



REPUBLIC OF KENYA



**Munga v Thiga (Civil Appeal E276 of 2023) [2024] KEHC 8268 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8268 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E276 OF 2023**

**RC RUTTO, J**

**JULY 5, 2024**

**BETWEEN**

**SAMUEL MUNGA ..... APPELLANT**

**AND**

**ANN WAIRIMU THIGA ..... RESPONDENT**

**RULING**

1. This appeal arises from Kikuyu CMCC No. 232 of 2021 in which the Appellant was sued by the Respondent for general and special damages as well as expenses for future medical care arising from injuries, sustained in a road traffic accident on 14<sup>th</sup> June 2021 along Kahuho-Zambezi Road.
2. According to the plaint dated 17/8/2021 the Respondent was lawfully travelling in motor vehicle registration number KCA 037B, owned by the Appellant, as a fare-paying passenger when the Appellant's driver/agent carelessly and or recklessly drove the said motor vehicle losing control of it thus causing the accident and occasioning injury to the Respondent.
3. The Appellant filed his defence, dated 7/9/2021, in which he denied the Respondent's claim. In the alternative, he pleaded that if the accident did occur, the same was solely caused or substantially contributed by negligence on the part of the respondent.
4. The matter proceeded to hearing and the Respondent testified and called two witnesses. The Appellant did not call any witness and his case was closed for non-attendance.
5. The trial Court entered Judgement for the Respondent against the Appellant as follows:
  - a. Liability 100%
  - b. General damages Ksh.1,300,000
  - c. Future medical expenses Ksh. 400,000
  - d. Special damages Ksh. 17,219



- e. Costs of the suit with interest from date of judgement.
6. Aggrieved by the said determination, the Appellant filed this Appeal on various grounds. The Appellant thus prays for this appeal to be allowed with Costs and to have this Court set aside the Trial Court's judgement on quantum and replace it with its own assessment.
7. Following the filing of this appeal, the respondent filed a preliminary objection dated 01/09/2023 seeking that the appeal be struck out having been filed out of time without leave of court. On 9<sup>th</sup> May 2024 the Court gave directions that the appeal be canvassed by way of written submissions. Following this, both parties complied, the appellant filed its submissions dated 31<sup>st</sup> October, 2023 while the respondents theirs dated 5<sup>th</sup> October 2023.
8. On the 3<sup>rd</sup> June 2024, this matter came before me for the first time. On this day the appellants were not represented while the respondent was represented by Ms. Kamau who was holding brief for Mr. Kibiku for the respondent. Counsel submitted and sought for a ruling date for they had uploaded their submissions dated 31<sup>st</sup> May 2024. Based on counsel submissions the Court was under an impression that a ruling was pending and proceeded to a ruling date of 5<sup>th</sup> July, 2024.
9. Subsequently, upon a read-through of the record it has emerged that the respondent filed a preliminary objection (P.O) dated 1<sup>st</sup> September, 2023. Directions were given on how the P.O was to be determined. After, several mentions and more specifically on 9<sup>th</sup> May 2024 in the presence of counsels for all parties the court directed that the P.O was overtaken by events.
10. It therefore follows that by the matter was being mentioned before me there was no P.O subject of which a ruling was pending. What remains for determination is the appeal dated 29<sup>th</sup> June 2023. I also note that on the 9<sup>th</sup> May 2024 the court directed that the appeal be canvassed by way of submission where the appellant was granted six days to file and serve their submissions while the respondent was given 5 days after service to file theirs.
11. I have perused the record and note that since the directions were given, the appellant has not filed its submissions while the respondent filed theirs dated 31<sup>st</sup> May 2024. Consequently, in the interest of just and fast dispensation of this matter, I direct as follows;
  - a. The appellant to file and serve its submissions within the next 7 days. In default, this appeal will be deemed dismissed for want of prosecution.
  - b. Matter to be mentioned before this court on 25<sup>th</sup> July, 2024 to confirm compliance and taking a judgment date.
12. Orders accordingly

**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED ON 5<sup>TH</sup> THIS DAY OF JULY 2024 AT NAIROBI**

Appellant: N/a

Respondent: Mr. Kamau H/b For Mr. Kibiku

Court Assistant: Peter

