Kayjay Packaging Limited & another v Njuguna (Civil Appeal E786 of 2024) [2025] KEHC 7122 (KLR) (Civ) (30 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7122 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E786 OF 2024

AC MRIMA, J

MAY 30, 2025

BETWEEN

KAYJAY PACKAGING LIMITED ..... 1ST APPELLANT

PETER MAUNDU DANIEL ..... 2ND APPELLANT

AND

JOYCE WAIRIMU NJUGUNA ..... RESPONDENT

(Being an appeal from the judgment and decree of Hon. S. N. Muchungi (Senior Principal Magistrate) delivered on 7th June 2024 in Nairobi CMCCOM Suit No.6950 of 2019)

JUDGMENT

1. The appeal subject of this judgment arose from the decision of the trial Court rendered on 7th June 2024 where the Court found in favour of Joyce Wairimu Njuguna, the Respondent herein against Kayajay Packaging Limited and Peter Maundu Daniel, the Appellants herein.

2. The crux of the matter before the trial Court is that through a Plaint dated 18th September 2019, the Respondent sued the Appellants in Nairobi [Milimani] Chief Magistrates Commercial Court Case No. 6950 of 2019 [hereinafter referred to as 'the suit'] for the sum of Kshs. 223,643/= together with costs and interests. The suit was essentially filed under the doctrine of subrogation.

3. The suit arose from a road traffic accident that occurred on or about 19th September 2019 where the Respondent blamed the 2nd Appellant for the accident. The 1st Appellant was the registered owner of the motor vehicle which was driven by the 2nd Appellant. Vide a Defence dated 17th January 2020, the Appellants denied liability for the said accident and asked the Court to dismiss the suit with costs.

4. The suit was heard by way of viva voce evidence. The Respondent testified and called one witness Charity Njuguna, the Legal officer of the 1st Respondent's insurance company. The 2nd Appellant testified on behalf of both Appellants. At the close of parties' respective cases, submissions were filed and the Court delivered its judgment on 7th June 2024 in favour of the Respondent in the following terms: -

    a. Liability against the appellants - 100%;

    b. Sum of Kshs. 213,735/=; and

    c. Costs plus interest.

5. Aggrieved by the judgment, the Appellants filed the instant appeal and preferred the following repetitive grounds: -

    i. The Learned Magistrate erred in Law in finding the Appellants 100% liable for the Road Traffic Accident in question.

    ii. The Learned Magistrate failed to find that the Respondent was the author of her own misfortune by ramming the Appellants vehicle from behind.

    iii. The Learned Magistrate erred in Law in failing to apply the applicable standard of proof under the circumstances.

    iv. The Learned Magistrate erred in Law in failing to appreciate that blame in a police abstract cannot be the sole basis of attributing Liability to one party.

    v. The Learned Magistrate erred in Law in abdicating her role of establishing who was to blame for the accident in question and wholly relying on a police abstract blaming the 2nd Appellant who was the driver without any basis and or without any demonstrated investigations.

    vi. The Learned Magistrate erred in Law in finding liability against the appellants where there was no proof of adequate investigations having taken place.

    vii. The Learned Magistrate erred in fact in finding that because the respondent's vehicle had no damages then the respondent's vehicle could not have rammed into the appellant's car.

    viii. The Learned Magistrate erred in Law and fact in finding that the 2nd appellant seemed not sure of how the accident occurred even though the 2nd appellant never testified but adopted his witness stamen.

    ix. The Learned Magistrate erred in fact when without basis found it credible to believe that it the appellant's vehicle that first rammed into the rear of the respondent's the proceeded to overtake the respondent's and then rammed it at the front.

    x. The Learned Magistrate erred in Law in failing to give adequate basis upon which she preferred the Respondent's version of the subject incident to that of the appellant.

    xi. The Learned Magistrate erred in Law and in fact by entirely dismissing the appellant's defence without considering in totality the evidence and the submissions field on behalf of the appellant in support of their case thus arriving at a wrong decision.

    xii. The Learned Magistrate erred in failing to have sufficient regard for the evidence submitted by the appellants.

