



Hashim ((Suing for Next of Friend Abdiaziz Abdullahi)) v Ahmed & another (Civil Appeal E056 of 2021) [2024] KEHC 10887 (KLR) (18 July 2024) (Judgment)

Neutral citation: [2024] KEHC 10887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E056 OF 2021
BK NJOROGE, J
JULY 18, 2024**

BETWEEN

**LATIFFA SHARIF HASHIM (SUING FOR NEXT OF FRIEND ABDIAZIZ
ABDULLAHI) APPELLANT
(SUING FOR NEXT OF FRIEND ABDIAZIZ ABDULLAHI)**

AND

**ABDIRIZAK ALI AHMED 1ST RESPONDENT
ALI ABDI ABDULLAHI 2ND RESPONDENT**

(Being an appeal from the Judgment of the learned Magistrate Hon. M. Okuche (Principal Magistrate) delivered on 14th September, 2021 in Nyeri Civil Suit no. 122 of 2019)

JUDGMENT

1. This Appeal turns on whether the trial court can decline to assess damages, on the basis that no medical report was produced. Put differently, the issue at hand is whether the trial court can rely on other evidence apart from medical reports for assessment of damages.
2. The Appeal lies from the decision of Hon. M. Okuche (PM) delivered at Nyeri dismissing the Appellant's case. This has triggered the Appeal.
3. The Appeal was flagged for the Rapid Results Initiative (RRI) for the month of June 2024. Parties were directed to file written submissions. Only the Appellant's advocates have filed written submissions.

Brief Facts

4. This Appeal arises out of a road traffic accident that occurred along the Nanyuki-Nyeri highway. The Appellant was a passenger in motor vehicle KCP 320T which collided with motor vehicle KCD 471Q.



The Appellant blamed the 1st and 2nd Respondents as the driver and owner of the motor vehicle KCD 471Q.

5. The file before the lower court was identified as the test suit in relation to three other files Nyeri HCCA No. EO55 of 2021, Nyeri HCCA No. E062 of 2021 and Nyeri HCCA No. E054 of 2021 Liability was determined at 100%. There has been no appeal on this issue. On quantum the trial court found that the medical report had not been produced. It declined to assess damages. It proceeded to dismiss the claim for general damages but awarded special damages of Kshs.25,406/=. This has triggered the Appeal before this Honourable court.
6. The Appeal is not opposed.

Analysis

7. This is a first appeal. The court is bound to re-look, re-analyse, re-evaluate the evidence presented before the trial Court and arrive at its own independent conclusion. The court has to warn itself that it did not hear or see any of the witnesses. *Selle & Another –vs- Associated Motor Boat Company Ltd & others (1968) E. A 123* is applicable herein.
8. The court proceeds to frame only two issues for determination.
 - a. Whether general damages can be assessed in absence of a medical report?
 - b. What reliefs the Honourable court may grant in this appeal?
9. The court has considered the memorandum of appeal, the grounds raised as well as the submissions filed by the Appellant with the authorities cited.

a. Whether general damages can be assessed in absence of a medical report?

10. The trial court noted that the Appellant did plead for injuries. He also appeared in court and testified. He produced a medical summary. There was no medical report.
11. In the trial court's eyes, such evidence of injuries sustained was insufficient. It stated that it was unable to discern the injuries sustained.
12. The Court disagrees. The courts have held that injuries need not be proved by medical reports, which are expert opinions. Medical treatment notes, P3 forms and discharge summaries will do. This court is alive to the fact that proof of injuries is on a balance of probabilities. This court is persuaded by the decision in *Carolyne Indasi Mwononyo vs Kenya Bus Service Ltd (2012) eKLR* and *Esther Chepkemoi Ngecher vs John Kungu & Charles Muthoka (2022) eKLR*.
13. The court ought to have considered the documents produced by the Appellant being Medical case summary and any other medical documents including X-ray Reports etc.
14. The Court has considered the Medical summary and finds it fairly legible. However, there is no P3 Form produced in Court. That would easily have frustrated the trial court in making sense of the injuries sustained. A medical report would have been most helpful.
15. The Medical case summary is legible and the Court is able to discern some of the injuries as will be seen herein below.



b. What reliefs the Honourable court may grant in the Appeal?

16. We note that the trial court did not assess the damages. The proper procedure has been that the court of first instance sought to assess damages. This is even though it will proceed to dismiss the suit. This enables the Appellate court analyse the exercise of such discretion. After all it is the trial court that saw and heard the witnesses. See Mordekai Mwangi Nandwa –vs- Bhoglas Garage Ltd CA No. 124 of 1993 and Gladys Wanjiru Njaramba –vs- Globe Pharmacy & another [2014]eKLR.
17. The trial Court had directed the parties to proceed for assessment of damages by way of written submissions. Such submissions were duly filed.
18. It appears to this court, that having admitted the Medical Case Summary into evidence, it is harsh for the Court to ignore it. This may cause an injustice.
19. In an ideal situation, this court would have proceeded to assess the damages. It has the jurisdiction to do so as an appellate court. For the reasons alluded to above, it may not be practical to do so.
20. This court is minded to remit the matter back to the trial court. This is with appropriate directions that it can assess the damages from other medical evidence and not necessarily from a medical report only. A case in point is that the Medical Case Summary from the Outspan Hospital contains sufficient information to assist the trial court identify the injuries and assess the damages.
21. The issue of liability at 100% against the Respondent and the award of special damages remains undisturbed.
22. The Appellant having succeeded is entitled to the costs of this appeal. Half costs would suffice as the Respondents did not put up a fight.

Determination

23. The Appeal succeeds and is allowed as follows:
 - a. The Judgement of the trial Court dismissing the claim for general damages is hereby set aside.
 - b. The Court remits the original file in Nyeri CMCC No.122 of 2019 Latiffa Sharif Hashim (Suing through the next of friend Abdiaziz Abdullahi Ibrahim) vs- Abdirizak Ali Ahmed & Another back to the trial Court, with directions that the trial Court assesses the general damages from the evidence of the Plaintiff on record and any other medical evidence produced including Medical Case Summary.
 - c. In the event the Honourable Magistrate who initially heard the suit is no longer in the Station, the file may be placed before any other Magistrate for consideration and compliance with the orders of this Court.
 - d. The Appellant is awarded half the costs of this Appeal.
24. It is so ordered.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 18TH DAY OF JULY, 2024.

.....
NJOROGE BENJAMIN K.
JUDGE



In the presence of:

..... for the Appellant

..... for the Respondent

