Roy Transmotors Limited v Kaberu & another (Civil Appeal E1138 of 2024) [2025] KEHC 11511 (KLR) (Civ) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11511 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E1138 OF 2024

AC MRIMA, J

JULY 31, 2025

BETWEEN

ROY TRANSMOTORS LIMITED ..... APPELLANT

AND

JOHN KABERU ..... 1ST RESPONDENT

GIDEON MASILA MUTETI ..... 2ND RESPONDENT

(Being an appeal from the judgment and decree of Hon. C. Ogweno (SRM) in Nairobi Chief Magistrates Court Civil Suit No. E110 of 2022 delivered on 5th September 2024)

JUDGMENT

Background:

1. Roy Transmotors Limited, the Appellant herein, initiated Nairobi [Milimani] Chief Magistrates Court Civil Suit No. E110 of 2022 [hereinafter referred to as 'the suit'] against John Kaberu and Gideon Muteti, the 1st and 2nd Respondents herein. The Appellant sought to recover general and special damages for the loss he suffered as a result of a road traffic accident that occurred on 20th October 2019.

2. The Appellant pleaded that its employee was lawfully driving motor vehicle registration No. KBP 840Q [hereinafter referred to as 'the Appellant's vehicle'] along the Northern bypass when the Respondents, while driving the motor vehicle KBH 645Y [hereinafter referred to as 'the Respondents' vehicle'], from the opposite direction, negligently rammed into the Appellant's motor vehicle thereby causing extensive damages thereto. Cumulatively, the Appellant sought to recover Kshs. 1,185,630/- being the pre-accident value of the vehicle, loss of use, towing charges, assessment costs and the motor vehicle search fees.

3. In its Statement of Defence dated 11th April 2023, the Respondents denied owning the Motor vehicle Registration No. KBH 645Y. They put the Appellant to strict proof on the claim of negligence as well as the damages claimed. The Respondents posited that if the accident did occur, it was as a result of the negligence on the part of the Appellant. They asserted, among other things, that the Appellant's employee failed to keep to its lawful lane, failed to heed to presence of other motorists and failed to control the motor vehicle as expected of a competent driver.

4. In her judgment, the learned Trial Magistrate was of the finding that there was no proof of negligence on the part of the Respondents and that it was immaterial that they (the Respondents) failed to call evidence. She dismissed the suit.

The Appeal:

5. Dissatisfied with the decision, the Appellant lodged a Memorandum of Appeal dated 3rd October 2024. It sought to have this Court set aside the entire judgment of the trial Court on a prolix 15 grounds as hereunder;

    1. That the learned trial magistrate erred in law and in fact by failing to properly scrutinize and evaluate the pleadings, evidence and submissions tendered therein by the appellant and correctly relating the same to the evidence therein, thereby failing to arrive at a fair reasonable decision.

    2. That the learned trial magistrate erred in law and in fact by subjecting the Appellant's case to a standard of proof beyond reasonable doubt and dismissing the Appellant's suit with costs on the basis that it had not proved liability against the 1st and 2nd Respondents on a balance of probabilities.

    3. That the learned trial magistrate erred in law and in fact in failing to find that the evidence of a police abstract and motor vehicle assessors report tendered therein established and or proved to the required standard negligence on the part of 1st and 2nd Respondents.

    4. That the learned trial magistrate erred in law and in fact in disregarding the evidence of the motor vehicle assessor report which was not rebutted.

    5. That the learned trial magistrate erred in law and in fact in disregarding the photographs attached to the motor vehicle assessor report showing the accident scene and basing her finding on the failure of the Appellant to produce an eye witness.

    6. That the learned trial magistrate erred in law and in fact by failing to take into account the fundamental principle in the doctrine of res ipsa loquitor as pleaded by the appellant.

    7. The learned trial magistrate misdirected herself by failing to acknowledge that the police abstract produced was prima facie evidence of the occurrence of the accident that was not rebutted.

    8. That the learned trial magistrate erred in law and in fact by failing to appreciate the evidence of the police officer who testified in court that the Respondent were to blame for the occurrence of the accident.

    9. That the learned trial magistrate erred in law and in fact by failing to take into consideration the appellant's evidence on the occurrence of the accident which was not challenged nor rebutted by the 1st and 2nd Respondents.

10. The learned trial magistrate erred in law and fact by writing a judgment that was not based on proper evaluation and consideration of pleading, evidence on record, submissions of the Appellant and relying on the 1st and 2nd Respondent averments in their statement of defence whose contents were mere denials.

11. That the learned trial magistrate erred in law and in fact by disregarding the appellant's testimonies and or evidence when the same was not rebutted by failure on the part of the Respondents to call any defence witness nor produce any supporting documentary evidence.

12. That the learned trial magistrate erred in law and in fact by failing to award the Appellant general and special damages despite the Appellant having proved its case to the required standard.

13. That the learned trial magistrate erred in law and in fact in finding fault on the appellant's failure to produce an eye witness whereas the occurrence of the accident and involvement of the said motor vehicle was not challenged nor disputed.

14. That the learned trial magistrate erred in law and in fact in finding that there was occurrence of an accident and failing to apportion liability.

15. That the learned trial magistrate's decision was arrived at in cursory and perfunctory manner in consideration of the irrelevant factors while leaving out the relevant one ending up dismissing the Appellant's case.

6. The Appellant sought for the appeal to be allowed, the judgment be set-aside and the suit be allowed. The Appellant, however, did not file submissions.

