



**Surestep Systems & Solutions Limited v Kihumba & another (Civil Suit 4521 of 2019) [2023] KEMC 86 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 86 (KLR)

**REPUBLIC OF KENYA**  
**IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**  
**CIVIL SUIT 4521 OF 2019**  
**JP ADUKE, SRM**  
**MARCH 22, 2023**

**BETWEEN**  
**SURESTEP SYSTEMS & SOLUTIONS LIMITED ..... PLAINTIFF**  
**AND**  
**STEPHEN KIHUMBA ..... 1<sup>ST</sup> DEFENDANT**  
**JONSU ROAD & BRIDGES COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 26<sup>th</sup> February 2018 at Lumumba Drive in Nairobi. In the plaint filed on 24<sup>th</sup> June 2019, the plaintiff avers he was driving motor vehicle registration number KCG 698Y when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KBT 630H negligently and carelessly drove the said motor vehicle, caused it to ram into KCG 698Y causing damage to the plaintiff's car.
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 7 of the Plaint while the particulars of alleged negligence are captured in para 9 of the Plaintiff. The Plaintiff prays for special damages, costs of the suit and interest at court rates. The plaintiff's insurer claims against the Defendants 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 adopted his witness statement on file as his evidence in chief and Defence Counsel tested this evidence on cross-examination. The defence did not show up on the date of the hearing. There was proof of service on record confirming service with the hearing notice. Parties filed and exchanged written submissions.



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

### **1. Liability**

6. With respect to liability, I have seen a copy of the Police Abstract on file which blames the driver of motor vehicle KBT 630H for causing the road accident herein. I have also seen a copy of the copy of Motor Vehicle Copy of Records dated 23 November 2018 search records confirming the identity of the owner of the motor vehicle KBT 630H as the Family Bank Limited and John Waithanji Mwangi. I note that the alleged road traffic accident happened on 26<sup>th</sup> February 2018. I have noted that the 2<sup>nd</sup> Defendant is a company. I have not seen on file any CR12 from the Registrar of Companies confirming that the aforementioned registered owners of Motor Vehicle KBT 630H are the owners of the said 2<sup>nd</sup> Defendant. According to the laws of Kenya, registration is the conclusive proof of ownership of a motorvehicle. 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.
7. 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**

8. 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 22<sup>ND</sup> MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 12PM.**

In the presence of :

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff- .....

(Name, Signature, Date)

For the Defence: .....

(Name, Signature, Date)

