

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL 713 OF 2009

Being an appeal from the judgment of Hon. Abdul Lorot delivered at Githunguri on the 2nd of December, 2009 in SRMCC No. 36 of 2008)

KAMAHUHA LIMITED APPELLANT

VERSUS

GEORGE NJOROGE NJERI & ANOTHER

(Suing as the legal Representative of the estate of

SAMUEL NDEGWA NJERI {deceased}..... RESPONDENTS

JUDGMENT

This is an appeal arising from a judgment of the lower court delivered on 2nd December, 2009 where the appellant was held liable to the extent of 100% for the negligence of its driver who was involved in a road accident on 2nd September, 2007 along Ruiru - Kiambu road.

Following the said accident one Samuel Ndegwa Njeri sustained fatal injuries leading to his death. The respondents herein are the legal representatives of his estate. After the full trial the learned trial magistrate awarded Kshs. 1,093,330/=. Thereafter he observed that this award was way beyond his jurisdiction but since the plaintiff filed the suit before that court, he reduce the award to Kshs. 800,000/= with costs and interest against the defendant.

With profound respect that order cannot stand the test of law and procedure. It should have become evident during the trial, production of exhibits, submissions by counsel and at the time of writing judgment that jurisdiction was a crucial issue. If I were to uphold the order by the learned trial magistrate, prejudice may be visited upon both parties herein.

As the subject of liability and quantum are intertwined in cases of this nature, the issue of jurisdiction will also affect both findings. I am of the view, without addressing the merits or otherwise of the appeal, that this is a matter where the appeal should be allowed. However, the ends of justice will be met if a retrial is ordered.

I have checked the record. All the relevant exhibits are still available and I believe the witness would be readily available. This being an old matter, the orders that commend themselves are as follows; this appeal is allowed and the judgment of the lower court set aside in its entirety. There shall be conducted a retrial before another magistrate of competent jurisdiction. This order shall be served upon both parties expeditiously and the new trial conducted as early as the parties shall be available. Each party shall bear their own costs.

Orders accordingly.

Dated and delivered at Nairobi this 5th day of July, 2016.

A. MBOGHOLI MSAGHA

JUDGE