The Respondents' case:

7. The Respondents opposed the appeal through written submissions dated 24th March 2025. It identified the issues for determination as whether the Appellant proved its case and costs. On the first issue, the Respondents concurred with the trial Court's position that the circumstances of the accident had not been elucidated and as such, the Appellant failed to lay a basis upon which the police held the Respondents responsible. While referring to the evidence of PW1 [who was the Appellant's legal officer], the Respondents submitted that the witness was not aware of how the accident occurred and had not, in his written statement, indicated how it occurred. The Respondents further indicated that the driver of the Appellant's motor vehicle was not called to testify in order to shed light on the circumstances of the accident and that the Investigating officer did not testify. Another police officer did so on his behalf who neither witnessed the accident nor visited the scene of the accident.

8. The Respondents were categorical that a police abstract, as has been observed by various authorities, among them *Kennedy Nyaoga - v- Bash Hauliers* (2016) eKLR and *Wangongu - v- Kithinji & 2 Others* (2024) KEHC 6272 (KLR), is not proof that an accident occurred. It was their case that it only speaks to a report of an accident being made at the police station. The Respondents argued that the Appellant had failed to meet the dictates of Section 107(1) of the *Evidence Act*.

9. As regards the application of the doctrine of res ipsa loquitor, the Respondents submitted that the Appellant had the duty of proving negligence against them before they could be called to disprove anything. But since no evidence was adduced, the doctrine was not available. It was its case that the Appellant's driver was not called to testify and his statement could not be used in support of the its case. In the end, the Respondents prayed that the appeal be disallowed with costs.

Analysis:

10. The only issue for determination is whether the appeal is merited. As a first appellate Court, it is the duty of this Court to re-assess and reanalyse the evidence afresh, with a view to arriving at its own independent findings. In *Abok James Odera t/a AJ Odera & Associates - v- John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR it was observed: -

> ... This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority v Kustron (Kenya) Limited* [2000] EA 212.

11. Kennedy Waithaka was PW1. He adopted his written statement dated 18th October 2022 as his evidence where he stated that on 20th October 2019, the Appellant instructed its driver, Michael Mwaura Karanja, to attend to their vehicle which had broken down near Rironi area of Kiambu County. It was his statement that the said Michael Mwaura Karanja was involved in an accident along Northern Bypass near Thome Catholic Church and was reported to Kasarani Police Station. Consequently, they hired towing services to take the vehicle to the Police Station and instructed Bright Loss Assessors to do an assessment of the damage.

12. The witness stated that the accident compelled them to hire alterative vehicle for eighteen days at a total cost of Kshs. 72,000/=. On cross-examination, PW1 admitted that he did not witness the accident but all he had were the receipt of Kshs. 5,000/- and one for Kshs. 2,500/- and loss of user of Kshs. 72,000/-.

13. Alex Osoro, was PW2. He claimed that he was the investigating officer. It was his evidence that the Respondent's motor vehicle was to blame for the accident. On cross-examination, he conceded that he was not the investigating officer. He simply had read the Police Abstract. He admitted that he neither had evidence to show how the accident occurred nor had he visited the scene.

14. The Appellant's case was predominantly hinged on the tort of negligence and the principle of res-ipsa loquitor. The tort of negligence has four ingredients to it namely; duty of care, a breach of that duty, injury or loss sustained as a result of breach and the fact that it was reasonably foreseeable that the breach would cause injury/loss. For a party to successfully recover loss incurred or get compensation for injury as a result of tort of negligence, he bears the duty, pursuant to section 107 of the *Evidence Act*, to demonstrate, on a balance of probability, that the facts, circumstances and evidence point unerringly to a Defendant's negligent conduct.

15. Just like the trial Court, this Court is unable to assess who was to blame for the accident. There was no eye witness. The Appellant's driver, personally involved in the accident, did not testify. The Investigation Officer did not witness the accident. He only gave evidence as presented in the Police Abstract, which as correctly submitted by the Respondents is merely a report to the police station on the occurrence of an accident. Similarly, the evidence of PW3, assessor singularly to the cost of repairs. Not to the person responsible for the accident.

16. That an accident occurred does not simply operationalize the doctrine of res-ipsa-loquitor. It first must be shown that there was negligence and that were it not for it, loss or injury would not have occurred. The doctrine operates on premise that the duty to prove negligence was discharged. The doctrine allows the Court to make a reasoned inference or presumption that taking the circumstances cumulatively, the accident would not have occurred but for the conduct of a defendant.

17. In the book by *Winfield & Jolowicz on Tort* 17th Edition the learned author discussed the doctrine thus;

> .... This has traditionally been described by the phrase *res ipsa loquitur* – the thing speaks for itself. .... Its nature was admirably put by Morris L. J. when he said that it:
>
> ... Possesses no magic qualities, nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin. When used on behalf of a plaintiff it is generally a short way of saying:
>
> I submit that the facts and circumstances which I have proved establish a prima facie case of negligence against the defendant ...' There are certain happenings that do not normally occur in the absence of negligence and upon proof of these a court will probably hold that there is a case to answer.
>
> The essential element is that the mere fact of the happening of the accident should tell its own story so as to establish a *prima facie* case against the defendant. This is commonly divided into two parts on the basis of Erle C.J.'s famous statement in *Scott v London and St. Katherine Dock Co*:
>
> There must be reasonable evidence of negligence, but when the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

18. In the circumstances of this case, and just like the trial Court, this Court is unable to attribute negligence, as claimed, to the Respondents. The aspect of liability was not proved.

19. Consequently, the appeal fails in its entirety and is hereby dismissed with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Ochieng, Learned Counsel for the Respondent.

Mr. Waweru, Learned Counsel for the Appellant.

Amina/Michael – Court Assistants.