



**Tsuma & another v Muluma (Civil Appeal 41 of 2021)
[2024] KEHC 2874 (KLR) (19 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL 41 OF 2021
JR KARANJA, J
MARCH 19, 2024**

BETWEEN

OBED TSUMA 1ST APPELLANT

OCHAMO GODFREY 2ND APPELLANT

AND

ALEX JUMBA MULUMA RESPONDENT

JUDGMENT

1. The appeal is against the decision of the Principal Magistrate of Kapsabet in Civil Case No. 95 of 2016 in which the Appellants were the Defendants having been sued by the Respondent who was the Plaintiff for damages arising out of a road traffic accident which occurred on 15th August 2015 along the Kapsabet-Lessos Road.
2. It was pleaded that the first Appellant was the owner of a motor vehicle Registration No. KBZ 288B Hino Bus which was on the material date being driven by the second Appellant when it was involved in an accident in the manner of losing control and rolling thereby causing bodily injuries to the Respondent who was among the several passengers in the bus. He therefore instituted this suit against the Appellants praying for general damages for pain and suffering, special damages and costs of the suit.
3. The Appellants denied the claim and in their statement of defence contended that if indeed the accident occurred, then it was caused by the Respondent's reckless, negligent and/ or careless acts or omissions.
4. After the hearing of the claim by the trial court the Appellants were found liable for the accident and ordered to compensate the Respondent in the sum of Kshs. 200,000/- being general damages for pain and suffering.

The Respondent was also entitled to costs of the suit and interest at court rates till payment in full.



5. Being dissatisfied with the court's decision, the Appellants preferred seven (7) grounds of appeal as set out in the memorandum of appeal dated 23rd December 2020.

The appeal is on both liability and quantum of damages and was canvassed by way of written submission which were duly filed by both parties through Kimondo Gachoka & Company Advocates and Rioba Omboto & Company Advocates, respectively.

6. This court, considered the appeal on the basis of the supporting grounds and the rival arguments or submissions filed by the parties. Its cardinal duty was to reconsider the evidence and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (See, *Selle Vs. Associated Motor Boat Company and Others* (1968) EA 123).
7. Briefly, the claimants case was that the Claimant/ Respondent Alex Jumba Mulumba (PW1) had on the material date boarded the ill-fated motor vehicle travelling from Nairobi to Kaimosi when it was involved in an accident on reaching Lessos. As a result, he suffered injuries to his shoulder, back and leg and was in the first instance treated at a local hospital. He was later issued with a police P3 form and a police abstract after the accident had been reported to the police for necessary action.
8. The police, through PC Christopher Kosgei (PW2), investigated the accident and gathered that due to the driver's careless driving the ill-fated bus lost control, veered off the road and landed in a ditch thereby causing most passengers to sustain injuries. These included the Plaintiff. The vehicle's driver was charged with a traffic offence but acquitted by the court
9. The Plaintiff was examined by Dr. Joseph Sokobe (PW3) who completed and signed the necessary medical report (P. Exhibit 5). Indicating that the Plaintiff suffered soft tissue injuries for which he was expected to fully recover. The injuries consisted of blunt trauma on the right shoulder and blunt injuries on the upper back and right ankle joint.
10. A Clinical Officer at Kapsabet County Referral Hospital, Danson Gichongi (PW4), confirmed the injuries on the basis of the P3 form prepared by his colleagues and the accompanying treatment notes (P. Exhibit 1 and 3).

The Appellants did not lead any evidence in support of their defence but called the Base Commander at Kapsabet Police Station, CIP Peter Kinuthia (DW1), as their only witness.

11. His, (DW1) evidence was confined to disowning some of the claimants as having been passengers in the ill-fated bus. These included the claimant herein. The Base Commander could however not establish that the alleged false Claimants were charged with criminal offences related to fraud. He admitted that he did not carry out investigations in this matter neither did he issue any police abstract. He did not also produce the occurrence book (O/B) to show that the names of the false claimants were not reported therein.
12. The trial court considered the foregoing evidence and the parties final submissions to arrive at the conclusion that the Appellants/ Defendants were to blame for the accident; hence fully liable to the Plaintiff/ Respondent in damages.

The Plaintiff was therefore awarded Kshs. 200,000/- general damages for pain and suffering.

13. Basically, what emerged as the main issue for determination in this matter was the question of liability on which grounds one (1) to six (6) of the appeal are based.

From the evidence the occurrence of the accident was not substantially or at all disputed. This was clearly established by the Plaintiff's evidence as corroborated by the Traffic Police Officer who investigate the accident (PW2).



Also not substantially disputed was the Plaintiffs presence in the ill-fated bus as a lawful passenger.

14. Although the Defendants alleged that the claim was false for the reason that the Plaintiff was not a passenger in the material bus at the material time they did not provide credible and sufficient evidence to disprove the fact that the Plaintiff was indeed a passenger in the bus or that he was injured as a result of the accident and what he provided as medical treatment notes or reports were false documents.
15. The evidence of the base commander (DW1) was insufficient for that purpose and unworthy of belief as he was not involved in the investigations of the accident and could not establish that the alleged false claimants including the Plaintiff herein were indeed false claimants to the extent that they were charged with Criminal Offences in relation thereto and adjudged guilty by a court of law.
16. Other than the foregoing, there was no evidence whatsoever from the defendants to disprove the fact that the accident was a direct consequence of the second Defendant's negligence, recklessness and/or carelessness in the manner of driving the ill-fated vehicle on that material date thereby causing the maternal accident, which led to the Plaintiff and other passengers suffering bodily injuries for which they were entitled to general damages from the Defendant for pain, suffering and loss of amenities.
17. The trial court was correct in holding the Defendants fully liable for the consequences of their negligent acts and/ or omissions.

This appeal is therefore devoid of merit of the question of liability. Grounds one (1) to six (6) thereof are thus overruled and dismissed by this court.

18. The Respondent was awarded general damages in the sum of Kshs. 200,000/-. In so doing, the trial court considered the degree of injuries suffered by the Plaintiff and the authorities cited by both sides relating to similar injuries.

In this court's opinion the amount was adequate and reasonable compensation for the pain and suffering endured by the Respondent as a result of the accident.

19. Ground seven (7) of the appeal relates to quantum of damages and cannot on the basis of the foregoing observations be sustained for failure by the appellant to demonstrate that the trial court acted on wrong principles of law to award the amount or that it was inordinately excessive in the circumstances of the case.
20. In sum, this appeal is devoid of merit and is hereby dismissed with costs to the Respondent.

Ordered accordingly.

DELIVERED AND DATED THIS 19TH DAY OF MARCH, 2024

J. R. KARANJAH,

JUDGE

hcca no. 41 of 2021 judgment	Page 0
------------------------------	--------

