

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 910 OF 2004

ODDS & ENDS LIMITED.....APPELLANT

VERSUS

REFRIGERATION COMPONENTS LIMITED.....RESPONDENT

(Appeal from the Judgment of Mrs. Wekesa, Senior Resident Magistrate at the Senior Resident Magistrate's Court, Milimani Nairobi dated the 16th day of August 2004 in Civil Suit No. RMCC 2047 OF 2000)

JUDGMENT

The respondent sued the appellant for the sum of Kshs. 44,792.50/= being the amount of repair charges of motor vehicle registration No. KAC 878 E which was allegedly damaged by motor vehicle registration KXX 633 owned by the appellant. The two motor vehicles collided at Nyayo Stadium roundabout along Mombasa Road on 23rd November, 1998.

The respondent blamed the driver of the appellant. The claim was denied by the appellant, but after the full trial the lower court found that the appellant's driver was to blame and gave judgment in favour of the respondent as prayed.

It is my duty as the appellate court to make an assessment of the evidence presented before the lower court and make independent conclusions. This I have done. The appellant's motor vehicle was being driven on the outer most lane as one approaches the roundabout. The respondent's motor vehicle on the other hand was on the right hand side on the last lane along Mombasa road.

The lower court found that the respondent's motor vehicle had a right of way and that if the appellant's motor vehicle was going to Mombasa road from the roundabout, it ought not have been in the outermost lane. The evidence of the appellant's drive is instructive in that regard. The following is what he told the court,

“What happened I was on the outermost lane of the roundabout. The plaintiff came fast from behind when the plaintiff's driver attempted to come in front of me the rear of the plaintiff's motor vehicle came and hit my side mirror.....there was no lane on that roundabout. One could not find a lane. That time everyone is trying to move on. It is plaintiff who was attempting to go ahead of me to outer lane of Mombasa road dual carriage.”

This driver was subjected to cross examination, to which he answered as follows,

“There are four lanes from Uhuru High Way to Lusaka/Uhuru High way roundabout. The outermost lane takes vehicles to Lusaka Road.I was in the outermost lane. I had passed the entry to Lusaka Road. I was in outermost lane in Uhuru Highway... there was no signs to show I was not supposed to be where I was. Even police direct us to pass there so long as one does not hit a vehicle.”

The appellant's driver having confirmed that he was on the outermost lane which leads traffic to Lusaka Road was negligent to have proceeded ahead thereby interfering with the respondent's motor vehicle which had a right of way. He knew that he was on the wrong. He even said the police sometimes direct

them or allow motor vehicles to pass, but that does not mean that he had any right whatsoever to do so. The lower court found on a balance of probability that the appellant's driver was negligent. With respect, I have arrived at the same conclusion. The appellant's driver was wholly to blame for the collision.

The respondent's material claim was in the form of special damages. This was specifically pleaded and strictly proved by production of receipts. There is no merit in this appeal which is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 7th Day of March, 2017

A. MBOGHOLI MSAGHA

JUDGE