



**Luka v China Wu Yi Company Limited (Civil Appeal E279 of 2022)
[2023] KEHC 23708 (KLR) (Civ) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23708 (KLR)

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

CIVIL

CIVIL APPEAL E279 OF 2022

DAS MAJANJA, J

OCTOBER 19, 2023

BETWEEN

WELLINGTON LUVEMBE LUKA APPELLANT

AND

CHINA WU YI COMPANY LIMITED RESPONDENT

(Being an appeal from the Judgment and Decree of Hon.C. W. Ndumia, Adjudicator/RM dated 14th April 2022 at the Nairobi, Small Claims Court at Milimani in SCCC No. E228 of 2022)

JUDGMENT

1. This is an Appeal from the Small Claims Court where the court apportioned liability equally as between the Respondent who was the owner of motor vehicle Registration No. KBT xxxV and the Appellant a motor cycle rider of Registration No. KMEM xxxG. The court awarded the Appellant Ksh. 700,000.00 and Kshs. 173,510.00 as general damages and special damages respectively.
2. The Appellant appeals against the judgment on the basis of the Memorandum of Appeal dated 04.05.2022. Although he raises three grounds of appeal, the central issue for resolution is whether the trial court could apportion liability in the manner it did.
3. As this is an Appeal from the Small Claims Court, the jurisdiction of the Court is circumscribed by section 38 of the *Small Claims Act* which limits appeals to matters of law. This means the Court can only intervene if the evidence on record does not reasonably support the conclusions made by the trial Court.
4. Only the Appellant testified at the hearing. He stated that on 28.06.2021 at about 7.30pm, he was riding the motor cycle to his place of work in Westlands, Nairobi. At Waruku area, on his left hand



side, the Respondent's lorry came and entered the road at a high speed without checking whether it was safe to do so and hit him whereupon he lost consciousness.

5. Upon consideration of the Appellant's testimony, the trial court observed there was insufficient evidence as to how the accident occurred in the absence of an independent eye witness who would have brought out how the accident happened. The trial court, guided by *Evans Osuga Mboi v James Lesaaya and another* [2021] eKLR apportioned liability equally by stating as follows:

[30] The evidence in support of each of the opposing accounts is barely sufficient. Accordingly, the trial magistrate exhibited aptness and made a conscientious decision to draw upon the case of *Baker v Market Harborough Co-operative Society Ltd* 1953 1 WLR 1472 to decide the issues between the parties by blaming both the 2nd respondent and the rider equally for the accident. The circumstances of, and evidence presented in this case warrant a 50:50 contributory negligence between the respondents and the motorcycle rider. I therefore, do not find anything on which to rattle the apportionment of liability by the trial court. The appeal on liability fails and is dismissed.

6. In *Baker v Market Harborough Industrial Co-Operative Society Ltd* (Supra) cited with approval by the Court of Appeal in *Beatrice Wambui Ndinga v Samuel Gichuru Kariuki* [2016] eKLR, Denning LJ., made the following observation:

Everyday, proof of collision is held to be sufficient to call on the defendant for an answer. Never do they both escape liability. One or the other is held to blame, and sometimes both. If each of the drivers were alive and neither chose to give evidence, the court would unhesitatingly hold that both were to blame. They would not escape liability simply because the court had nothing by which to draw any distinction between them....”

7. As I stated earlier, the issue in this Appeal is whether the Court ought to have apportioned liability. I disagree with the Adjudicator as the Appellant clearly explained what happened. The lorry came from his left hand side at a high speed and hit him causing the injury. This testimony was neither contested nor rebutted by the Respondent. As I understand from the authorities, this is not a case where the incident was not explained. The Appellant's testimony was straightforward hence there was no basis for the Adjudicator to apportion liability.
8. The Appeal is therefore allowed and the judgment to the extent of apportioning liability between the Appellant and Respondent is set aside. It is substituted with a finding of 100% liability against the Respondent. The Respondent shall bear costs of the Appeal assessed at Kshs. 25,000.00 only.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER 2023.

D. S. MAJANJA

JUDGE

