



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CIVIL CASE NO. 79 OF 2002**

**ALEX SEME NYANYUKI..... PLAINTIFF**

**VERSUS**

**M/S AKAMBA PUBLIC ROAD SERVICES LIMITED .....  
DEFENDANT**

**JUDGMENT:**

The plaintiff ALEX SEME NYANYUKI has sued AKAMBA PUBLIC ROAD SERVICES LIMITED for special and general damages for injuries suffered in an accident which occurred on 14th November 2001 at Keroka Town. He also prays for costs.

The plaintiff (PW1) told court that on the material day at 12.30 a.m. he tried to board bus Reg. No.KAG 847X at Keroka Agip petrol station. The bus moved off suddenly before he could get in. He fell down and the rear wheels of the bus ran over him injuring him seriously. He was taken to hospital and both his legs were amputated below the knees. He said the driver drove off without any warning and therefore he was to blame for the accident.

The defendants denied that their bus was involved in the accident. JOHN MULWA (DW1) said he drove the bus alleged to be involved in the accident on the material day to Kakamega from Nairobi. The bus was then driven back to Nairobi through Kisumu.

There are no doubts that the plaintiff was involved in an accident on 14/11/01 at Keroka town and was seriously injured. The main issue however is the identity of the vehicle which was involved in the accident.

PW1 is the only witness who said it was the defendant's m/v KAG 847X which was involved in the accident. This was denied by the defendants.

After carefully and keenly evaluating all the evidence I am not satisfied that the plaintiff was able to positively identify the vehicle which injured him. It is apparent the vehicle which injured him did not stop after the accident. The plaintiff said he saw the registration number of the vehicle but I doubt this. The accident took place at night. The incident was about 500 meters from the bus stage. Plaintiff could not have been that keen to look at the vehicles registration number and memorise it. He did not know the accident was going to happen.

It also seem most likely that he was trying to board the vehicle while it was still on motion. He had said that he normally used to board vehicles at the bus stage. Could he have been left by the bus and he ran after it and tried to board? This to me looks most likely. If the bus had stopped at least the conductor would have seen the plaintiff trying to board and falling down and would have alerted the driver. PW3  
P.C. TITUS WANJALA

told court that though he was the investigating officer they did not charge the driver for there was no evidence. He said it was the plaintiff who gave them the vehicle's number. True to prove a criminal charge the degree of proof is higher than in a civil case where a party only need to prove his case on a balance of probabilities but even with that the plaintiff did not prove that it was the defendant's vehicle which injured him.

In the circumstances I find that plaintiff has failed to prove his case and dismiss it.

Seeing that plaintiff did suffer serious injuries I will order each party to bear its own costs.

It is so ordered.

**KABURU BAUNI**

**JUDGE**

**17/6/04**