



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanjohi v Murangi & 2 others (Civil Appeal E045 of 2021)  
[2024] KEHC 10970 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E045 OF 2021  
BK NJOROGE, J  
JULY 5, 2024**

**BETWEEN**

**JANE SARAH WAIRIMU WANJOHI ..... APPELLANT**

**AND**

**CHARLES GITONGA MURANGI ..... 1<sup>ST</sup> RESPONDENT**

**MARY MUTHONI ..... 2<sup>ND</sup> RESPONDENT**

**JOHN MATHENGE GIKONYO ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This is an Appeal from the decision of Hon. H. Adika (P.M) sitting at Nyeri. It was delivered on his behalf by Hon. W. Kagendo (C.M) (as she then was).
2. The trial Court dismissed the Appellant's case for failure to prove negligence. The Appellant being aggrieved by the decision has preferred this Appeal.
3. This matter was identified for the Rapid Results Initiative (RRI) for the month of June 2024. Directions that the matter be disposed of by way of written submissions were given on 14/3/2024. So far, only the Appellant and the 2<sup>nd</sup> Respondent complied with the orders by filing their submissions. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents did not comply.

**Brief Facts**

4. The Appellant was a passenger in a Motor Vehicle Registration Number KAE 684Z, owned by the 1<sup>st</sup> Respondent. This Motor Vehicle collided with Motor Vehicle KBM 492C owned by the 2<sup>nd</sup> Respondent and a Motor Vehicle KBE 004B owned by the 3<sup>rd</sup> Respondent. After a full trial, the trial Court found that it had no evidence to assist it find who was liable.



5. It assessed general damages for pain and suffering at Kshs.300,000/-. Special damages were awarded at Kshs.2,275/-. Nevertheless, the Suit was dismissed with costs to the Defendants, as liability was not proved.
6. This is a first Appeal. This Court has a duty to relook, re-evaluate and re-analyse the evidence tendered before the trial Court. The Court should arrive at its own independent findings, all the time bearing in mind that it never saw nor heard any of the witnesses who testified in Court. See *Selle v Associated Motor Boat Co. Ltd* [1968] E.A. 123.
7. The Court identifies two (2) issues for determination.
  - a. Whether the Appeal is merited?
  - b. What reliefs should this Court grant?

### **Analysis:**

8. The Appellant has filed a Memorandum of Appeal containing six (6) grounds. The grounds can be condensed to a single question. Whether the Trial Court erred in finding that liability had not been proved.

The Court has considered the submissions filed by the Appellant as well as the 2<sup>nd</sup> Respondent. The Court also appreciates the research and industry that went into the authorities attached.

#### **a. Whether the Appeal is Merited?**

9. The Appellant testified that she was a passenger in a Motor Vehicle KAE 684Z. It was being driven from Nyeri and the accident happened at Naro Moru township.
10. The Motor Vehicle the Appellant was in, was being driven from Nyeri to Naro Moru. From the evidence recorded this Motor Vehicle collided with a Motor Vehicle coming from the opposite direction. This other Motor Vehicle was performing a Three Point Turn on the middle of the road. She identified this Motor Vehicle as KBE, presumably the KBE 004B. The 3<sup>rd</sup> Motor Vehicle involved in the accident she identified as a KBN, presumably KBM 492C. It was said to have been driving behind the Motor Vehicle performing the Three-Point Turn, while reversing on the middle of the road.
11. The Police Officer, Plaintiff's Witness No.3 was not an eye witness to the accident and he was unable to place blame upon any party.
12. The Respondents did not call any witnesses to give their version of the story, though they did not bear the legal burden to prove negligence.
13. This case rests on the evidence of a passenger in a Matatu owned by the 1<sup>st</sup> Defendant which collided with another Matatu owned by the 3<sup>rd</sup> Defendant.
14. In the ordinary scheme of things, Motor Vehicles driven at reasonable speeds, while keeping to the left would not ordinarily collide.
15. The Appellant blames the 3<sup>rd</sup> Respondent whose Motor Vehicle was performing a Three Point Turn on the middle of the road. In the ordinary scheme of things, Motor vehicles should not be performing Three Point Turns on the middle of the road. They should not be reversing at the middle of the road, unless it is clear and safe to do so. This evidence was not rebutted by the 3<sup>rd</sup> Respondent. This particular of negligence was pleaded in the amended Plaintiff.



