**Makau and others v Attorney-General and another**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 11 July 1974

**Case Number:** 237/1972 (21/75)

**Before:** Simpson J

**Sourced by:** LawAfrica

*[1] Limitation of Actions – Proceedings against Government – Under Fatal Accidents Act – Must be*

*filed within* 12 *months – Public Authorities Limitation Act* 1974*, s.*3 (1) (*K.*)*.*

*[2] Master and Servant – Vicarious liability – Government servant entitled to mileage allowance –*

*Government not liable for servant’s negligence.*

**Editor’s Summary**

The second defendant was a government servant who was driving his own car in circumstances in which he would have been entitled to a mileage allowance from government.

In an accident a passenger in the car died.

The plaintiffs sued in an action started more than 12 months after the accident, and contended that the

of the Public Authorities Limitation Act did not apply to actions under the Fatal Accidents Act.

**Held –**

(i) no cause of action was shown against government;

( ii) action against a government officer under the Fatal Accidents Act must be brought within 12

months (*Williams v. Mersey Docks & Harbour Board* (3) and *Gawley v. Belfast Corporation* (4)

followed; *Venn v. Tedesco* (7) not followed).

First defendant struck out.

**Cases referred to Judgment:**

(1) *Seward v. Vera-Cruz* (1884), 10 A.C. 59; [1881-5] All E.R. Rep. 216.

(2) *Markey v. Tolworth Joint Isolation Hospital*, [1900] 2 Q.B. 454.

(3) *Williams v. Mersey Docks & Harbour Board*, [1905] 1 K.B. 804.

(4) *Gawley v. Belfast Corporation*, [1908] 2 I.R. 34.

(5) *British Columbia Electric Ry. v. Gentile*, [1914] A.C. 1034.

(6) *Nunan v. Southern Ry*., [1924] 1 K.B. 2