



## HIGH COURT OF KIRIBATI

*Civil Appeal N° 21/2019*

**BWEBWETAKE RAWEITI**

*Appellant*

**v**

**KABUREE TEMARITI**

*Respondent*

*Angitonu David for the appellant  
Banuera Berina for the respondent*

*Date of hearing: 18 October 2019  
Date of judgment: 22 October 2019*

### **JUDGMENT**

- [1] In Kiritimati Magistrates' Court civil case 1/19, the respondent sued the appellant for the cost of repairs to his truck following a collision with the appellant's motorcycle. The respondent claimed \$1980.90 in damages plus \$105 in court fees. The appellant resisted the claim.
- [2] The trial proceeded on 23 January 2019. The respondent testified that, on the day in question, he was driving his truck. The road was narrow, such that it would be difficult for 2 vehicles to pass. The respondent saw the appellant's motorcycle approaching. He stopped the truck. He estimated that the motorcycle was travelling towards him at 60 kilometres per hour – too fast for the conditions. The motorcycle did not stop, and collided with the front of the truck, cracking the truck's windscreen. Two other witnesses were called by the respondent – Nabuaka Tebuangui, a police officer who attended the scene of the collision, and Benaia Teirei, another police officer who inspected both vehicles after the collision. Neither actually witnessed the collision. Nabuaka expressed the view that, had the appellant's motorcycle been travelling at a reasonable speed then it should have been able to avoid a collision. Benaia reported that, while the rear brakes on the appellant's motorcycle were fine, the front brakes were not working properly. The motorcycle was so badly damaged as to be inoperable after the collision. Benaia confirmed the damage to the respondent's truck.

- [3] In reply, the appellant testified that he had not seen the respondent's truck until it was too late. He said that the respondent had not left enough room for the motorcycle to pass. He estimated that the motorcycle's speed at the time was about 40 kilometres per hour.
- [4] The Single Magistrate gave judgment on 29 January 2019. She found for the respondent and awarded him the full amount of damages claimed.
- [5] The appellant paid the filing fee for an appeal on 26 April 2019, but a notice of appeal was not filed until 3 May, after the expiration of the 3-month limit set by section 66(2) of the *Magistrates' Courts Ordinance* (Cap.52). Counsel for the respondent not opposing, I granted leave to the appellant under rule 33(4) of the *Magistrates' Courts Rules* to extend the time for the filing of his appeal.
- [6] Before I move to a consideration of the appellant's grounds of appeal, I want to address an apparent anomaly in the conduct of the hearing of this matter in the Magistrates' Court. From the Single Magistrate's judgment, it is clear that, at least in part, she based her decision on a view of the scene of the collision. There is nothing in the record of the trial to show that the Court attended the scene. At the beginning of the hearing in the High Court, I raised with counsel my concern that perhaps the Single Magistrate had undertaken some research on her own. This would have been inappropriate, as the Court's decision must be based on the evidence placed before it. There is nothing wrong with the Court going on site, but it must be done 'on the record', with the parties in attendance. I was informed by both counsel that the Single Magistrate's visit to the scene of the collision was something that happened in the course of the trial, and she was accompanied by the parties. For future reference, it is essential that any such site visits be recorded in the minutes, noting who was present and what (if anything) was said.
- [7] The appellant appeals on 2 grounds, the first being that there was no evidence to support the quantum of damages awarded to the respondent. The second ground asserts that the Single Magistrate failed to consider the appellant's evidence in determining liability.
- [8] On the question of liability, it is clear from the Single Magistrate's judgment that she did have regard to the appellant's testimony, but she preferred the evidence put forward by the respondent and his witnesses. Where there is conflicting evidence, it is the role of the magistrate to assess where the truth lies, on the balance of probabilities. If the Single Magistrate prefers the respondent's testimony to that of the appellant, that does not mean that she did not consider the evidence, she simply did not accept it. There was ample evidence from which the Single Magistrate was entitled to reach the conclusions she did. I see no merit in this ground.

- [9] As for the issue of quantum, I had been concerned that nowhere in the record provided to me initially had there been any evidence as to the cost to repair the damage to the respondent's truck. I pointed out to counsel for the appellant that her client had not taken issue with the sum claimed in the course of the trial, and had focussed solely on the issue of liability. She submitted that I should not assume from this that the figure was accepted by the appellant. He was not legally represented in the court below, and could not be expected to know how best to proceed. Counsel for the appellant maintained that the respondent had failed to provide any evidence to support his claim for damages. It was her submission that, even if I accepted the Single Magistrate's finding on liability, I should return the case to the Magistrates' Court for a fresh assessment as to damages, so that evidence could be called, and properly challenged.
- [10] Counsel for the respondent advised the Court that he was instructed that his client had in fact provided documentary evidence to support his claim for damages in the course of his testimony in the trial. A review of the file from the Magistrates' Court registry revealed a work order, invoice and receipt from JMB Enterprises for repairs to the respondent's truck, which support the damages claim made by the respondent. There is nothing in the minutes of the hearing to explain how the documents came to be on the court's file. It is also unclear why these papers were not provided as part of the appeal record. I asked both counsel to have their clients provide affidavits setting out what they knew about the documents and their source.
- [11] According to the appellant, he had not seen the documents before. At no time during the trial did the respondent tender any documents relating to his claim for damages. He cannot say how the documents ended up in the Court's file.
- [12] The respondent says that he gave the documents to the Single Magistrate in the course of his testimony in the trial. He says that the appellant was present in court and must have been aware of the existence of the documents, but did not ask to see them.
- [13] If the documents were tendered at the hearing the Single Magistrate has neglected to record that occurrence in the minutes. This is disappointing, but it would not be the first time that minutes of proceedings in the magistrates' court were later found to be incomplete. The lack of any reference in the minutes to the site visit is a clear indication of the Single Magistrate's lack of attention to detail in this regard. In the circumstances, it is more likely than not that the documents were tendered as claimed by the respondent. I am satisfied that evidence to support the respondent's claim for damages was provided to the Court.

- [14] Counsel for the appellant has referred me to the High Court decision of *Taiaki Irata v Airata Teemeta*.<sup>1</sup> There Millhouse CJ held that it was wrong for a Single Magistrate to rely solely on documentary evidence of the cost of repairs following a collision. In that case the defendant had admitted liability. The only issue in dispute was the amount of damages. Where there is a dispute as to quantum, then of course witnesses should be called to prove the amount claimed. However where, as is apparent in this case, there is no dispute as to the damages claimed, it is perfectly acceptable for the court to rely solely on documentary evidence.
- [15] I am satisfied that there was sufficient evidence upon which the Single Magistrate could determine the damages to be awarded. The appellant has failed on this ground as well.
- [16] Neither ground of appeal having been made out, the appeal is dismissed. The enforcement of the judgment debt (together with any accrued interest) will be a matter for the Magistrates' Court. I order that the appellant is to pay the respondent's costs, to be assessed if not agreed.

  
**Lambourne J**  
Judge of the High Court



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<sup>1</sup> [2003] KIHC 108.