16. As per the testimony of the Appellant, Motor Vehicle KBM 492C was not to blame. The Court finds no negligence attributed to it. There was no testimony that the 2<sup>nd</sup> Respondent's Motor Vehicle collided with Motor Vehicle KAE 684Z.
17. The Appellant testified that the Motor Vehicle she was travelling in was being driven too fast. One would expect that if a Motor Vehicle is being driven at a reasonable speed, quick action like braking and swerving would avert an accident on the middle of the road. The 1<sup>st</sup> Respondent did not present any evidence to rebut this evidence.
18. This Court is satisfied that sufficient evidence was placed before the trial Court by the Appellant to demonstrate how the accident occurred. She was an eye witness seated at the front seat of the 1<sup>st</sup> Respondent's Matatu.
19. Looking at the evidence in Chief and Cross-examination, the Court is persuaded that the primary cause of the accident was the 3<sup>rd</sup> Respondent's Matatu that was doing a Three Point Turn at the middle of the road. The secondary cause would be failure by the 1<sup>st</sup> Respondent's driver to brake, slow down or swerve so as to avert the accident, as he was driving fast.
20. The Appellant pleaded the doctrine of Res-Ipsa Loquitur. The accident involved two motor vehicles. It would be safe to apportion liability upon the 1<sup>st</sup> and 3<sup>rd</sup> Respondents respectively. The 2<sup>nd</sup> Respondent is absolved.
21. The Court finds that negligence was proved on a balance of probabilities and proceeds to interfere with the decision of the trial Court. Looking at the evidence as presented, it would be unsafe to say that liability was not proved. The accident happened on the middle of the road involving two matatus. The Appellant was a mere passenger. Surely, she would not have contributed to the accident. The trial Court ought to have asked itself, whether the two matatus could be absolved from negligence. This is taking into consideration the evidence of the Appellant which was largely unchallenged.

### **On Quantum**

22. The Medical Report produced by Doctor Muchai Mbugua (Plaintiff Witness No. 2) reveals the injuries suffered as follows.
  - a. A large degloving injury on the Left Leg below the knee.
  - b. A Large degloving injury on the left heel.
23. The Appellant submitted to an award of Kshs.750,000/- for general damages. The 1<sup>st</sup> Respondent submitted to Kshs.200, 000/- while the 2<sup>nd</sup> Respondent submitted for Kshs.100,000/-. The trial Court awarded Kshs.300,000/-. The parties have maintained their respective submissions on quantum. This Court finds the award of Kshs.300,000/- fair and reasonable, as assessed by the Trial Court.
24. The Court will not disturb the award of special damages of Kshs.2,275/-

### **What Reliefs should this Honourable Court Grant**

25. This Court upholds the trial Court's assessment of quantum. It overturns the decision on liability. The costs of this Appeal are awarded to the Appellant to be borne by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. They should also bear the 2<sup>nd</sup> Respondent's cost, since they are the tortfeasors.



## **Determination**

26. The Appeal is hereby allowed. The decision of the trial Court is set aside and replaced by the following Judgement:
- a. Judgment is entered for the Appellant against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents jointly and or severally.
    - i. Liability is apportioned at 50% against the 1<sup>st</sup> Respondent and 50% against the 3<sup>rd</sup> Respondent.
    - ii. General damages for pain and suffering remain as assessed at Kshs.300,000 and the same awarded to the Appellant.
    - iii. Special damages remain as assessed at Kshs.2,275/-.
  - b. The costs of the Suit before the trial Court and of this Appeal are awarded to the Appellant to be borne by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. The 2<sup>nd</sup> Respondent's costs before the trial Court and in this Appeal are also to be borne by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.
27. It is so ordered.

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

.....

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of:

Miss Wangira holding brief for Karweri for the Appellant.

Miss Rigaga for 2<sup>nd</sup> Respondent.

No appearance for Kimondo Gachoka for 1<sup>st</sup> Respondent.

No appearance for 3<sup>rd</sup> Respondent.

