



**MA (Minor Suing through Next of Friend AAG) v Spring Board Capital Limited & another
(Civil Appeal E137 of 2021) [2023] KEHC 1634 (KLR) (Civ) (10 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1634 (KLR)

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

CIVIL

CIVIL APPEAL E137 OF 2021

JN MULWA, J

MARCH 10, 2023

BETWEEN

MA (MINOR SUING THROUGH NEXT OF FRIEND AAG) APPELLANT

AND

SPRING BOARD CAPITAL LIMITED 1ST RESPONDENT

PHILIP NJOROGE MWAURA 2ND RESPONDENT

*(Being an appeal from the judgment and decree of the Chief Magistrates Court at Milimani
in CMCC No. 4689 of 2019 delivered by Hon. S.G. Gitonga (RM) on 5th March 2021)*

JUDGMENT

1. This is an appeal against both liability and quantum arising from the trial court's judgment in Milimani CMCC No 4689 of 2019 delivered on the 5/3/2021. The Appellant sued the Respondents for special and general damages arising from a road traffic accident that occurred along Thika Road on March 10, 2019. The accident involved motor vehicle registration number KBG 534A in which the minor was travelling as a passenger in the company of her mother, and, motor vehicle registration number KCK 460T owned by the Respondents. In the plaint dated June 21, 2019, it was pleaded that the driver of the Respondents motor vehicle negligently drove the said vehicle at a high speed causing it to hit motor vehicle registration number KBG 534A, from which the minor sustained severe injuries.
2. The Respondents denied the Appellant's claim in totality through their joint Statement of Defence dated 19/8/2019 filed on 30/8/2019.
3. The case was not heard orally; Rather, by consent, parties agreed that the medical reports by Dr Okere and Dr Wambugu be admitted without calling the makers; the plaintiff's documents as per the list of



documents be admitted as exhibits; and parties to file written submissions on quantum of damages and liability. The consent was duly adopted as an order of the court.

4. By a judgment delivered on March 5, 2021, the trial magistrate found that the Appellant did not prove that the Respondents were the owners of motor vehicle registration number KCK 460T and thus could not be held vicariously liable and proceeded to dismiss the suit against the Respondents with costs.
5. Aggrieved by the said decision, the Appellant preferred the instant appeal vide a Memorandum of Appeal dated March 17, 2021 on nine grounds summarized in to two as follows: -
 1. The learned trial Magistrate erred in law and in fact by dismissing the entire suit with costs.
 2. That the whole judgment was against the weight of the evidence before the court.
6. The parties agreed to canvass the appeal by way of written submissions. However, only the Appellant had filed submissions at the time of writing this judgment. The only issue that falls for determination therefore is whether the Appellant proved her case against the Respondents on a balance of probabilities.

Liability

7. The burden of proof in civil cases at all times lies on the party that calls the law to his or her aid. This is buttressed by the provisions of section 107 (1) of the Evidence Act, cap 80 laws of Kenya which states that:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”
8. In her witness statement, PW1, Abdia Adan Gange stated that on 10/3/2019, she was travelling in motor vehicle registration number KBG 534A in the company of her husband and their son, the minor herein. When they reached near Garden City along Thika Road at around 5.45am, the Respondents motor vehicle appeared from the opposite direction and knocked their vehicle. Their son sustained severe injuries as a result. They were rescued by good Samaritans and rushed to Meridian Equator Hospital. She blamed the driver of the Respondent’s motor vehicle for the accident.
9. The Appellant submitted that the Respondents driver was blamed for the accident. I have looked at the police abstract, the only document produced by the Appellant on the issue of liability. It does not indicate who was to blame for the accident. It merely shows that the accident was pending under investigation. In any event, a police abstract is not conclusive proof of liability but only shows that the accident was reported to a police station; See Catherine Mbithe Ngina v Silker Agencies Limited [2021] eKLR and Peter Kanithi Kimunya v Aden Guyo Haro [2014] eKLR. In addition, the Appellant did not adduce any evidence in the form of photographs or sketch plan of the accident scene to enable the court determine the point of impact and position of the two vehicles soon after the accident. The investigating officer was also not called to testify before the trial court.
10. On the matter of ownership of the vehicles, the Appellant was required to provide proof that the two Respondents were the registered owners. Before the trial court, no motor vehicle records were produced. The copy of Motor Vehicle Search included in the Record of Appeal filed herein (See page 71) was not among the documents in the list and bundle of documents filed in the trial court and produced by consent of the parties. Further, the Appellant did not apply to this court for leave to adduce additional evidence on appeal. In the premises, it is evident that the Appellant did not produce sufficient evidence before the trial court to meet the standard of proof as per the law required, being



on a balance of probabilities. In the end, the court finds that the learned magistrate cannot be faulted for failing to hold the respondents liable for the accident and dismissing the suit against them as a consequence.

Quantum of Damages

11. On quantum, the Appellant faulted the learned trial magistrate for reaching her decision without considering the medical evidence adduced. At paragraphs 6 of the plaint, the appellant pleaded that the minor sustained the following injuries:

- (a) injuries on the face
- (b) neck injuries
- (c) 2% burns on the face.

The medical reports of Dr Wambugu and Dr Okere show that the minor sustained the following injuries: friction burns on the face; blunt trauma injury to the neck; and loss of cervical lordosis.

12. In determining the quantum of damages, the trial magistrate held in her judgment that;

“It is trite law that comparable authorities should attract comparable awards. Taking into consideration the authorities cited, the plaintiff’s injuries and inflation trends, I find that a sum of Kshs 150,000/- would have been sufficient to compensate the plaintiff as general damages had she succeeded in her claim against the defendants.

The plaintiff prayed for special damages of Kshs 55,315/- and provided receipts which proved this amount. Had she succeeded in her claim, I would have awarded this amount as special damages.”

13. In this court’s view, the award made on account of general damages was sufficient taking into account the injuries that the minor sustained in the accident and comparable awards. The learned magistrate therefore exercised her discretion appropriately and this court will not interfere with it.

14. For the foregoing, the court finds that the appeal lacks merit and is hereby dismissed with costs to the respondents.

Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 10TH DAY OF MARCH 2023.

J.N. MULWA

JUDGE.

