



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL CROSS APPEAL NO 45 OF 2019**

**CHRISTINE ALOO.....APPELLANT**

**VERSUS**

**LONA ATIENO OKUTA.....RESPONDENT**

**JUDGMENT**

1. The Appellant herein lodged this Cross Appeal to **HCCA No 14 of 2019 Lona Atieno Okuto vs Mary Atieno Ouma** on 3<sup>rd</sup> April 2019 vide a Memorandum of Appeal dated 28<sup>th</sup> March 2019. She relied on six (6) Grounds of Appeal.
2. The Appellant herein had appealed on both liability and quantum. Having said so, on 27<sup>th</sup> September 2021 the court delivered its decision on the question of apportionment of liability in **HCCA No 12 of 2019 Lona Atieno Okuto vs Mary Atieno Ouma** where it found and held that the Appellant herein was wholly liable for the negligence that was occasioned by her driver at the material time of the accident. This therefore disposed of Grounds of Appeal Nos (1), (2), (3) and (4).
3. On 12<sup>th</sup> November 2020, parties agreed that the Appeal and Cross-Appeals herein be consolidated and be heard together. However, the court did not fix a date for the Judgment of the Cross- Appeal as 20<sup>th</sup> July 2021, the date when the Cross-Appeal was to be mentioned, was declared a public holiday.
4. Parties filed Written Submissions which they relied upon in their entirety. The Judgment herein is therefore based on the said Written Submissions only. The only remaining issue that would have been pending for determination in this court was the question of quantum. However, in her Written Submissions the Appellant had contended that in the event the court was to uphold the finding that she was liable for the accident, then the judgment of the lower court should be upheld.
5. It was therefore not necessary to analyse the Respondent's submissions regarding the defectiveness of the Appellant's Cross-Appeal as it had now been rendered moot.

**DISPOSITION**

6. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Cross Appeal that was lodged on 3<sup>rd</sup> April 2019 was not merited and the same be and is hereby dismissed. The effect of this decision is that the judgment of the Trial Court that was delivered on 22<sup>nd</sup> January 2019 on quantum be and is hereby upheld.
7. The Appellant will bear the Respondent's costs of the Cross Appeal.
8. It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 8TH DAY OF OCTOBER 2021**

**J. KAMAU**

**JUDGE**