



**Indoken Auto Limited v Kioko & 2 others (Civil Appeal E945 of 2023)
[2024] KEHC 14425 (KLR) (Civ) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14425 (KLR)

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

CIVIL

CIVIL APPEAL E945 OF 2023

LP KASSAN, J

NOVEMBER 19, 2024

BETWEEN

INDOKEN AUTO LIMITED APPELLANT

AND

BENSON KIOKO 1ST RESPONDENT

AUTO INDUSTRIES LIMITED 2ND RESPONDENT

YASSIN GITHINGA NJOROGE 3RD RESPONDENT

JUDGMENT

1. The Applicant filed grounds of Appeal against the decision of the Lower court dated 25th August 2023 and raised several issues that I shall shortly address having read submissions and the proceedings.

1. Ownership of Motor Cycle KMEP 426C. PW1 testified on 29th March 2022. He adopted his witness statements and produced his exhibits. For the purpose of this limp, the plaintiff produced a copy of records dated 26th of November showing that the Motor Cycle was registered in the name of the first defendant. The 2 Defendant on his part produced several documents to prove that it sold the Motor vehicle on 29th August 2018. The most important document is an Application for Transfer dated 17th March 2020 to Nancy after the alleged accident. The third party stated that it had sold the Motor Cycle to Nancy before the accident but failed to enjoin Nancy as the second third party. The fact that the said Motor cycle was transferred to Nancy after the accident is evidence that the 3 Party was its legal owner and can only be rebutted if Nancy had been enjoined in the Suit. This is buttressed by the action of the 1st Defendant who enjoined the 3 Party after a copy of records produced by the Plaintiff that showing it as the legal owner of the Motor Cycle. All documents produced by the First Defendant were not objected to by the third Party. The fact that there is no prove of employee/



servant relationship between the 3 Party and 2 Defendant does not carry a lot of weight on the shoulders of the 1 Defendant and the Plaintiff because the records show that the 3 party legally owned the Motor Cycle at the time of the accident and it is better placed to explain this relationship. Consequently, the learned Magistrate was correct in holding that the Third Party owned the Motorcycle at the time of accident.

2. Liability

The plaintiff was the only eye witness who testified. There is no contradicting evidence and despite the fact that the abstract has the name of the Second Defendant who was the rider of the motor cycle, he did not testify. The trial magistrate was correct in assessing liability at 100% as against the 2 Defendant and the third Party.

3. General Damages

I have read the Authorities on damages and medical report. Doctor Kioko indicated that the Plaintiff suffered the following injuries;

Fracture of the 4th and 9th ribs
Haemopneumothrax (internal chest bleeding)
Fractures of 6th and 7th cervical and 1st thoracic
Head concussion
Tear of tendons

2. The above injuries led to 15 percent permanent disability. The Plaintiff would not be able to stand for long or lift heavy objects. These are serious injuries that are set to affect the Plaintiff's quality of life. The general damages awarded by the Trial court are modest and not excessive at all.

The upshot of the above is that the Appeal is dismissed with costs and the lower Court's Judgement upheld.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF NOVEMBER 2024.

L. KASSAN

JUDGE

In the presence of:

Kaba for the Appellant

Mumbi holding brief Waiganjo for the Respondent

Carol – Court Assistant

