



Nairobi Logistics Construction Company Ltd v Obondi (Civil Appeal E092 of 2022) [2024] KEHC 4798 (KLR) (25 April 2024) (Judgment)

Neutral citation: [2024] KEHC 4798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E092 OF 2022**

KW KIARIE, J

APRIL 25, 2024

BETWEEN

NAIROBI LOGISTICS CONSTRUCTION COMPANY LTD APPELLANT

AND

ERICK OCHIENG OBONDI RESPONDENT

(Being an Appeal from the judgment and decree in Mbita Senior Resident Magistrate's SRMCC No.11 of 2018 by Hon. Nicodemus N. Moseti – Senior Resident Magistrate)

JUDGMENT

1. Nairobi Logistics Construction Company Ltd, the appellant, was the defendant in Mbita Senior Resident Magistrate's SRMCC No. 11 of 2018. The respondent sued for a claim of general and special damages following a road traffic accident involving motor vehicle KCD 835L and the respondent, a motorcyclist. The respondent sustained injuries. The learned trial magistrate blamed both parties and apportioned liability at 50:50. The respondent was awarded Kshs. 1,500,000 in general damages and Kshs. 350,000.00 being costs for future medication before factoring in contributory negligence.
2. The appellant was aggrieved by the judgment and filed this appeal through Nancy Nyarige & Company Advocates. He raised the following grounds of appeal:
 - a. The learned trial magistrate misdirected himself on several matters of law and fact.
 - b. The learned trial magistrate erred in the law of evidence in deciding the case against the weight of evidence and holding that the respondent had proved his case on a balance of probability by finding in favour of the plaintiff despite admitting in his judgement that he did not know who to believe.



- c. The learned trial magistrate erred in fact and law by finding for the plaintiff despite noting that it could not make its independent finding on who was to blame for the accident as the plaintiff had failed to present and/or produce a sketch map.
 - d. The learned trial magistrate erred in law by failing to exercise his jurisdictional powers to call upon the police to produce the sketch map, which would have enabled him to arrive at a concise judgment.
 - e. The learned trial magistrate erred in law and, in fact, in apportioning liability equally (50:50) in favour of the respondent, yet the respondent, in presenting his case, did not meet the threshold required for providing his case as required by the law of evidence.
 - f. The learned trial erred in law and, in fact, by failing to take into consideration that the appellant's evidence and that of his witnesses on the occurrence of the accident were not challenged by the respondent.
 - g. The learned trial magistrate erred in law of evidence in failing to appreciate the evidence of the police officer who testified in court and stated that the respondent was to blame for the accident.
 - h. The learned trial magistrate erred and misdirected himself in law and, in fact, in his assessment of damages awardable to the respondent that were inordinately high in the circumstances.
 - i. The learned trial magistrate erred in law and, in fact, by disregarding and/or ignoring the evidence adduced, exhibits produced, and submissions filed and arriving at a wrong conclusion.
3. The respondents opposed the appeal through the Kuke & Company Advocates firm. The respondent Opposed the appeal and contended that it lacked merits.
 4. This Court is the first appellate court. I am aware of my duty to evaluate all the evidence on record, bearing in mind that I had no advantage of seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
 5. The respondent contended that motor vehicle KCD 835L hit his motorcycle from the rear. He conceded that he was not wearing a reflective jacket as required by law. On his part, the driver of the motor vehicle KCD 835L testified that he suddenly saw the motorcyclist and had no time to evade him.
 6. The accident occurred at about 7.30 p.m. The respondent contributed significantly to the accident by failing to wear a reflective jacket that could have made him visible to other motorists. I am, therefore, persuaded to interfere with the learned trial magistrate's finding on liability. I set aside his finding and hold the respondent 80 per cent liable.
 7. The appellant contended that the award to the respondents was inordinately high. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs Khan* [1981] KLR 349 on page 356, Law JA stated:

...an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low.



8. As a result of the accident complained of, the respondent sustained the following injuries:
- a. Displaced fracture of the distal radial metaphysis with deformity.
 - b. Ulna styloid process fracture.
 - c. Fracture of the right femur midshaft.
 - d. Fracture of the right radial ulna.
 - e. Multiple injuries on the right femur/tibia.
 - f. Swollen forehead.
 - g. Neck injury and tenderness.
 - h. Loss of consciousness.
 - i. Back injuries.

He was awarded Kshs. 1,500,000.00 for these injuries.

9. At the trial, the appellant opined that the respondent was not entitled to any award and did not propose anything quantum. The respondent proposed Kshs. 2,000,000.00 and relied on the decision in *Millicent Atieno Ochuonyo v Katola Richard* 2012 [2015] eKLR. The plaintiff, who sustained pelvic injuries with fracture of the right pubic ramus and diastasis of the pubis symphysis, was awarded Kshs.2,000,000.
10. The injuries the respondent sustained are more severe than in the cited decision. There are no reasons, therefore, to make me interfere with the award.
11. Since the appeal has partially succeeded on liability, the appellant will be entitled to half the costs in the trial and this court.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF APRIL 2024

KIARIE WAWERU KIARIE

JUDGE

