



**Gakui v Wambui & another (Civil Suit 5552 of 2019)
[2023] KEMC 68 (KLR) (27 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 68 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CIVIL SUIT 5552 OF 2019
JP ADUKE, SRM
MARCH 27, 2023**

BETWEEN

NDURUMO WA GAKUI PLAINTIFF

AND

JOSEPHINE WAMBUI 1ST DEFENDANT

KAGUNYI JOHN 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 30th April 2016 along Eastern Bypass in Nairobi. In the plaint filed on 29th July 2019, the plaintiff avers his driver Edwin Busolo was driving motor vehicle registration number KBQ 239P when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KBP 567W negligently and carelessly drove the said motor vehicle, caused it to ram into KBQ 239P from the front causing damage to the plaintiff's car. The Plaintiff alleges that the 2nd Defendant is vicariously liable for the tort of negligence of his authorized driver, the first defendant.
2. The Plaintiff blames the Defendants 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 Defendants.
3. The particulars of damage occasioned to the Plaintiff's car are captured in para 8 of the Plaint while the particulars of alleged negligence are captured in para 5 of the Plaint. The Plaintiff prays for special damages, costs of the suit and interest at court rates. The plaint does not state whether or not this suit is brought under the principle of subrogation of rights.
4. Return of Service on Record shows that the defendants were served with the suit papers. The Defendants entered appearance and filed a defence. The plaintiff called four witnesses who testified on oath. Pw1, PW2, PW3 and PW4 adopted their witness statements on file as their evidence in chief and Defence Counsel tested this evidence on cross-examination. The defence called one witness who



testified and whose evidence was also tested in cross-examination. Parties filed and exchanged written submissions.

5. The issues for determination before this court are liability and quantum:

1. Liability

With respect to liability, I have seen a copy of the Police Abstract on file which blames the driver of motor vehicle KBP 567W for causing the road accident herein. I have also seen a copy of the copy of Motor Vehicle Copy of Records dated 13th July 2019 search records confirming the identity of the owner of the motor vehicle KBP 567W as Leakey Wahome Mwangi and the previous owner as Thumbi Gitonga. I note that the alleged road traffic accident happened on 30th April 2016. I have noted that neither the 1st Defendant's name nor the 2nd Defendant's name appears in the copy of search records produced in evidence before this court. According to the laws of Kenya, registration is the conclusive proof of ownership of a motor vehicle. In the absence of congruence between the police abstract and a copy of the motor vehicle copy of records showing the registered owner as at the date of the road traffic accident herein, I find the defendants not liable.

For the avoidance of doubt, in the absence of any further supporting proof of ownership as at the date of the accident or thereabout, I am unable to ascertain and apportion liability. In the circumstances, I find that the defendants are not liable. 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.

2. Quantum

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

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY THIS 27TH MARCH 2023 IN THE PRESENCE OF THE PARTIES AT 12PM.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

In the presence of:

Counsel for the Plaintiff - Wekesa

For the Defence - Mungai

