



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Civil Case 52 of 1999**

**ALICE WAMBURA NJAGI.....1<sup>ST</sup> PLAINTIFF**

**NANCY GATURO.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ROBERT NJOKA.....1<sup>ST</sup> DEFENDANT**

**NICHOLAS MWANIKI.....2<sup>ND</sup> DEFENDANT**

**STEPHEN EZEKIEL NJIRU.....3<sup>RD</sup> PARTY**

**JUDGMENT**

The two plaintiffs were fare paying passengers in motor vehicle KAC 606 B owned by first Defendant and driven by second defendant on 23/12/1998. The defendants added a third party. As they traveled along Embu/Kiringari Road at Kianjai the 2<sup>nd</sup> defendant controlled/managed and drove the said motor vehicle so carelessly that the accident occurred. The first plaintiff testified as to how she entered the matatu on that day at about 3.00 p.m. at Karingari market traveling towards Embu town. The matatu was driving fast at high speed. The driver was unable to negotiate a sharp corner and the vehicle rolled. She was taken out of the vehicle by persons who were by road side. Some good Samaritan offered to take the plaintiffs to hospital. There were other passengers who were also picked up and placed in a pick up. In town they received first aid treatment.

On cross-examination the first plaintiff said they were sitting at the back and there was noise from tyres hitting the road at speed. She also said that the 2<sup>nd</sup> Defendant was charged on traffic court and convicted and fined for failure to stop and failure to report accident.

PW2 was the 2<sup>nd</sup> Plaintiff a business woman at the market. She boarded the vehicle and after traveling for a short distance the vehicle traveling at high speed rolled because the driver failed to negotiate a corner. After waiting for sometime they were picked up and taken to Robert who was to take them to hospital. These witnesses produce police Abstract Exhibit 7 which showed first Defendant as owner of the vehicle. The 2<sup>nd</sup> plaintiff admitted that first Defendant Robert Njoka was her step-brother. There is no dispute that the driver 2<sup>nd</sup> Defendant was driving the vehicle and that he was charged in a traffic court for failure to stop after accident and failing to report the accident. He was found guilty and fined.

The first Defendant was sued as owner of the vehicle but he said he had sold it to the 3<sup>rd</sup> party before the accident but that he had not caused the transfer of the vehicle to the 3<sup>rd</sup> party because the third party had not paid the purchase price. He retained the log book. Later the first Defendant repossessed the

vehicle and sold it to another person.

The evidence of the 2<sup>nd</sup> defendant the driver was that, on that day he was given the vehicle by the third party to carry passenger and in the cause of the day the accident occurred. The evidence of third party was that on that day he was working for the first Defendant, the owner of the vehicle. He admitted having given the vehicle to the driver, second defendant who used to drive for Defendant's vehicles. He himself, 3<sup>rd</sup> party, was driving another vehicle for first Defendant. He further said the sale mentioned by first Defendant was after the accident. From the above it is agreed by all defendants that an accident occurred as stated by the plaintiffs. The accident was caused by the second defendant who was driving the vehicle at the material time

On the issue of liability the allegation by the first defendant that he had sold the vehicle is not supported by law. He had not complied with the lawful requirements which prove that a motor vehicle has changed ownership (if at all). He had not complied with the provision of the Traffic Act. Again he had retained the logbook and then he alleged that he had sold the vehicle to his employee. This appears to be a clear scheme to try and avoid liability. I do not believe that evidence.

It is my finding that the vehicle belonged to the first Defendant and it was being driven by 2<sup>nd</sup> defendant as his employee agent and with his authority. I find that the third Defendant was exercising control of the vehicle on that day on behalf of the first Defendant. Therefore the first defendant was vicariously liable for the negligent driving of 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> defendant is liable 100% and the first defendant is vicariously liable as the owner of the vehicle. I find the 3<sup>rd</sup> Defendant not liable at all.

On issue of quantum I have considered the injuries suffered by both plaintiffs. I have also considered the authorities cited by the plaintiffs and the defendants. The second defendant proposals are too low to be considered the decisions were made more than 10 years ago and expenses of living have gone up tremendously. The injuries of first plaintiff include fracture and dislocation of cervical spine and soft tissue injuries in the lower back head and right ear. She was admitted in hospital for 18 days. There is continuing pain.

It is my view that an award of Shs.400,000/= is adequate compensation for pain and suffering and lack of amenities for first plaintiff.

Second plaintiff suffered injuries on left shoulder right pelvis lower back and right thigh, she has traumatic arthritis of left shoulder, the back and pelvic bone. It is my opinion that for her arthritis is a painful condition, I award her shs.300,000/= for pain and suffering and loss of amenities. Both plaintiffs claim special damages, Shs. 200/=. Police Abstract fees are printed at the back of form. Medical Reports by Dr. Ndirangu for Alice Wambura Njagi and Nancy Gatari Ileri the two plaintiffs' receipt of 1500/- dated 24/6/1999 for each plaintiff is exhibited. The total sum of Shs.3200/= is hereby awarded being pleaded and receipts shown.

Judgment is therefore entered for first plaintiff:-

General Damage for pain and suffering - Shs.400,000/=

Special Damage - Shs. 1600/=

Total - **Shs.401,600/=**

For 2<sup>nd</sup> Defendant:-

General Damage for pain and suffering - Shs. 300,000/=

Special Damage - Shs. 1600/=

Total                                **- 301,600/=**

against first and 2<sup>nd</sup> defendants jointly and severally with costs and interest at court rates. The Second Defendant shall pay the costs of third party.

Dated this 16<sup>th</sup> January, 2008.

**J. N. KHAMINWA**

**JUDGE**

**16/1/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Njuguna HB**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**