

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E1100 OF 2023

EVELYNE GRACE MUTHIKE KANYA
APPELLANT

VERSUS

AFRICA PVC INDUSTRIES LIMETED
RESPONDENT

*(Being an appeal from the judgment and decree of Hon M. Kinyanjui Senior
Principal Magistrate Adjudicator delilered on 3rd September 2024)*

JUDGMENT

1. This is an appeal against the decision of the lower Court in which the trial magistrate dismissed a claim basically because its pleading was defective as it did not outlay particulars of negligence. The Learned magistrate stated in the Judgement that the Claimant did not pin point specific negligence that the respondent exhibited that led to the road traffic accident which was the subject of the Claim and quoted **Ogwari v Hersi CA 223/22** which states and I quote " in instances where a Claim is founded on negligence, then the negligence has to be pleaded and proven." . The trial magistrate also faulted the Claim for not highlighting particulars of injuries and the Claimant for not producing a medical report. I have read the submissions and other

relevant documents and to determine this Appeal, I wish to note the following;

2. Whether negligence was pleaded. Paragraph 4 of the Claim states " On or about the... the claimant was travelling on board a vehicle registration. along Mombasa Road... when the vehicle she was travelling in was hit by the Respondent Lorry which was being driven negligently. This to me is sufficient "particulars of negligence" especially this being a small Claim Court which is bereft from detail or technicalities. The Learned Magistrate ought to have derived the particulars of negligence from reading this statement. In fact, in 4(2) the Claimant states that the OB blamed the Respondent. I am well aware that in normal suits advocates for a long time have been highlighting numerous particulars of negligence as a guess work while in reality only one or two instances could be the reason for accidents and I think this practice should be brought to halt. The rule that particulars of negligence must be specifically pleaded has belabored advocates to list all available circumstances so as to cast the net wider. To this extend, it is my finding that particulars of negligence are in the Claim either directly, by reference or when taken along with the abstract.

Prove of negligence

3. The Respondent did not produce any document and so the Claimant's testimony and the abstract remains unchallenged and tilts the balance to the favour of the Appellant. Medical documents were produced as further prove that the Claimant was injured.

Medical documents produced

4. I have seen several medical documents which were produced as exhibits and they include; X ray reports from Nairobi west Hospital, Treatment Summary and the abstract that opined the Plaintiff's injury as "harm". The X ray indicated that there was evidence of "previous right femoral nail implant and removal" and that the Claimant complained of right hip pain. The Claimant did not produce a traditional medical report but his injuries are captured in his statement and medical documents which were produced as exhibits. Although a "proper medical report is desirable", a small Claims Court being a Court bereft of technicality cannot consider lack of it as fatal if there are other medical documents and especially under this circumstances where the trial proceeded only on documents. Under such circumstances, the trial Magistrate was required to uphold the balance of probability principle or on the weight of documents relied upon and in this case the Respondent did not produce any document.

Quantum

5. The Appellant suffered soft tissue injuries and the X ray shows that there was no fracture or permanent injuries. I have considered authority on similar damages awards which I hold at Ksh 10,0000. On special damages they were not specifically pleaded although documents were produced. The bar on pleading these damages specifically cuts across all cases including a Small Claim Court and so I will not award damages under this limp.

6. The upshot of the above is that the Lower Court erred in dismissing the Claim and so I shall reverse that finding and replace with the following;
 - 1. General damages at ksh 100000.**
 - 2. Interest on the above from the date when the lower Court tendered its Judgement.**

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13th DAY OF OCTOBER 2025.

**HON. L. P. KASSAN
JUDGE**

In the presence of:

No appearance for Appellant

Ms Maina for Respondent

Carol - Court Assistant

Stay granted for 30 days

ORIGINAL