



**Kariuki v Nyambura (Civil Appeal E095 of 2022)
[2024] KEHC 10896 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E095 OF 2022
BK NJOROGE, J
JULY 5, 2024**

BETWEEN

RICHARD MWAURA KARIUKI APPELLANT

AND

JOHN KAMAU NYAMBURA RESPONDENT

JUDGMENT

1. This is an Appeal against the decision of Hon. H. M. Ng'ang'a (PM) delivered in CMCC No. 198 of 2019 at Gatundu. The Respondent sought general and special damages arising out of an accident that occurred on 1/7/2017. The Court delivered a Judgment on 20th August 2022. Liability was apportioned at 70%: 30% against the Defendant. General damages were assessed at Kshs.100,000/- and Special damages at Kshs.2,000/-. This amount was subject to apportionment of contributory negligence at 30%.
2. Dissatisfied with the Judgement, the Appellant lodged this Appeal. The matter was flagged down for the Rapid Results Initiative (RRI) for the month of June, 2024. The Court gave directions to dispose of the Appeal by way of written submissions on 27/07/2023 and 29/4/2023.
3. The Parties complied and filed their written submissions. The Court has considered the submissions as well as the authorities attached.

Background Facts

4. The Respondent was riding his Motorcycle Registration Number KMDH 122D, on 1/1/2017. The accident happened at Kimbo-Kiganjo Road. The Respondent collided with a Motor Vehicle Registration Number KBC 551M owned by the Appellant. The Appellant denied any liability. At the trial the Respondent called five (5) witnesses. The Appellant called one (1) witness.



5. The Court has taken note of the Record of Appeal filed as well as the Supplementary Record of Appeal, containing the proceedings and Judgment.

Issues for Determination

6. The Court frames two (2) issues for determination.
 - a. Does the Appeal have merits?
 - b. What orders should issue?
7. This is a first Appeal. This Court is mandated to re-look, re-evaluate and re-analyse the evidence on record. It may then proceed to reach its own independent decision. However, the Court must bear in mind that it never heard nor saw any of the witnesses before the Trial Court. The Court follows *Selle & Another –vs- Associated Motor Boat Company Ltd & others* (1968) E. A 123.

Analysis

8. The Memorandum of Appeal contains nine (9) grounds, which challenge the issue of liability and quantum.

Does the Appeal have Merits?

9. The Court has looked at the proceedings in relation to how the accident happened.

On Liability

10. The Respondent testified that he was travelling from Kiganjo to Kimbo. He was hit by a motor Vehicle KBC 511M a Matatu. It attempted to force itself between two vehicles that were parked at either side of the road. The Motorcycle was passing between this space. The matatu was driven at High speed. It hit the Motorcycle from the front end.
11. An eye witness Plaintiff Witness No. 3 George Githuku Ndungu supported the Respondent's evidence. The Police produced the Police Abstract. The Defence called no eye witness. It relied on the evidence of a Police officer who produced a Police Abstract with remarks that KMDH 122D was to blame. No sketch plans, Police file, statements or investigation reports were produced to support this contention.
12. The trial Court which saw and heard all the witnesses was not convinced of the Appellant's version that the Respondent was to blame. The trial Court was of the view that the information in the Occurrence Book was neither corroborated by the Respondent nor an Investigating Officer.
13. The trial Court was of the view that the plausible version was that the Appellant collided into the Motorcycle. This was while seeking to navigate the limited space or gap left along the middle of the road.
14. This Court is equally persuaded by the Respondent's evidence and version of events. Liability was apportioned at 30%:70% with the Appellant to bear the 70%. The Court finds this a reasonable apportionment and proceeds to adopt it.

On Quantum

15. The Respondent pleaded the following injuries.
 - a. Head injury with loss of consciousness.



- b. Diffuse axonal brain injury.
 - c. Open wound of upper limb.
 - d. Multiple injuries to the face, eyes and ears.
 - e. Injuries to the mouth with cracked teeth.
 - f. Multiple soft tissue injuries.
16. The Medical Report by Doctor W. M. Wokabi dated 13/8/2019 was produced as Plaintiff's Exhibit 4. It identifies the Respondent's injuries as:
- a. Blunt Soft Tissues injuries to the head.
 - b. Impaction of Molar teeth.
17. Further, the Doctor went on to opine that the head injuries caused injury to the brain. The effect on the axonal injuries persisted and would persist indefinitely. The dental conjunctivitis would also persist. There was a possibility of the Respondent developing epilepsy. The Doctor noted that he Respondent had altered speech. This also manifested during his cross-examination before the trial Court.
18. The Court has looked at the comparables given in this Appeal. In the case of Moiz Motors Limited and another -vs- Harun Ngethe Wanjiru [2021] eKLR the Court assessed damages at Kshs.700,000/-. The patient was hospitalized for 3 days. There was no residual disability or risk of epilepsy. In Telkom Orange Kenya Limited -vs- Iso Minor Suing through his next friend and Mother J. N. (2018) eKLR, the Court assessed damages at Kshs.500,000 in December 2018.
19. The Respondent relies on the case of Artan Hussein, & 2 others -vs- Saida Hareada Upepo [2017]eKLR where an award of Kshs.900,000/- was made in 2017. Also Prem Gupta & another -vs- Grimley Otieno & 3 others [2018]eKLR, where an award of Kshs.800,000/- was made in 2018.
20. The Court is of the view that the sum of Kshs.900,000/- awarded is within the band of quantum that the Court would assess for such or similar injuries. The Court is also alive to the fact that injuries will not always be the same. The Court is not persuaded that it should interfere with the quantum. The decision of Butt -vs-Khan [1978] eKLR is applicable to this case.
21. The Special damages of Kshs.2,000/- awarded by the Trial Court were proved to the required standard.

What orders should Issue?

22. The Court is not persuaded that the Appeal is meritorious. The Judgement of the Trial Court is upheld.

Determination

23. The Appeal is dismissed with costs, which are awarded to the Respondent.
24. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF JULY, 2024.

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NJOROGE BENJAMIN K.

JUDGE



In the presence of:

.....for the Appellant.

.....for the Respondent.

