



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CIVIL APPEAL NO. 305 OF 2008**

**THOMAS BEGI ..... APPELLANT/ ORIGINAL  
DEFENDANT**

**VERSUS**

**SAMWEL NJOROGE KIRO ..... RESPONDENT/ ORIGINAL  
PLAINTIFF**

*(Being an appeal from the Judgment and decree of Hon. F. Ileri Esq, Resident Magistrate on 14<sup>th</sup> May 2008 in CMCC No. 2232 of 2001 at Milimani Commercial Courts at Nairobi)*

**J U D G M E N T**

**I. PROCEDURE**

1. This is a material loss claim.
2. A motor vehicle collision occurred on the 29<sup>th</sup> May 1999 at 7.00 am or thereabouts along the Jogoo Road Nairobi. The original plaintiff was driving motor vehicle registration KAJ 771B when the original defendant, driving motor vehicle registration KAC 608U, came and knocked the original plaintiff's vehicle to the side.
3. The parties agreed that the original defendant would be liable and meet the costs and repairs. An agreement to this effect was signed. There was therefore no report made to the police on the non injury accident.
4. The original defendant did not keep his word. The original plaintiff filed suit against him as the driver/registered owner. On further investigations, it transpired that one Pauli N. Ongondi was the actual registered owner of the vehicle. She was to be enjoined to the suit. The Hon. Trial Magistrate declined this prayer by the original plaintiff because she was being enjoined out of the limitation of action time of 3 years.

5. The suit proceeded against the original defendant.
6. The Hon. Trial Magistrate found the original defendant to be liable for the accident and entered judgment against him at 100%. The material loss claim was Ksh. 127,774/=
7. Being dissatisfied with this, the said original defendant then appealed against the decision delivered on the 14<sup>th</sup> May 2008.

## II APPEAL

8. The said memorandum of appeal stated that the Hon. Magistrate erred in law and fact:

**8.1 ... by finding the defendant liable.**

**8.2 ... by finding the ownership of the vehicle belonged to the defendant.**

**8.3 ... by finding the alleged accident was proved.**

**8.4 ... by awarding special damages not proved**

**8.5 ... by failing to consider submission.**

9. The appellant prayed that the appeal be allowed. The suit dismissed in favour of the applicant

10. The main contention raised by the appellant was the issue of a police abstract form. That this was never produced to the court and as such was fatal to the case.

11. The cases relied on being:

i) **Thuranira Karauri**

vs

**Agnes Ncheche**

(CA 192/96) Nyeri

ii) **Wellington Nganga Muthire**

Vs

**Akamba Public Road Services Ltd**

(CA 78/2003) Kericho

iii) **Harrison Mlinga**

Vs

**The Attorney General**

(HCC 2610/93) Nbi

12. In reply, the respondent original defendant stated that the said Hon. Magistrate came to the correct conclusion.

## III OPINION

13. The case before the subordinate case is unique. This is because after the accident occurred, the original defendant admitted in writing that he was at fault.

14. Once the defendant had entered appearance and filed defence, the original plaintiff should have at once requested for judgment on admission. There would have been no need to further proceed with this case to full hearing.

15. It is on the basis of this admission that the requirement of a police abstract does not arise in this case.

16. I would therefore find that the Hon. Magistrate came to the correct conclusion in awarding the original plaintiff judgment.

17. I would therefore dismiss this appeal with costs to the respondent original plaintiff in the subordinate court and in this appeal.

DATED THIS 19<sup>TH</sup> DAY OF DECEMBER 2011 AT NAIROBI

### **Editorial Summary**

1. *Civil Appeal*

2. *Subject of Subordinate Court Case*

#### *TORT*

2.1 *Material loss claim*

2.2 *Motor vehicle collision between two vehicles*

a) *Motor vehicle registration No. KAJ 771b*

b) *Motor vehicle registration No. KAC 608U*

2.3 *Suit filed against*

i) *Thomas Bigi:- 1<sup>st</sup> defendant original*

*driver*

ii) *Attempt to enjoin registered owner*

*Pauline N Ongoti declined by court on*

*grounds that injunction would mean after the*

*limitation of action.*

2.4 *Related cases /unrelated cases*

*HCC 3689/97*

*CA 746/02*

*relied on.*

2.5 Plaintiff/respondent's case. There was admission by respondent original defendant.

2.6 Appellant/original defendant:-

i) No evidence established that there was an accident.

ii) No police abstract form produced fatal to case.

iii)

2.7 Trial Hon. Magistrate held:

Judgment for the respondent/ original plaintiff

Material loss of Ksh. 127,774/=

2.8 Appellant sum to be awarded should actually

be Ksh. 123,424/=

(14<sup>th</sup> may

2008)

3. Appellant original defendant appeals.

Appeal 13<sup>th</sup> May 1999

Admission 29<sup>th</sup> October 2010

Sitati J

Directions 17<sup>th</sup> October 2011

Ang'awa J

4. Memo of Appeal

Hon. Magistrate erred in law and fact:

5.1 ... Finding defendant liable

5.2 ... Ownership belonged to defendant

5.3 ... Alleged accident proved.

5.4 ... Awarding special damages not proved

5.5 ... Failing to consider submissions.

5.6 Prayed appeal allowed and suit be

dismissed.

5. Held:

Hon. Trial Magistrate came to correct

conclusion.

*Appeal dismissed*

6. *Case Law:*

- i) *Thuranira Karauri - Vs - Agness Ncheche*  
*(CA 192/96) Nyeri*
- ii) *Wellington Nganga Muchina*  
*Vs*  
*Akamba Public Road Services*  
*(CA 78/2003) Kericho*
- iii) *Harrison Mbogo – vs – Attorney General*  
*(HCC 2610/93)*

*Nbi*

7. *Advocates :*

- i) *D.M. Wambua instructed by M/s B. Mbai & Associates for appellant/original defendant*
- ii) *M W Githaga holding brief for E N K Wanjama instructed by M/s Wanjama & Co Advocates for respondent/ original pla*

**M.A. ANG'AWA**

**JUDGE**

*Advocates :*

- i) *D.M. Wambua instructed by M/s B. Mbai & Associates for appellant/original defendant*
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