



REPUBLIC OF KENYA



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Mwangi v Karanja (Civil Case 5 of 2018)
[2023] KEHC 23390 (KLR) (11 October 2023) (Judgment)

Neutral citation: [2023] KEHC 23390 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL CASE 5 OF 2018
J WAKIAGA, J
OCTOBER 11, 2023

BETWEEN

GERALD WANDAKA MWANGI APPELLANT

AND

JULIUS KARANJA RESPONDENT

(Being an appeal against the Judgement and decree delivered in Resident Magistrate's Court Civil Case No 233 of 2015 at Muranga on 17th January 2018)

JUDGMENT

1. By a Plaintiff filed on 19th day of June 2015, the Appellant sued the Respondent in respect of a road traffic accident on 14th June 2014, involving motor vehicle registration number KBD 145 U and the Appellant as a result of which the same sustained injuries and special damages pleaded therein. It was pleaded that the said accident was caused solely by the negligence of the Respondent particulars of which were pleaded and forms part of the record of appeal.
2. By a defence thereon dated 1st February 2016, the Respondent denied ownership of the subject motor vehicle and particulars of negligence contained therein and in the alternative stated that if the accident occurred which was denied, then the same was caused and or substantially contributed to by the Appellant's own negligence the particulars whereof were pleaded.
3. The cause proceeded for hearing and by a judgement thereon dated 27th November 2017 the Court found the Respondent liable at 80% against the Appellant 20% and awarded general damages at the sum of Kshs 350,000 with special damages of Kshs 14,991.



4. Being dissatisfied by the said award, the Appellant filed this appeal and raised the following grounds of appeal: -
 - a. The judgement was delivered in the absence of the Appellants advocate without notice.
 - b. The Appellant evidence which unshaken by cross examination was not considered.
 - c. The Court erred in awarding contributory negligence against the Appellant without evidence supporting the same.
 - d. The award was inordinately low based on the injuries sustained by the Appellant.
5. The Appellant therefore sought that the appeal be allowed, judgement set aside and the same be enhanced together with costs.
6. At the hearing of the appeal, the Respondent did not attend and it was submitted by Mr. Wandaka for the Appellant that the Court made an error on judgement on liability since the Appellant evidence was not shaken. On cross examination the Respondent did not tender in any evidence to challenge his version as the Respondent's driver had signed a note admitting liability. In the absence of rebuttal by the Respondent the Court should not have found the Appellant liable.
7. On quantum it was submitted that the Court found that there was no fracture contrary to the medical report by the Appellant to the effect that the same was walking with a limp and the mobility the leg was affected. It was contended that an award of nine hundred thousand (Kshs 900,000) would have been appropriate based on the case of *Ben Menges v Edith Makungu Lande* [2013] eKLR

Proceedings

8. Being a first appeal, the Court is under a duty to re-evaluate the evidence on record to come to its own conclusion thereon, though considering the fact that it did not unlike the trial Court have the advantage of seeing and hearing witnesses as was stated in *Ndungu Denis v Ann Wangari Ndirangu & another* [2018] eKLR
9. The Appellant testified as PW1 Gerald Wandaka Mwangi and stated that on his way home from work at Mugoiri Girls as he was boarding the subject motor vehicle the driver saw another motor vehicle and took off causing him to fall backward. The driver admitted liability and paid him Kshs 1000 for treatment. In cross examination he stated that the motor vehicle was in a hurry and that he sustained injuries to the back.
10. PW2 Joel Onyancha a Clinical Officer produced a medical report on behalf of the Appellant who was aged 72 years as at the time with a history of having fallen down while boarding a motor vehicle sustaining injuries on the back spine. In cross examination he stated that the injuries were 17 weeks old and that his walk was due to age.
11. PW3 Dr. Julius Kimani Mwangi produced his medical report and stated that he relied on the P3 form with a history of soft tissue injuries to the cartilages between bones and joints. PW4 PC Mutai Muthui Mbaria confirmed that the Appellant reported the accident on 23rd June 2014 which he booked on the OB top the extent that he was boarding a motor vehicle and the driver drove off causing him to fall down.



12. The Respondent called no evidence.
13. In finding on liability the Court found as a fact that the Appellant ought to have been cautious while boarding a motor vehicle which was in a hurry and had not stopped at the designated area and found as a fact that the injuries were of soft tissue in nature.

Determination

14. From the proceedings herein and the submissions by the Appellant the following issues are identified for determination:
 - a. Whether the Appellant contributed to the accident therein.
 - b. Whether the award in general damages was inordinately low so as to be interfered with by this Court on appeal.
15. An Appellant Court will only interfere with the trial Courts' finding on facts if the following conditions are met:
 - a. If it appears that the Court failed to take account of particular circumstances or probabilities or impression of the demeanour of a witness see *Sella Boat and Another v Associated Motor Boat Co Ltd & Another* [1968] eKLR
 - b. If the decision is erroneous and is based on no evidence or on misapprehension of the evidence see *Mwangi v Wambugu* [1984] KLR.
 - c. That the Judge misdirected himself in law.
16. The first issue for determination is that of liability, which in my view is a matter of evidence, the evidence on record is that the Appellant was boarding the Respondents motor vehicle and that before he boarded the same the driver who had seen another motor vehicle took off.
17. In finding the Appellant liable in contribution, the trial Court had this to say:

“the plaintiff on the other hand hadn't fully boarded the said motor vehicle. He ought also to have been cautious if he saw the motor vehicle was in a hurry or had not stopped in the designated bus stop as it appeared it hadn't”.

This is a finding of fact by the trial Court, I therefore find no fault with his determination thereon as the same was based on the evidence tendered at the trial.
18. On quantum, the injuries sustained by the Appellant were confirmed by the medical reports produced before the Court and the Appellant's attempt at producing further evidence failed.
19. From the medical report produced the Appellant sustained the following injuries: blunt injuries to the elbow and lacerations to the lower limbs, which the trial Court found were soft tissue injuries, the age of the Appellant notwithstanding. In awarding the sum herein the trial Court relied on the following authorities *Ben Mangera v Edith Mukunyu Lande* [2013] eKLR and *Mwaura Muiruri v Suera Flowers Ltd* [2014] eKLR tendered by the Appellant which he considered were of grievous injuries as weighed against those tendered by the Respondent namely *Eastern Produce (K) Ltd v Gilbert Mubunzi Makotsi* [2013] eKLR among others and considered the rate of inflation.



20. It therefore follows that the award was based on sound legal principles and would therefore be reluctant to interfere with the same merely on the ground that I been the trial Court, might have arrived at a different award.
21. I am not persuaded by the submissions by the Appellant that the award herein was inordinately lower having taken into account the age of the Appellant and would therefore dismiss the appeal which I hereby do.
22. In the final analysis I find and hold that the award in general damages was based on sound legal principles and that the trial Court did not err in awarding the same. The appeal herein lacks merit and is therefore dismissed and the judgment of the trial Court both on liability and quantum affirmed.
23. Whereas cost follows the event, in this matter the Respondent did not take part in the hearing of the appeal and as such each party shall bear their own cost of the appeal.
24. And it is ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 11th DAY OF OCTOBER 2023.

J. WAKIAGA

JUDGE

