



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL NO.98 OF 2019

BETWEEN

DANIEL WAWERU.....APPELLANT

AND

MAURINE ACHIENG (*Suing as a personal representative of the estate of*

ZEKI OCHIENG ALANDO *alias* **EZEKIELMUMBO DECEASED-)**.....**RESPONDENT**

(Being an Appeal from the judgment in Oyugis Principal Magistrate's PMCC No. 83 of 2016 by Hon. J.S Wesonga –Senior Resident Magistrate).

JUDGMENT

1. Daniel Waweru, the appellant herein, was the defendant in Oyugis Principal Magistrate's PMCC No. 83 of 2016. This was a claim that arose from a road traffic accident where Zeki Ochieng Alando *alias* Ezekiel Mumbo was fatally injured. The learned trial magistrate delivered judgment dated 1st April, 2019. He held the appellant 100% liable and made a total award of Kshs.1, 620, 000 in favour of the respondent.

2. The appellant was aggrieved by the said judgment and filed this appeal. He was represented by the firm of Mose, Mose & Milimo advocates. He raised eight grounds of appeal as follows:

- a) That the learned trial magistrate erred in law and in fact in making a finding of damages and liability against the defendant based on hearsay evidence when the matter ought to have been dismissed.
- b) That the learned trial magistrate erred in and in fact in holding that the defendant 100% liable based on hearsay.
- c) That the learned trial magistrate erred in law and in fact in awarding unreasonable loss of dependency of Kshs.1,500,000/= without taking into consideration vagaries of life.
- d) That the learned trial magistrate erred in law and in fact in failing to appreciate the impeccable defence of the defendant thereby arriving at a wrong and erroneous conclusion condemning the defendant to net damages of Kshs.1,620,000/=.
- e) That the learned trial magistrate erred in law and in fact in failing to appreciate the doctrine of *stare decisis* in awarding damages.
- f) That the learned trial magistrate erred in law and in fact in failing to appreciate the plaintiff's pleadings and evidence were incapable of sustaining the award of damages.
- g) That the learned trial magistrate erred in law and in fact in failing to appreciate that the respondent did not establish her case on quantum.
- h) That the learned trial magistrate erred in law and in fact in failing to appreciate the legal position that there could be no liability without fault.

3. The appeal was opposed by the respondent through the firm of Everlyne Kuke & Company, Advocates.

4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no

JUDGE