



REPUBLIC OF KENYA



**Katila v Kenya Airports Authority & another (Civil Appeal E317 of 2021)
[2024] KEHC 11676 (KLR) (Civ) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E317 OF 2021

AN ONGERI, J

SEPTEMBER 19, 2024

BETWEEN

PETER MALELU KATILA APPELLANT

AND

KENYA AIRPORTS AUTHORITY 1ST RESPONDENT

MAINA WARUI 2ND RESPONDENT

*(Being an appeal from judgment and decree of Hon A. M. Obura
(CM) in Milimani CMCC No. 7508 of 2016 delivered on 24/5/2021)*

JUDGMENT

1. The appellant filed Milimani CMCC no. 7508 of 2016 seeking general damages and special damages of ksh.676,091 in respect of injuries the appellant sustained on 22/7/2014 along Kangundo road when the appellant was lawfully driving his motor vehicle registration KAZ 138U when it was hit by motor vehicle registration no. KBN 455E.
2. The 1st respondent denied ownership of motor vehicle registration no. KBN 455E and it also denied being the employee of the 2nd respondent.
3. The trial court found that in the police abstract motor vehicle registration no. KBN 455E is described as a motorcycle and dismissed the appellants case for want of evidence.
4. The appellant has appealed to this case on the following grounds;
 - i. That the learned honourable magistrate erred and misdirected herself in law and fact when she held that the appellant was wholly to blame for the accident in question.



- ii. That the learned honourable magistrate erred and misdirected herself in law and fact when she held that the appellant failed to prove liability against the respondents.
 - iii. That the learned honourable magistrate erred in law and fact when she found that a mere description of the make and model of the motor vehicle in the certificate of search from National Transport and Safety Authority cast doubt as to the liability of the respondents.
 - iv. That the learned honourable magistrate erred and misdirected herself when she applied a higher standard of proof than it is required in matters of nature as the one before her.
 - v. That the learned honourable magistrate erred and misdirected herself when she failed to find that the respondent's witness did not sufficiently rebut evidence adduced by the appellant.
 - vi. That the honourable learned magistrate misdirected herself in law and fact when she held that the appellant failed to prove that the 2nd defendant was vicariously liable for the accident.
 - vii. That the honourable learned magistrate erred and misdirected herself in law and fact when she dismissed the plaintiff's case with costs.
5. The respondent did not file submissions. The appellant filed submissions as follows; the appellant submitted that there was no dispute that the accident in question occurred. It was also not in dispute that the said accident involved motor vehicles registration numbers KAZ 138U and KBN 455E and that the appellant suffered the pleaded injuries as a result of the accident.
 6. There was also no dispute that the 2nd respondent was the driver of the said vehicle at the time of the accident. The only dispute was whether the 1st respondent was the owner of motor vehicle registration number KBN 455E and whether the appellant was to blame for the accident.
 7. On the ownership of KBN 455E the appellant submitted that the 1st respondent was the registered owner of the said motor vehicle and was confirmed by way of search from NTSA. As per the 1st respondent's witness, even their own search at NTSA reviewed that the vehicle (though described as a motor cycle) belonged to them. A letter they produced from NTSA answers their concerns and places the motorcycle as belonging to them.
 8. That the 1st respondent as at the time of the hearing had made no efforts to correct or change or remove their name from the registration and ownership status of the said vehicle.
 9. The appellant submitted that indeed the 2nd respondent was employed by the 1st respondent as there were no reports of any of their vehicles having been stolen or driven by unauthorized persons. That further the appellant is not in a position to know the number or identity of employees of the 1st respondent. The burden of proof is always on the party who wants the court to believe in pleaded facts. Section 112 of the *Evidence Act*, Cap 80 Laws of Kenya provides that, in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.
 10. The appellant argued that the of motor vehicle registration number KBN 455E dangerously overtook other vehicles while driving at a high speed from the opposite side. Despite the appellant flashing headlights as a warning, the driver of the other vehicle did not heed and proceeded to come to his side and hit him. The appellant tried to avoid the accident but he was not lucky enough. The impact was too strong that the appellant's vehicle span and faced the direction he was coming from.
 11. There was no evidence led by the respondent to rebut or controvert this version and therefore the appellant has proved his case on a balance of probabilities.



12. This being a first appeal, the duty of the appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had an opportunity to see the witnesses.
13. The issues for determination in this appeal are as follows;
 - i. Whether the appellant proved his case to the required standard.
 - ii. Whether the appellant proved ownership of motor vehicle registration no. KBN 455E.
 - iii. Whether the appeal should be allowed.
14. On the issue as to whether the appellant proved his case to the required standard, the evidence adduced by PW 1 (the appellant) and his witness that PW 1 was hit by motor vehicle registration no KBN 455E lorry belonging to the 1st respondent.
15. The 1st respondent called one witness who said the 1st respondent does not own motor vehicle registration no. KBN 455E.
16. I find that there is evidence that the said accident occurred.
17. There is a search from NTSA which shows KBN 455E is a motorcycle.
18. DW1 also said the 1st respondent does not have an employee by name Maina Warui.
19. The trial court was right in dismissing the suit against the 1st respondent in the circumstances.
20. I find that interlocutory judgment was entered against the 2nd respondent on 26/1/2017.
21. The trial court was right in dismissing the suit against the 1st respondent because there is no evidence that motor vehicle registration no. KBN 455E belongs to the 1st respondent and further the evidence on record shows that the same is a motorcycle.
22. However, interlocutory judgment having been entered against the 2nd respondent, the appellant's averments that the 2nd Respondent was driving a motor vehicle whose Registration is No. KBN 455E that caused the accident still stands.
23. There was also no dispute that the 2nd respondent was the driver of the said vehicle at the time of the accident. The only dispute was whether the 1st respondent was the owner of motor vehicle registration number KBN 455E and whether the appellant was to blame for the accident.
24. I find that the Trial court ought to have found the 2nd Respondent liable in view of the evidence adduced by the appellant.
25. The appellant's evidence was that the driver of motor vehicle registration number KBN 455E dangerously overtook other vehicles while driving at a high speed from the opposite side. Despite the appellant flashing headlights as a warning, the driver of the other vehicle did not heed and proceeded to come to his side and hit him.
26. The appellant said he tried to avoid the accident but he was not lucky. The impact was too strong that the appellant's vehicle span and faced the direction he was coming from.
27. I find that there was no evidence led by the respondent to rebut or controvert the appellant's version.
28. I find that there is evidence that driver of motor vehicle Reg. No. KBN 455E was negligent and the court ought to have assessed damages in respect of the 2nd respondent.



29. In the case of *Felix Mathenge v Kenya Power & Lighting Company Limited* Civil Appeal No. 215 of 2002, the court held that;

“The role of the court after entering the interlocutory judgment was only to assess damages since interlocutory judgment having been regularly obtained there can never be any doubt that judgment was final with regard to liability and was unassailable. It was only interlocutory with regard to the quantum of damages.”

30. *Order 10 Rule 6* states as follows;

“Interlocutory Judgment

Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be”.

31. The Trial court said general damages of ksh.2,000,000 would have been awarded.

32. Special damages of Kshs.679,091 were proved making a total award of Kshs.2,679,091.

33. I set aside the trial court’s order dismissing the plaintiff’s suit and I substitute it with judgment in favour of the appellant against the 2nd respondent in the sum of ksh.2,679,091 since the issue of liability was settled by the interlocutory judgment.

34. The 2nd Respondent to pay the costs original suit and also the costs of the appeal to the Appellant.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

