

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

Civil Suit 25 of 2005

MADLON JOELE DE VRIES

(Suing as the personal representative of the Estate of

KEPHER OCHOLA MISASA - DECEASED) PLAINTIFF

-VERSUSELDORET

EXPRESS LTD DEFENDANT

J U D G M E N T

In this case MADLON JOELE DE VRIES, the plaintiff has sued M/s Eldoret Express Ltd, the defendant seeking damages for fatal injuries caused to one KEPHER OCHOLA MISASA, the deceased.

On 22/12/2004 at about 9.00 pm, the late Kephher Ochola Misasa, who was then the Project Manager of the Pamoja Child foundation, based at Awasi was traveling to Kisumu in the motor vehicle registration number KAN 499J along Ahero - Kisumu Road. At a place known as Number Okana, he had a collision with a bus registration number KAS 040K owned by the defendant. As a result of the said accident Kephher Ochola Misasa, sustained fatal injuries from which he died instantly on the spot. On 23/3/2005, the plaintiff brought this action against the defendant's Company which was served with summons but it did not enter appearance consequently on an application by the plaintiff's counsel an interlocutory judgment was entered.

When the matter came up for formal proof, the plaintiff testified and stated that when the accident occurred, she had gone to Netherlands on maternity leave and that she only came back later on after the accident. The plaintiff called Police Constance Woba of Ahero Police Station who had visited the scene immediately after the accident. This witness who testified as PW2, and claimed that he found the bus which was heading towards Ahero parked partly on the left side of the road facing Ahero and the Toyota pick - up registration no KAN 499 J which was going to Kisumu was after the accident on left side of the road facing Kisumu. He added that the point of impact was on the right side of the road as one faces Kisumu. He added that the point of impact was 1.6 m to the right edge of the road. This witness said that before the accident, the driver of the pick - up had gone of on to the lane of the on coming vehicles and that that caused the accident. The witness said he blamed the driver of the pick - up for causing the said accident.

In the light of the evidence of PW2 who had immediately visited the scene and had carried out investigations, and although there is on record an interlocutory judgment, I would decline to hold that the defendant is to blame for the said accident. I would therefore dismiss the suit.

Dated and delivered at Kisumu this **29th day of July, 2005.**

B. K. TANUI

JUDGE

In the presence of; Mr Olago Aluoch for plaintiff

N/A for defendant

B. K. TANUI

JUDGE

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