disembark from the rear door, which the Appellant knew to be dangerous, she voluntarily assumed the risk of injury and could not blame the same on the Respondent. According to him, there was no evidence of any defect in the bus, and the Respondent could not be held liable only by reason of the fact that the Appellant was a passenger in the bus. The onus was on her to prove negligence on the part of the Respondent.

Having examined the record of the proceedings, I am fully satisfied that the trial court based its decision on the evidence before it. The Appellant clearly admitted in evidence that she knew it was dangerous to disembark using the rear door; that there were notices to that effect in the bus; that she was an experienced traveler; that she fell down because she missed a step; and that she did not see anyone else fall down. These admissions are clear. Secondly, the Respondent's witnesses produced an inspection report from the Police prepared immediately after the accident to show that there were no defects in the bus.

I concur with the trial court that according to the evidence before it the Appellant simply missed the step and fell off the bus, and got injured. The Respondent was not negligent in any manner. Accordingly, I find no need to interfere with the decision of the lower court, and hereby dismiss this appeal with costs to the Respondent.

Dated and delivered at Nairobi this 10th day of December, 2004.

ALNASHIR VISRAM

JUDGE