Trinity Petrol Station v Sobolo (Civil Appeal E118 of 2023)
[2024] KEHC 1261 (KLR) (9 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1261 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL APPEAL E118 OF 2023

PJO OTIENO, J

FEBRUARY 9, 2024

BETWEEN

TRINITY PETROL STATION ..... APPELLANT

AND

RAPHAEL SOBOLO ..... RESPONDENT

(Being an appeal from the Judgment of Hon. Caroline Cheruiyot (RM) in Kakamega Civil Claim No. E117 of 2023 delivered on 21st July 2023)

JUDGMENT

The Appeal

1. By way of a statement of claim dated 4th April, 2023, the respondent sued the appellant for a sum of Kshs. 278,975/- and costs of the suit. The respondent pleaded that on 25/9/2022, his Motor Vehicle Registration Number KDA 066B was fueled at a cost of Kshs. 4,1000/-. After fueling, it was established that the appellant had sold the respondent adulterated fuel following which the vehicle developed mechanical problems leading to the destruction of the vehicle's common rail and as a result of this, the respondent suffered loss of business as well as repair costs over and above the said sum of Kshs. 278,975/-.

2. In a response to the statement of claim dated 26th May, 2023, the respondent pleaded and conceded that indeed the respondent fueled his motor vehicle at the appellant's station on 25/9/2022 and the vehicle's common rail got spoilt but added that on 27/9/2022, the respondent brought the vehicle back to the respondent for repairs and thereafter left with the vehicle on 1/10/2022 after being satisfied with the repairs. The respondent again notified the appellant that the vehicle had got spoilt on 6/10/2022 for which damage the appellant denies liability.

3. Both sides adduced evidence on their rival position. In a reserved judgment delivered by the trial court on 21st July 2023, the court found that the appellant was 100% liable for the damage of Motor Vehicle

Registration Number KDA 066B, assessed and awarded to the respondent damages in the sum of Kshs. 204,000/- together with costs and interest at court rates from the date of filing the claim.

4. Aggrieved with the decision of the trial court, the appellant's lodged the memorandum of appeal dated 11th August, 2023 faulting the trial court on grounds that: -

    a. The learned magistrate erred in fact and in law in finding that the appellant had not adduced any plausible reasons why the subject vehicle was damaged, thereby shifting the burden of proof to the appellant.

    b. The learned magistrate erred in fact and in law by ignoring the evidence on record which clearly showed that the appellant repaired the respondent's vehicle, and the respondent was satisfied with the repairs.

    c. The learned magistrate erred in fact and in law by ignoring the evidence on record, which clearly showed that any subsequent damage after the first repair could not be attributed to the appellant, and no evidence was placed before court to show that the second damage arose from the fuel which the respondent purchased from the appellant.

    d. The learned magistrate erred in fact and in law by finding that the respondent was 100% liable for the damage to the respondent's vehicle when there was no evidence to support that finding.

    e. The learned magistrate erred in fact and in law in finding that the respondent was 100% liable for the damage to the respondent's vehicle when there was no evidence to support the allegation that the vehicle was repaired for a second time.

    f. The learned trial magistrate erred in failing to consider the evidence on record.

5. For the above reasons, the appellant prays that the judgment of the trial court be set aside and be substituted with an order that the respondent's claim be dismissed with costs to the appellant.

6. The appeal was directed to be canvassed by way of written submissions and both parties have filled rival submissions which the court has had the opportunity to peruse and given due regards.

7. In the submissions filed, the appellant asserts that the respondent failed to discharge the legal and evidential burden of proof that the vehicle was spoilt on 6/10/2022 and that the damage to the vehicle was caused by the appellant. They contend that the respondent merely produced copies that a mechanical part had been purchased and installed in the vehicle but failed to call the mechanic who allegedly did the work to ascertain if at the part was spoilt and installed and how the damage may have occurred.

8. The appellant further submits that there was a break in the chain of causation when the driver of the vehicle testified that after the vehicle was repaired on 1/10/2022, he took the vehicle for a ride and was satisfied with the repairs and that he left with the vehicle which was used for matatu operations and used it for several days until it broke down. In this regard thy cite the court of appeal decision in *Jane Wangui Obwogi v Lawrence John Aburi* [1997] eKLR where it was held as follows;

> " Upon a careful consideration of the material before us, we are satisfied that there was a break in the chain of causation and the respondent's negligence was not the effective or proximate cause of this further damage. Clearly, the operation of the original cause ceased and the chain of causation was broken by the intervention of the acts of the medical team and such intervention is not a kind of fact which may reasonably have been anticipated. To render the

respondent liable in an action for negligence, it must be shown that the negligence found is the proximate cause of the damage."

9. There is a further arguement that the chain of causation broke after 1st October, 2022 when the vehicle was first repaired and the driver resumed his duty of transporting passengers for five days during which time the vehicle must have fueled at different petrol stations and that the damage cannot be attributed to the appellant.

