

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 129 OF 2010

(Appeal arising from Vihiga Senior Resident Magistrate's Court in Civil Case No.13 of 2009

– Judgment of [L.O. ONYINA, SRM] delivered on 7.9.2010)

ANNE AYUMA HARRISON.....PLAINTIFF

V E R S U S

SIMON GITHURE MARUNGO.....DEFENDANT

J U D G M E N T

The appellant filed civil suit no. 13 of 2009 before the Vihiga Senior Resident Magistrate's Court claiming damages arising from a road accident on the 8.7.2008. The suit was fully heard and dismissed. There were six grounds of appeal but counsel for the appellant in his written submissions condensed all the grounds into one which is that the appellant did prove the ownership of the accident vehicle. Counsel contends that a police abstract was produced and it was indicated that the respondent was the registered owner of the accident vehicle.

The respondent was served through his counsel but did not file any submissions. The record of the trial court shows that two witnesses testified. The appellant was the plaintiff and testified as PW1. Her evidence is that on the 8.7.2008 she was travelling in motor vehicle registration number KAW 409 V owned by the defendant when the vehicle had an accident near Jordan River. The vehicle overturned and it was a self-involved accident. She was travelling from Nairobi heading to Esibuye. She was taken to Maseno Hospital for first aid and later transferred to New Nyanza Provincial Hospital where she was admitted for three days. She was later treated at Kenyatta national Hospital where she was admitted for fourteen days. She suffered a fracture of the left clavicle, chest and head injuries. She blamed the driver of the vehicle for the cause of the accident as he was driving at high speed.

PW2 DR. WERE OKOMBO attended to the appellant on the 11.8.2009 and prepared a medical report. The injuries are itemized as head injury with loss of consciousness, injury on the chest, cut wound on the right leg and fracture of the left clavicle born. It is noted in the report that the fractured clavicle has not properly united and there is deformity. There will be need for corrective surgery and plastic surgery on the scars. The future medical expenses are estimated to cost KShs.150,000/=.

The respondent closed his evidence without calling any evidence. The trial magistrate dismissed the suit mainly on the ground that the appellant did not prove that the accident vehicle belongs to the respondent. The trial magistrate relied on the case of **THURANIRA KARAUARI V AGNES NCHECHE Civil Appeal No. 192 of 1996**. The court held that the appellant did not produce a copy of the records relating to the ownership of the vehicle from the Registrar of Motor Vehicles.

The main issue for determination is whether the trial magistrate was correct in dismissing the suit on the basis that ownership of the accident vehicle had not been proved. The record shows that the appellant produced a ticket that was issued to him on the date she was travelling. The ticket indicates that the transporter was trading as **SIGMAN COACHES**. The appellant produced a police abstract that was issued to her by the Luanda police division. The police abstract indicate that the owner of the accident vehicle was **SIMON GITHURE MARUNGO of P.O. BOX 44, SUBUKIA**. The abstract also indicates

that the same person had insured the vehicle with Blue Shield Insurance Company being Policy Number 089/001480/01/08/885. The policy was to expire on the 28.1.2009. Given the evidence on record it is established that the respondent was the owner of the accident vehicle. It is common knowledge that whenever an accident occurs the accident vehicle is taken to the nearest police station. The accident is investigated and the details of the vehicle and its ownership are given to the police. That is why the abstract is designed in such a way that the information required is premeditated. Such information includes the police station where the accident was reported, the date of the accident, the name of the victim, the road where the accident occurred, the time of the accident, the registration number of the accident vehicle, the driver of the vehicle, the owner of the vehicle and other relevant information. In a civil matter the court ought to consider the information given in the police abstract as giving the correct position relating to the accident. There was no defence evidence to disprove the contents of the police abstract. It is common knowledge that at times the registered owner of a vehicle could be different from the actual owner. This can occur when the vehicle is sold but the purchaser fails to present the transfer documents before the Registrar of Motor Vehicles. At times vehicles are bought on installments and the transfer is effected upon the completion of the purchase price. The police abstract that was produced proved that the respondent was the owner of the vehicle. He even took a comprehensive police on the vehicle. The police at Luanda police station got the respondent's name after the accident. The police did not just pick any name and indicate to be the owner of the vehicle on the abstract. The nonproduction of records from the Registrar of Motor Vehicles did not disprove the fact that the respondent is the registered owner of the accident vehicle.

I do find that the trial magistrate misdirected himself on the issue of ownership. Each case has to be determined on its own merits. I do find that the appeal is merited and is allowed.

On the issue of quantum the trial court dwelt on the issue of damages and agreed with a proposed sum of KShs.500,000/= by counsel for the appellant. The court cited the cases of **OTIENO MUSA OCHIENG V BWANA MKUU MOHAMMED Mombasa HCCC. No.958 of 1991** and that of **TITO SEKFNI V JOHN KANYILI MING & ANOTHER Mombasa HCCC No.245 of 1992**. I have noted the injuries sustained by the appellant. There will be need for future medical treatment. Counsel for the appellant is seeking a sum of KShs.500,000/= as general damages. I find that the estimation of the trial magistrate on damages was correct and I will leave it intact. The appellant is awarded general damages of **KShs.500,000/=** plus special damages of **KShs.1,600/=** being for the medical report (**KShs.1,500/=**) and the police abstract (**KShs.100/=**). The appellant shall have costs of the appeal and the costs before the trial court.

Delivered, dated and signed at Kakamega this 8th day of October 2014

SAID J. CHITEMBWE

J U D G E