



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NO. 80 OF 2019

SIMON KIOKO MUNYILU.....1ST APPELLANT

NGUGI MICHAEL.....2ND APPELLANT

-VERSUS-

JOHN PHILIP NZIOKA KILONZO

(Suing as the brother and personal Representative of the estate of

JONES KIMEU KILONZO (Deceased).....RESPONDENT

(Being an Appeal from the whole judgement of the Honourable Senior Principal Magistrate

D. Orimba (SPM) delivered on 26th July 2017 at Kangundo SPMCC No. 13 of 2016)

BETWEEN

JOHN PHILIP NZIOKA KILONZO

(Suing as the brother and personal Representative of the estate of

JONES KIMEU KILONZO (DECEASED).....PLAINTIFF

-VERSUS-

SIMON KIOKO MUNYILU.....1ST DEFENDANT

NGUGI MICHAEL.....2ND DEFENDANT

JUDGEMENT

1. The Appellants in this appeal were the Defendants in Kangundo SPMCC NO. 13 of 2016 which was filed by the Respondent seeking damages from a road traffic accident that occurred along the Nairobi-Kangundo road near Tala High School on 8th of February 2015 at about 7.40 pm from which the deceased herein died.

2. It was alleged that on that day, the deceased, a 63year old man, **Jones Kimeu Kilonzo**, was a lawful pedestrian walking by the roadside when the Appellants' motor vehicle Reg. No. KAT 329U Toyota Van was so negligently driven, managed and/or controlled by the Appellants' driver that it was caused to lose control veer off the road and knock the deceased thereby causing him fatal injuries. The said case was filed by the Respondent in his capacity as the personal representative of the estate of the deceased pursuant to the provisions of the **Law Reform (Miscellaneous Provisions) Act** and **Fatal Accidents Act**. In their suit, the Respondent sought the following reliefs;

1. Special damages of Kshs. 20,535
2. General damages under the Law Reform Act and Fatal Accident Act
3. Costs of the suit
4. Interest on a, b and c above
5. Any other relief that the court may deem fit and just to grant.

3. After hearing the evidence, the learned trial magistrate, **Hon. D. Orimba, SPM**, found the Appellants 100% liable, entered judgement against them and assessed the damages as follows:

- a. Kshs. 20,000 for pain and suffering
- b. Kshs. 100,000 for loss of expectation of life
- c. Kshs. 400,000 for loss of years
- d. Kshs 20,535 as special damages
- e. Costs
- f. Interest

4. Aggrieved by the said decision, the Appellants lodged this appeal citing the following grounds;

- a. The learned trial Magistrate erred in law and in fact when he failed to consider the Appellant's submissions on points of law and facts on damages payable as quantum to the Respondent.**
- b. The learned trial Magistrate's decision was unjust, against the weight of evidence and based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice on award of damages under Fatal Accidents Act and Law Reform Act.**
- c. The learned trial Magistrate erred in law and in fact in failing to apportion liability judiciously.**
- d. The learned trial Magistrate erred in law and in fact in unduly disregarding the Appellant's evidence on loss of expectation of life and pain and suffering in the circumstances**
- e. The learned trial Magistrate erred in law and in fact in unduly disregarding the submissions and judicial authorities cited by the Appellants and by instead of relying on the authorities cited by the Respondent which were excessive in the circumstances.**

5. In this appeal, the Appellants are seeking the following orders from this court;

- a. The appeal be allowed.**
- b. The whole judgment of the Honourable Senior Principle Magistrate D.Orimba (SPM) Kangundo SPMCC No. 13 of 2016 delivered on 26th July 2017 be set aside and/or varied.**
- c. The costs of the appeal be awarded to the Appellants.**
- d. Such other orders as this Honourable Court may deem fit to grant.**

6. On 24th March, 2021, this Court gave directions regarding the manner in which the appeal was to be prosecuted and directed the appellants to file and serve their submissions within 21 days while the Respondent was directed to file and serve their within 21 days of service upon them of the Appellants' submissions. The matter was then stood over to 2nd June, 2021 for confirmation of compliance with the said directions and for issuance of further orders. Come that day, and it turned out that the Respondent had filed his submissions while the appellants had not. Notwithstanding the clear failure by the Appellants to comply with the court orders, the Appellants were indulged with a further period of 14 days to file and serve their submissions. However as at the time of writing this judgement no such submissions had been filed.

7. In his submissions, the Respondent contended that the award given was reasonable and commensurate with the current court awards for similar injuries. Further, that the trial court did not err in finding that the Defendant's driver and/or agent was to blame for the accident. He opined that the evidence on record was unshaken and blamed the Appellants' driver for the accident and submitted that the trial did not err in finding the appellants 100% liable for the accident. It was submitted that the driver saw the deceased before the accident occurred and did

nothing to avoid knocking him down and that as a result the driver was charged with the offence of causing death by dangerous driving. He submitted that the trial court considered the evidence presented at the hearing and the submissions thereto in arriving at its judgement and reiterated that the award was reasonable and urged the court not to interfere with the same and dismiss the appeal. He cited **Tarmal Wire Products Limited vs Ramadhan Fondo Ndegwa HCCA No. 243 of 2010, Mombasa, Spin Knit vs Johnstone Otara HCCA No.9 of 2004 Nakuru** and **Patrick Kamuya Alias Gachau Patrick & Another vs Asap Gatundu Wanjiku HCCA No. 109 of 20212, Nyeri.**

8. From the foregoing, it is clear that the appellants have failed to prosecute their appeal in the manner directed by this Court. Accordingly, there is no basis upon which this Court can find for the Appellant considering that what is on record is mere record of the proceedings before the trial court and the grounds of appeal without the same being expounded upon.

9. Accordingly, there is no merit in this appeal which I hereby dismiss with costs to the Respondent.

10. It is so ordered.

READ, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 7TH DAY OF JULY, 2021

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Kabute for the Appellant

CA Geoffrey