10. In his submission, the appellant admits having sold adulterated fuel to the respondent's driver to whom he gave Kshs. 8,000/- to drain the adulterated fuel after which the appellant offered to repair the vehicle at his own costs but the vehicle still broke down after three days. It is stressed for the first time on appeal that the actions of the appellant violated his consumer rights under article 46 of the *Constitution* and section 16(a) of the *Sale of Goods Act* which requires that good should be fit for purpose. He argues that he discharged his burden of proof under section 109 of the *Evidence Act* by proving that he suffered loss and damage as a result of the adulterated fuel.

Issues, Analysis and Determination

11. Executing its mandate as 'first appellate court', the court has perused the grounds of appeal, the proceedings of the lower court, the Judgment and the submissions by both the appellant and the respondent and discerns the issue for determination to be whether the damage of Motor Vehicle Registration Number KDA 066B on the 4th of October, 2022 is attributable to the adulterated fuel sold by the appellant.

12. It is not disputed that the respondent's driver fueled the suit motor vehicle at the appellant's petrol station on 25th September, 2022. It is also not disputed, drawing from the admission of fault and concession to effect repairs, that the appellant sold the respondent's driver adulterated fuel which resulted in the motor vehicle's common rail getting spoilt and that the appellant repaired the motor vehicle at their expense and returned it to the respondent's driver on the 30th of September, 2022.

13. The respondent's driver testified, with little challenge, that he drove the motor vehicle on 1st, 2nd and 3rd after which the engine again failed to start forcing the respondent to purchase a new common rail. The appellant contends that following the first repair by the appellant's mechanic and the confirmation through a road test that the motor vehicle was in good condition on the 30th day of September, 2022, the appellant became absolved of any subsequent damage to the motor vehicle. It contends that since the motor vehicle was used in the matatu business and must have fueled elsewhere, these actions broke the chain of causation.

14. The appellant admitted to having sold the respondent's driver adulterated fuel which resulted in the motor vehicle's common rail spoiling. The appellant thus admitted to negligence which negligence resulted in the damage to the motor vehicle. The question the court must determine is if the motor vehicle's common rail failure/damage a few days the repair is attributable to the adulterated fuel.

15. That determination depends on consequential nexus between an injury and the negligence of a defendant. In the case of *Elijah Ole Kool v George Ikonya Thuo* [2001] eKLR the court in considering causation and nexus between injury and negligence observed as follows;

> "Although the Plaintiff may be able to trace even a consequential connexion between an injury and the negligence of the Defendant, the law does necessarily attach liability to the Defendant who has been negligent...

Negligence is an effective cause of an injury which either is intended, or, judged broadly on common principles, is a direct consequence. When negligence has been established, liability fallows for all the consequences which are in fact the direct outcome of it, whether or not the damage is a consequence that might reasonably be foreseen.

...the choice of the real or efficient cause from out of the whole complex of the facts must be made by applying common sense standards. Causation is to be understood as a man in the street, and not as either the scientist or the metaphysician, would understand it.

As Lord Denning said in *Davies v Swan Motor Co. (Swansea) Ltd.* [1949] 2 C.B. 291 at p. 321;

> "the efficiency of causes does not depend on their proximity in point of time."

It is enough that the cause forms part of a chain of events which has in fact led to the injury. What cause will be effective? The Learned Authors of Halsburys Supra at p. 28 say as follows:-

> "In the absence of intervention by voluntary human action the original act is to be regarded as a cause of the injury, provided that its effect is still actively continuing and has not been superseded by some independent natural cause.....If in fact the defendant's neglect of a proper precaution has caused the injury, the court will not enter into hypothetical inquiry to establish whether the Plaintif f's injury must necessarily have happened with or without the defendant's negligence."

In other words, the defendant's negligent act or omission is the cause of the Plaintiff's injury unless it is shown that there was some voluntary responsible human intervention in the chain of events between the original negligent act or omission and the Plaintiff's injury: The inquiry will be whether the injury can be treated as flowing directly or substantially from the negligence.

In The Oropesa [1943] 1 All E.R. 211 at 213 Lord Wright said as follows:-

> "Certain well -known formulae are invoked, such as that the chain of causation was broken and there was a novus actus interveniens. These phrases, sanctified as they are by standing authority, only mean that there was not such a direct relationship between the act of negligence and the injury that the one can be treated as flowing directly from the other."

16. The appellant has emphasized that the motor vehicle was used in the matatu business which means that prior to the incident the motor vehicle continually consumed fuel. It in fact drew fuel at the appellant's petrol station leading to the common rail getting spoilt, being repaired and released to the respondent who employed it in the usual business for only four days before the motor vehicle's engine failed and was diagnosed to have suffered breakdown on the common rail. The fact that it was the common rail that was affected by the adulterated fuel that needed to be replaced links the injury to the appellant's negligence. The appellant's allegation that the damage might have been caused by fuel from elsewhere and hence the chain of causation was affected by a third party is not born out by evidence and is at best conjecture. A court of law relies on facts and not mere propositions or suspicion.

17. It is therefore determined that no error in the assessment and evaluation of the evidence has been demonstrated against the trial court to merit interference with its findings of facts. The appeal thus lacks merits and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 9TH DAY OF FEBRUARY, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Mburu for Andia for the Respondent

Mr. Mwiguri for the Appellant

Court Assistant: Polycap Mukabwa