

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL APPEAL NO. E032 OF 2022

LINET CHEMUTAI NG'ENO.....
APPELLANT

- V E R S U S -

COSMOS CAR LIMITED1ST
RESPONDENT

AMOS KOECH.....2ND
RESPONDENT

JUDGMENT

1. ***Linet Chemutai Ng'eno***, the Appellant herein, was on 10/6/2020 a fare paying passenger aboard Motor Vehicle Registration No.KCV 701 Y travelling from Kisumu to Kericho. The aforesaid Motor Vehicle was involved in a road traffic accident along Kisumu-Kericho road at Kaitui area and as a result, the Appellant sustained injuries.

2. The Appellant filed a compensatory suit against Cosmos Car Limited and Amos Koech, the registered owner and beneficial owner respectively vide Kericho C.M.C.C. No.E013 of 2020.

3. Hon. E. Karani, Learned Resident Magistrate heard the suit and entered Judgment in favour of the Appellant as follows:-

(i) The Respondent to shoulder 80% liability while the Appellant would shoulder 20% liability.

(ii) General damagesKshs.100,000/=

(iii) Special damagesKshs. 10,550/=

Total..Kshs.110,550/=

Less 20% ContributionKshs. 22,110/=

Net totalKshs. 88,440/=

Plus costs of the suit and interest.

4. The Appellant was dissatisfied with the decision of the Trial Court and was prompted to file this Appeal and put forward the following grounds of Appeal:

(i) THAT the Trial Magistrate erred in Law and in fact and misdirected herself in find 20% liability against the Appellant Contrary to the ample evidence on record showing that the Respondents were wholly liable.

(ii) THAT the Trial Magistrate erred in Law and fct in awarding General Damages that was inordinately

low in total disregard of the severe injuries that the Appellant suffered in the accident and principles of law applicable.

(iii) THAT the Trial Magistrate erred in law and in fact and misdirected herself in ignoring the principles applicable and relevant authorities on liability and quantum cited in the written submissions presented and filed by the Appellant.

5. This Court directed the Appeal to be disposed of by written submissions. At the time of writing this Judgment, the Appellant was the only party who had filed her submissions.

6. On the first ground of Appeal, the Appellant argued that the apportionment of liability at 20:80 in favour of the Appellant was based on factors the Court ought not to have considered. It is stated that the weather conditions prevailing then ought not to have been the basis of the Court's finding on liability.

7. It is further argued that the Respondents (Defendants) did not adduce evidence that the accident was as a result of bad weather conditions. It is the submission of the Appellant that the Respondents should have found 100% for the accident.

8. I have re-evaluated the evidence tendered before the Trial Court. ***Linnet Chemutai (PW.1)*** told the Trial Court that on the material day, that is 10/06/2020, she boarded Motor Vehicle Registration No. KCV 701Y from Kisumu travelling to Kericho and upon reaching Kaitui area, they were involved in an accident.

9. PW.1 stated that the driver was driving at a high speed, lost control of the Motor Vehicle thus making it roll severally. As a result, PW.1 said she sustained deep cut wound on the left knee joint, blunt injury to the anterior chest wall, back and blunt injury to the right knee joint.

10. It is apparent that the Appellant suffered soft injuries. In Cross-Examination, PW.1 said she did not buckle up her safety belt.

11. ***P.C. Ismael Bishar (PW.2)*** a traffic Police Officer from Kipsitet Police Station told the Trial Court that the accident occurred at Kaitui Area along Kericho-Kisumu Road involving motor vehicle Registration No. KCV 701 Y, Toyota Matatu. PW.2 said that the Matatu was being driven by one Robert Cheruiyot from Kisumu towards Kericho. PW.2 said it was raining heavily on that material day and that the accident area was hilly. PW.2 further pointed out that the driver while negotiating a sharp bend lost control of the vehicle and veered off the road to left side and rolled severally. PW.2 further stated that there was no indication on the level of speed the driver was driving at and therefore the speed limit was treated as normal in view of the weather.

