

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO.149 OF 2010

ZAINABU CHEPTONUI RUTO.....APPELLANT

VERSUS

SWAN CARRIERSRESPONDENT

(Appeal from against judgment of Learned Principal Magistrate: EZRA AWINO delivered on 6-8-2010 in Kisumu CMCC No.546 of 2007).

J U D G M E N T

The deceased William Kipkurui Ruto was employed by the respondent to drive lorry registration number KAT 351N which was carrying goods between Kisumu and Mombasa. On 10/2/07 at about 10 a.m. he was found dead in the motor vehicle which had stopped at Mazeras along Mombasa-Nairobi road. He was apparently returning to Kisumu from Mombasa. He was not involved in a road accident. He was 51. When a postmortem was conducted it was found that he had died from increased intracranial pressure subarachnoid haemorrhage ischaemic due to heart disease. On 5/9/07 his widow filed a suit before the Chief Magistrate's Court at Kisumu seeking compensation from the respondent on account of breach of duty and negligence. It was alleged that the respondent had

- a. failed to provide a safe working system;
- b. exposed the deceased to danger which it knew or ought to have known; and
- c. failed to make safe the deceased's place of work.

The respondent filed a defence denying the claim. The trial court heard the matter which it dismissed with costs. It was found that no breach of duty had been shown, and neither had any negligence on the part of the respondent been proved. The appellant was aggrieved by the decision and preferred this appeal.

I agree with the trial court. The deceased did not die following a road accident. He was found dead in the vehicle. The appellant testified that she was informed that he had stopped at Mazeras to take a rest. He died from a heart condition. There was no evidence that the condition was known either to the appellant or to the respondent. The respondent was consequently not responsible for the death. The fact alone that he died while on duty and in the respondent's lorry could not make the latter liable as pleaded in the plaint. The deceased died from a heart disease and not from any act or omission, negligence or otherwise, on the part of the respondent.

These are the reasons why I find that the appeal lacks merits. It is dismissed with costs.

Dated, signed and delivered this 30th day of September, 2013.

A. O. MUCHELULE

J U D G E