



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO. 628 OF 2000**

**MUYA GITAO.....APPELLANT**

**VERSUS**

**TIMOTHY KINGONDU MOKI.....DEFENDANT**

**J U D G M E N T**

This appeal arises from the judgment and order of the Senior Resident Magistrate (W.O. Lichuma (Mrs) delivered on 26th October, 2000.

It concerned a road traffic accident in which the respondent alleged he was injured on Ngong Road by the appellants motor vehicle registration number KAE 356W on 8th July 1998.

The brief facts of the accident by the respondent were that he was riding his bicycle from Kibera to the town center. That he rode on the right side of the road and when he had passed Kenyatta National Hospital junction, he stopped to allow vehicles to pass before probably he crossed over to the other side.

The appellant's motor vehicle emerged from the city mortuary direction and in an attempt to turn in, it hit the respondent who was thrown off the bicycle onto the main road.

The appellant's version of the accident was different. He said he had driven his motor vehicle from Sunview Estate, near Ngummo and joined Mbagathi way and drove towards the City Mortuary.

Then he turned the round about into Ngong Road. That after passing the bus stage he indicated he was turning to the right into Kenyatta National Hospital but before he did so, a cyclist rode from Kenyatta National Hospital gate and rammmed into his vehicle at the rear right side.

The learned Senior Resident Magistrate heard and recorded this evidence and after considering it she wrote and delivered her judgment as already stated in which she apportioned liability at 30% against the respondent and 70% against the appellant.

The magistrate then proceeded to award the respondent Kshs.100,000/= general damages subject to the apportionment, Kshs.4,600/= special damages plus costs and interest.

This decision did not go down well with the appellant who lodged an appeal to this court on 24th November 2000 in a memorandum of appeal which listed six (6) grounds of appeal all of which questioned proof of the respondents case in the lower court.

In court on 11th March 2003 counsel for the parties appeared to urge or oppose the appeal. Counsel for the appellant continued to queasy proof of the respondents case and the criteria for the apportionment of liability at 70% against the appellant – grounds (1) and (2).

In this case the respondent relied on a card issued at Mbagathi Hospital which was found to have been tempered with. However, though these card was found to have been tempered with, but though marked, it was not produced as an exhibit.

Then counsel submitted on the contradictions regarding the registration number of the motor vehicle involved in this accident.

This cannot be an issue since the appellant admitted being involved in the accident subject to this appeal with motor vehicle registration No. KAE 256W.

It is true in the case subject to this appeal there were two varying versions as to how the accident occurred, with each side blaming the other for it.

In such case, it is desirable that independent evidence he adduced to ascertain the blame worthiness of either side.

That there was none does not favour any side. This is a case which should have been treated as one of a collision between the driver of the motor vehicle and the cyclist in which case the apportionment of liability should have been on a 50%-50% basis which I hereby order.

The injuries sustained by the respondent as evidenced by the two doctors from either side coupled with the inflationary trend in the Kenya Shilling tend to confirm to the award of Kshs.100,000/= award made by the learned Senior Resident Magistrate.

Other than the apportionment of liability which has been varied, I find no merit in this appeal which I dismiss with  $\frac{1}{2}$  costs to the appellant.

Delivered and dated this 10th day of April, 2003.

D.K.S. AGANYANYA

PRINCIPAL JUDGE