12. Upon considering the evidence on liability, the Trial Resident Magistrate came to the conclusion that the Respondents (Defendants) should bear the larger liability for

the accident. She also stated that the Appellant (Plaintiff) was injured despite admitting in Cross-Examination that she had not buckled up her safety belt as required.

13. The Trial Magistrate also stated that the Appellant who had not put on her safety belt had no say in the manner the Motor Vehicle was controlled. She further stated that the driver of the Motor Vehicle failed to appreciate the weather conditions and the nature of the road and failed to exercise the skills of a reasonable and competent driver expected considering the circumstances.

14. It is the holding of the Learned Resident Magistrate that considering the circumstances obtaining in this case that liability should be in the ration of 20%:80% in favour of the Plaintiff (Appellant). It is clear that the Learned Resident Magistrate did not attach any reasons as to why she held the Plaintiff (Appellant) responsible for 20% liability.

15. The Appellant had absolutely no role in the control of the Motor Vehicle. The appellant was merely a fare paying passenger.
16. The Trial Resident Magistrate was right to find that the driver failed to appreciate the weather conditions and nature of the road and that he failed to exercise the skills of a reasonable and competent driver. It is clear that the driver of the Motor Vehicle was wholly to blame.
17. The Appellant in the circumstances could not have played any role in controlling the Motor Vehicle. The fact that the appellant did not buckle up her safety belt cannot be a ground to affect liability. The order apportioning liability on the Plaintiff must be set aside as there was no basis at all.
18. The second ground which the Appellant put forward is to the effect that the Trial Magistrate erred by awarding General Damages that was inordinately low in total disregard

of the severe injuries that the Appellant suffered in the accident.

19. It is important to once more set out the nature of the injuries the Appellant, which are:-

- ***Deep cut wound on the left knee joint leading to soft tissue injuries.***
- ***Blunt injury to the anterior chest wall leading to soft tissue injury.***
- ***Blunt injury to the back leading to the soft tissue injuries.***
- ***Blunt injury to the right knee joint leading to soft tissue injuries.***

20. The Learned Trial Resident Magistrate stated that the Plaintiff (Appellant) and the witnesses adduced evidence which were inconsistent. The Learned Magistrate pointed out that there were glaring inconsistent as the evidence adduced proved injuries which included a fracture of the right wrist joint while the pleaded injuries were all soft tissue

in nature and the Plaintiff (Appellant) in her written statement testified having sustained soft tissue injuries.

21. The Learned Resident Magistrate went ahead and stated that considering the injuries pleaded and the evidence adduced, the Court found that the Plaintiff (Appellant) only proved the blunt injury to the right knee leading to soft tissue injuries.

22. With respect, I am convinced that the Learned Resident Magistrate came to the correct finding on quantum. It is clear the Appellant tendered evidence showing she suffered soft tissue injuries. The award she made is comparable to similar awards on nearly similar injuries. Consequently, the Appeal as against quantum is dismissed.

23. In the end, the Appeal partially succeeds. Consequently, Judgment on Appeal is as follows:-

(i) The order apportioning liability in the ratio of 20%:80% is set aside and is substituted with an

order making the Respondents (Defendants) wholly responsible for the accident.

(ii) Therefore the order subjecting the award to 20% contribution is set aside. Therefore the Respondents (Defendants) should settle the awards in full as follows.:-

**(a) General Damages
.....Kshs.100,000/=.**

**(b) Special Damages.....Kshs.
10,550/=.**

TotalKshs.110,550/=.

(iii) The awards to attract interest at Court rates as from the date of Judgment that is on 15/6/2022 until the date of full payment.

(iv) The Respondent to meet the costs of the suit.

(v) The Respondent to meet the costs of the Appeal.

Dated, signed and delivered at Kericho this 18th day of December, 2025.

**.....
J. K. SERGON**

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Njuguna holding brief for Nanjira for Respondent

Mboga for the Appellant