



**China Henan International Co-operation Ltd v Otieno (Civil Appeal
83 of 2021) [2023] KEHC 27498 (KLR) (19 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 27498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL 83 OF 2021
RPV WENDOH, J
JULY 19, 2023**

BETWEEN

CHINA HENAN INTERNATIONAL CO-OPERATION LTD APPELLANT

AND

NEVILLE OKOTH OTIENO RESPONDENT

*(An Appeal from the Judgement and Decree of Hon.
R.K. LANGAT in Rongo PMCC Civil Case No. 42 of 20)*

JUDGMENT

1. China Henan International Co - operation Limited (the appellant) preferred the instant appeal against the judgement and decree of Hon. R.K. Langat (PM) dated and delivered on 26/8/2021. The firm of Otieno, Yogo Ojuro & Co. Advocates is on record for the appellant while the firm of Onyango Owaka & Associates is on record for the respondent.
2. The respondent instituted a suit by a plaint dated 19/6/2020 seeking special damages, general damages, future medical expenses, costs, interest and any other relief the court deemed fit to grant as a result of injuries sustained by the respondent from an accident which allegedly occurred on the 18/4/2020. It was pleaded that the respondent was a rider of motorcycle registration No. KMEZ 844Z along the Rongo - Riosiri road at Kuja Deaf area; that motor vehicle registration number KCP 016R was recklessly, negligently and/or carelessly driven, controlled and/or managed by the appellant's driver, agent or servant that it lost control veered off its lane and knocked the aforementioned motor cycle causing an accident where the respondent allegedly sustained severe injuries.
3. The respondent further pleaded the particulars of the negligence of the appellant, its driver, servant and/or agent, the particulars of the injuries suffered by the respondent and particulars of special damages to the respondent.



4. The appellant filed its statement of defence dated 24/7/2020. It averred that the accident occurred as a result of the contributory negligence of the respondent, denied liability, the particulars of injuries, loss and damages stated by the respondent.
5. The suit proceeded for hearing. PC No. 57671 Dickson Agumba attached to the Awendo traffic base testified as PW1. The respondent testified as PW2 and Patroba Okachi a driver testified on behalf of the appellant as DW1.
6. After hearing and considering the submissions of both parties, the trial court delivered a judgement in favour of the respondent as follows: -
Liability 50%:50%
General damages - Kshs. 300,000/=
Special damages - Kshs. 7,050/=
Total award - Kshs. 307, 050/=
Less 50% -Kshs. 153, 525/=
Net Award -Kshs. 153, 525/=
7. The appellant being dissatisfied with the judgement preferred the instant appeal on the following four (4) grounds;
 - a. The learned trial magistrate erred in law and ion fact by apportioning liability in the ration of 50:50 despite the evidence presented by the appellant;
 - b. The learned trial Magistrate erred in law and in fact by placing the burden of proof on the appellant instead of the respondent;
 - c. The learned trial Magistrate erred in law and in fact by failing to consider the testimony of the appellant's witness and that of the police officer;
 - d. That the trial Magistrate erred in fact in law and in failing to consider the appellant's submissions.
8. It is also settled that an appellate court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or on demonstrably wrong principles not supported by evidence or on wrong principles of the law. This was the finding of the Court of Appeal in *Mbogua Kiruga v Mugecha Kiruga & another* [1988] eKLR.
9. Guided by the above principles, I have considered the appeal, the proceedings in the trial court and the submissions by both parties. The main issues for consideration are:-

a. Whether the trial court applied the correct principles in apportionment of liability.

10. On the issue of liability, the trial court in its judgement held that there was no eyewitness, the investing officer was not at the scene and he did not produce a sketch map of the scene. The trial court further held that although there was a preliminary report indicating that the rider was to blame, there is no conclusive report on the same. The trial court was of the opinion that since it was the word of the plaintiff against the defendant's driver in such a scenario, the court is left with no option but to apportion liability at 50%: 50%. The Magistrate hence held that the appellant was vicariously liable at 50%.



11. Having considered the material facts on record, this court does not find reason to depart from the findings of the trial court. The judgement and decree dated 26/8/2021 of Hon. R.K. Langat (PM) is hereby upheld. The appeal herein is hereby dismissed with costs to the respondent.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 19TH DAY OF JULY, 2023.

R. WENDOH

JUDGE

Judgement delivered in the presence of;

.....for the Appellant.

.....for the Respondent.

Emma & Phelix Court Assistants.

