

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL APPEAL NO. E050 OF 2022

MERCY CHEPKORIR.....
APPELLANT

- V E R S U S -

COSMOS CAR LIMITED1ST
RESPONDENT

AMOS KOECH.....2ND
RESPONDENT

***(Being an Appeal from Judgment of Hon. E. W. Karani,
SRM in CMCC No.E015 of 2020 delivered on 26th July, 2022)***

JUDGMENT

1. ***Mercy Chepkorir***, the Appellant herein was involved in a road traffic accident along Kericho-Kisumu road involving Motor Vehicle KCV 701Y in which she was a passenger.
2. The Appellant as a result sustained soft tissue injuries on the knee joint, back, and Chest. She filed a compensatory suit in Chief Magistrate’s Court, Kericho against Cosmos Cars Ltd and Amos Koech, (1st and 2nd Respondents) being the registered owner and beneficial owner respectively.
3. Hon. E. W. Karani, Learned Resident Magistrate entered Judgment in favour of the Appellant and against the

Respondents. The Learned Magistrate found the Appellant liable 20% as contributory negligence. The Trial Court awarded the Appellant kshs.110,550/= for General and Special Damages less 20% contribution. The Appellant being dissatisfied, she preferred this appeal and put forward the following Grounds of Appeal:-

(i) THAT the Trial Magistrate erred in Law and in fact in holding the Respondents 80% liable and the Appellant 20% in total disregard of the evidence on record and law.

(ii) THAT the Trial Magistrate erred in Law and in fact in failing to consider the evidence adduced by the Appellant on liability.

4. When the Appeal came up for hearing, this Court gave directions to have the appeal disposed of by written submissions. At the time of writing this Judgment, the Appellant was the only party who had filed her submissions.

5. It is the submission of the Appellant that the Trial Magistrate erred in law and in fact and misdirected herself and

proceeded on wrong principles by holding the Appellant 20% liable without any legal basis.

6. 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. The Appellant further pointed out that the weather conditions prevailing then ought not to have been the basis of the Court's finding on liability.

7. It is also the averment of the Appellant that the Respondents did not adduce evidence that the accident was as a result of bad weather conditions, therefore the Respondents should have been found wholly to blame for the accident. The Appellant further argued that the Trial Magistrate apportioned liability at 30%:70% in favour of the Plaintiff in Kericho C.M.C.C. No.E016 of 2020 while in Kericho C.M.C.C.C. No. 14 of 2020, she apportioned 10%:90% in favour of the Plaintiff.

8. It is pointed that the variance was without proper jurisdiction since the cases arose out of the same accident. I have re-evaluated the evidence that was presented before the Trial Court. The record shows that four witnesses testified in support of the appellant's case while the Respondent did not summon any witnesses to testify in support of the defence case.

9. Mercy Chepkorir (PW.1) told the Trial Court that on the material date, she boarded motor vehicle KCV 701Y from Kisumu travelling to Kericho. PW.1 stated that upon reaching Kaitui Area, the Motor Vehicle was involved in a road traffic accident. She pointed out that the vehicle was being driven at high speed thus losing control and as a consequence, it rolled severally. PW.1 said that as a result, she sustained soft tissue injuries on chest, knee joint and back. PW.1 wholly blamed the driver for the accident. PW.1 admitted that she did not buckle up that day.

10. 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.

11. Faced with the above evidence, the Trial Magistrate came to the conclusion the Respondents should bear the larger liability of the accident.

12. The Learned Resident Magistrate stated that the Plaintiff who had not put on her safety belt had no say in the

manner the Motor Vehicle was controlled. She also stated that the driver of the motor vehicle failed to appreciate the weather conditions and nature of the road and failed to exercise the skills of a reasonable and competent driver expected considering the circumstances.

13. The Trial Magistrate further stated that all in all, though PW.2 testified that the accident was beyond the control of the driver as the same was occasioned by bad weather, considering the circumstances obtained here, liability is entered in the ration of 30%:70% in favour of the Plaintiff.

14. Though the Trial Magistrate did not expressly state that the Appellant should shoulder 20% contribution, it would appear that was her holding. This is so because the award on damages was slashed by 20%. The question is whether the Trial Magistrate was justified to hold the Appellant was liable for 20% contribution?

15. The Trial Magistrate expressly stated and rightly so that the Plaintiff (Appellant) who had not put on her safety belt had no say in the manner the motor vehicle was controlled.
16. With respect, it is therefore clear that the Learned Resident Magistrate erred when she held the Appellant 20% liability for the accident. There was clearly no basis for the holding. The Appellant could not have contributed in any way to the accident.
17. It is apparent that the driver of the motor vehicle Registration No. KCV 701 Y was solely to blame for the accident. The driver failed to appreciate the bad weather conditions and take precautionary measures to avoid the accident. To say the least, the driver was careless and drove negligently. The order finding the Plaintiff (Appellant) 20% liable must be set aside and substituted with a finding the Respondents are wholly liable for the accident.

18. In the end, this Appeal succeeds. The Order apportioning Liability at 20% to the Plaintiff (Appellant) is set aside and is substituted with an order finding the Defendants (Respondents) wholly to blame for the accident.

19. For the avoidance of doubt, Judgment on Appeal is as follows:-

(i) The Respondents to shoulder 100% liability.

(ii) The awards of the Trial Resident Magistrate

i.e:-

(a) General DamagesKshs.100,000/=.

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

Total.....Kshs.110,550/=.

(c) Costs of the suit.

(d) The award to attract interest at Court's rate from the date of Judgment i.e. 26/7/2022.

(e) Costs of the appeal is awarded to the Appellant.

Dated, signed and delivered at Kericho this 12th day of March, 2026.

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Miss Kirui holding brief for Mboga for Appellant

No Appearance for the Respondent