6. It was on those grounds that the Appellants pray that the appeal be allowed, the judgment be set aside and they be awarded costs.

7. Pursuant to the directions of this Court, the appeal was canvassed by way of written submissions. The Appellants' submissions were dated 13th March,2025 while the Respondent's submissions were dated 3rd April 2025. The gist of these submissions will be ingrained in the latter part of this judgment.

8. The appeal mainly revolves around the issue of liability. As the first appellate Court, this Court is duty-bound to revisit the evidence on the record, evaluate it and arrive at its own conclusion. The case of Selle and Another vs. Associated Motor Boat Co. Ltd (1968) EA 123 and that of Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR reiterate as much. Additionally, this Court must appreciate the settled principle in Mwanasokoni vs Kenya Bus Service Ltd (1982-88)1KAR 78 and Kiruga vs Kiruga and Another that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings.

9. Returning to the elephant in the room, which is the issue of liability, it is not in dispute that the accident occurred, and it is also not in dispute that the 2nd Appellant and the Respondent were the primary parties involved in the accident. What is in dispute, is the manner in which the accident occurred. The Respondent alleged that the 2nd Appellant twice rammed into her vehicle. That, first he hit her vehicle from behind and then overtook it and again hit the front bumper. The Respondent, therefore, blamed the 2nd Appellant for causing the accident that resulted to the damage on her vehicle. The 2nd Appellant stated that his vehicle was hit from behind by the Respondent's vehicle and thereafter the Respondent informed him that he had hit her vehicle and damaged the bumper. To him, the Respondent was solely to blame and any other damage apart from the front bumper was exaggerated.

10. According to the Assessment Report dated 5th October 2016 by Texus Automobile Assessors, the Respondent's vehicle was damaged on the front. That was consistent with the 2nd Appellant's testimony. There was, however, no Police Inspection Report that was produced. The question that calls for an answer is how the Respondent's vehicle sustained damage on the front left-hand side. Given the nature of the damage sustained, it can only be that it was the Respondent's vehicle that rammed into the vehicle which was ahead of it. Alternatively, if it were true that the 2nd Appellant's vehicle hit the Respondent's vehicle as it was overtaking it, then since the damage was on the left-hand side, such damage could have been occasioned if the 2nd Appellant's vehicle overtook from the left side unto the right side. Such could only happen if the road had at least two lanes and the Respondent's vehicle was on the inner lane whereas the 2nd Appellant's vehicle was overtaking it from the left side unto the right side. However, such evidence was not tendered.

11. The police did not aid the trial Court either. Despite no officer testifying, even the police records on the investigations were not produced. Coupled with the fact that no Police Inspection Report was also produced without any justification, the conclusion in the Police Abstract that the 2nd Appellant was to blame for the accident lacks any sound legal basis. Even the point of impact was not ascertained in evidence. This Court, hence, affirms that apportioning blame to a party in a Police Abstract without more does not hold in law since such is untested evidence. A police officer who makes such a finding must be examined in Court so that the evidence is properly tested otherwise such evidence will have very low probative value, if at all any.

12. On a careful re-consideration of the evidence on record, and with the various lacuna thereof, this Court finds that it was the Respondent's vehicle that rammed into the rare of the 2nd Appellant's vehicle. The Respondent's assertion that her vehicle was rammed on the back and the front by the 2nd Appellant's

vehicle is unfounded and is for rejection. The totality of the evidence favours the verdict that the Respondent was to blame for the accident having failed to keep a safe distance from the 2nd Appellant's vehicle. This Court finds as much.

13. The upshot is that the Respondent did not prove her case as pleaded in the suit. Having failed to prove that the Appellants were culpable, no liability can legally attach to any of them.

14. In the end, the Respondent's claim, which was a special damage one, fails. Consequently, the following final orders do hereby issue: -

    a. The appeal succeeds and the judgment in the suit is hereby set-aside and is substituted with a finding dismissing the suit with costs.

    b. The Respondent shall bear the costs of the appeal.

    Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF MAY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss Machora, Learned Counsel for the Appellants.

Miss. Mwangangi, Learned Counsel for the Respondent.

Amina/Abdrazik – Court Assistants.