



**Betty v Fanaka Merchants Limited & another (Civil Suit  
7176 of 2018) [2023] KEMC 122 (KLR) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 122 (KLR)

**REPUBLIC OF KENYA**  
**IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**  
**CIVIL SUIT 7176 OF 2018**  
**JP ADUKE, SRM**  
**MAY 9, 2023**

**BETWEEN**

**ESMOND LILOVA BETTY ..... PLAINTIFF**

**AND**

**FANAKA MERCHANTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE CHEGE MAINA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants after he sustained injuries following a road traffic accident on 19<sup>th</sup> March 2017 along Naivasha Road in Nairobi. In the plaint on record, the plaintiff avers he was a lawful passenger aboard KAT 519 L living his best life when the Defendants either acting as servant/agent/authorized driver of motor vehicle registration number KAT 519L negligently and carelessly drove the said motor vehicle and while speeding abruptly and without due care caused it to lose control and knock down the Plaintiff while the Plaintiff was alighting causing the Plaintiff to suffer injuries.
2. The Plaintiff blames the Defendant and their agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendant.
3. The particulars of injuries sustained by the Plaintiff are captured in para 6 of the Plaintiff while the particulars of alleged negligence are captured in para 6 of the Plaintiff. The Plaintiff prays for general damages for pain and suffering and loss of earning capacity, special damages, future medical costs, costs of the suit and interest at court rates.
4. Return of Service on Record shows that the defendants were served with the suit papers. The defendants entered appearance. The hearing proceeded before Hon Gitonga, who has since moved to the Small Claims Court. The defence case was closed by the court in their absence. Parties filed submissions. The issues for determination before this court are two:



1. Liability
2. Quantum

**Liability:**

5. I have seen a copy of the abstract from police records dated 27<sup>th</sup> July 2017 that does not blame either of the defendants for the accident herein. I have also noted that the names of the injured persons on the said abstract from police records is different from the names of the plaintiff herein. Regrettably, there appears to be no copy of motor vehicle search records linking either of the defendants herein as at the date of the road traffic accident or thereabouts. In the absence of such congruence and noting the provisions of section 8 of the *Traffic Act*, I am unable to ascertain the issue of liability on the part of the defence. Accordingly, I find the defendants herein not liable for causing the alleged road accident. I have relied on section 8 of the *Traffic Act*, Cap 403 Laws of Kenya and the reasoning of the court in Wellington Nganga Muthiora vs Akamba Public Road Services & Another[2010] EKLR.

**Quantum**

6. Having found as above on the issue of liability, I find the suit unmerited, and dismiss the same. I make no award on costs.

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY THIS 09<sup>TH</sup> MAY 2023 IN THE ABSENCE/PRESENCE OF THE PARTIES AT 12.30PM.**

**In the presence of :**

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff- .....

(Name, Signature, Date)

3. For the Defence: .....

(Name, Signature, Date)

