



REPUBLIC OF KENYA



**Wachira & 3 others v Amiani (Civil Appeal E003 of 2023)
[2024] KEHC 5736 (KLR) (14 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL E003 OF 2023**

JR KARANJA, J

MAY 14, 2024

BETWEEN

**JOHN KARANU WACHIRA 1ST APPELLANT
PHILLIP KIPCHUMBA KOSGEI 2ND APPELLANT
CLASSIC SHUTTLE SACCO 3RD APPELLANT
BENSON MUNGAI MACHARIA 4TH APPELLANT**

AND

GEOFFREY AMIANI RESPONDENT

*(Being an appeal from the Judgment of Honourable S. M. Mokuu, (Chief Magistrate)
delivered on 31st December 2021 in Kapsabet CMCC No. 141 of 2019)*

JUDGMENT

1. The hearing of this appeal was by written submissions filed herein on behalf of the Appellants by Kimondo Gachoka and Company Advocates, and by Lestins and Smith Advocates, on behalf of the Respondent.

The appeal was provoked by the judgment of the chief magistrate delivered on 31st December 2021 in Kapsabet CMCC No. 141 of 2019. The supporting grounds are set out in the memorandum of appeal dated 17th January 2022 and filed herein on 19th January 2022.

2. The claim by the Respondent/ Plaintiff against the Appellants/ Defendant was for damages and loss of income arising from a road traffic accident which occurred on 31st August 2018, along the Kapsabet – Chavakali road involving the Plaintiff’s motor cycle Registration No. KMDQ 409H TVS Star and motor vehicle Registration No. KCH 005Y Toyota Matatu belonging to the first, second and third Defendants as registered and/or beneficial owners.



3. It was pleaded in the statement of claim that the Plaintiff was on the material date lawfully, carefully and prudently riding his aforementioned motor cycle while carrying a pillion passenger and on arrival at a place known as Sirwa Posta the motor cycle collided with the Defendant's motor vehicle which was at the time being driven recklessly, carelessly, negligently and at an excessive speed such that the vehicle lost control while negotiating a bend (corner) and encroached onto the Plaintiff's lane or path thereby causing the accident.

4. The Plaintiff/Respondent suffered serious bodily injuries as a result of the accident. He therefore instituted the present claim against the Defendants for damages and loss of income which he prayed for together with costs of the suit.

The Defendants denied the allegations made against them collectively and/or separately by the Plaintiff and contended in their joint statement of defence that if the accident indeed occurred, then it was caused by the reckless negligent and careless acts or omission in the Plaintiff's manner of riding his motor cycle.

5. The Defendants denied that the doctrine of "Res-ipsa-loquitur" applied in this case and contended further that the Plaintiff's statement of claim did not disclose any reasonable cause of action against them. They therefore prayed for the dismissal of the Plaintiff's case against them with costs.

6. In the course of the trial, this case was apparently consolidated with a similar suit arising from the same circumstances and cause of action or was treated as a test suit respecting both suits. The other suit being Civil Case No. 142 of 2019 involving Simon Lihanda Shitagwa, who was the Respondent's pillion passenger.

The evidence of all the witnesses who testified in the trial related to this case and the said Civil Case No. 142 of 2019

7. Be that as it may, the trial court after hearing all the parties rendered the impugned judgment in which it concluded that the fourth Defendant/ Appellant and by extension the rest of the Defendant/ Appellant were to blame for the accident at 100% liability. The Plaintiff/ Respondent was therefore awarded a sum of Kshs. 150,000/-, as general damages for pain, suffering and loss of amenities and a sum of Kshs. 49,150/- being special damages. The Plaintiff was also to have the costs of the suit and interest.

8. This appeal was an expression of the Defendants/ Appellants dissatisfaction with the decision of the trial court. Being a first appeal, the duty of this court was to revisit the evidence and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses. (See, *Selle Vs. Associated Motor Boat Company Limited* (1968) EA 123).

9. In that regard, the Plaintiff/ Respondent's evidence was considered together with that of his witnesses. He testified as PW1 and his witnesses as PW2 to PW6. None of the Defendant/ Appellants testified in court, but they availed a police officer (DW1) as their only witness.

Having considered the evidence, and with regard to the question of liability, this court agrees with the findings of the trial court that the Appellants were fully responsible for the accident.

The Respondent (PW1) confirmed as much when he indicated that he was on his proper side of the road when he was hit by the Appellant's vehicle which veered off its lane into his lane while moving at a high speed.

10. The pillion passenger, Simon Lihanda (PW2) corroborated the Respondent's evidence which remained unrebutted and undisputed in the absence of the Appellant's evidence. Their witness (DW1)



blamed the Respondent for the accident but he confirmed that the Respondent was never charged with a traffic offence relating to the accident thereby implying that the Respondent was not to be blamed for the accident. His (DW1) evidence was unsatisfactory and unreliable in establishing that the Plaintiff/ Respondent was to blame for the accident. In any event, he (DW1) did not investigate the case and could not therefore place culpability on the Plaintiff.

11. There was nothing from the Appellants to show that the Respondent contributed to the accident fully or to a certain degree. There was nothing forthcoming to establish and prove the Respondent's contribution if any to the occurrence of the accident. Therefore, the Appellants remained fully responsible and liable for the accident.

Grounds one (1) to (3) of the appeal which touch on liability and the arguments advanced by the Appellants in respect thereof are in the circumstances overruled and dismissed.

12. The rest of the grounds (i.e. 4 to 9) relate to quantum of damages.

The trial court after considering the evidence, the injuries suffered by the Plaintiff/ Respondent and the authorities cited by both parties rightly concluded that the Appellants were liable to the Respondent in both general and special damages. In that regard, an award of Kshs. 150,000/- was made as general damages for pain, suffering and loss of amenities. Special damages of Kshs. 49,150/- were made.

13. The opinion of this court is that the award for general damages was reasonable and adequate regard being given to the nature of the injuries suffered by the Plaintiff as confirmed by the medical evidence through Dr. Manyonge (PW4). The Appellants did not herein demonstrate that the trial court misdirected itself and/or applied the wrong legal principle in arriving at the award.

14. As for special damages, the Plaintiff/Respondent was awarded what he claimed i.e. Kshs. 49,150/-. This amount was made up of costs incurred by the Respondent for repairs of his motor cycle, medical report, police abstract, motor vehicle search and investigations.

Apart from being pleaded, the costs had to be specifically proved and this was achieved by the production of relevant documentary evidence.

15. This court does not find any factual or legal reason to interfere with the award of damages made by the trial court. It would therefore follow that grounds four (4) to nine (9) of the appeal are also overruled and dismissed.

In sum, the appeal is disallowed and dismissed in its entirety with costs to the Respondent. The impugned judgment of the trial court remain intact and so does the judgment in Civil Case No. 142 of 2019.

Ordered accordingly.

DELIVERED AND DATED THIS 14TH DAY OF MAY, 2024

J. R. KARANJAH,

JUDGE

