



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ondenyo v Rojeh (Civil Appeal E194 of 2023)  
[2025] KEHC 6343 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E194 OF 2023  
BM MUSYOKI, J  
MAY 15, 2025**

**BETWEEN**

**CAROLINE NANGAI ONDENYO ..... APPELLANT**

**AND**

**GEORGE ROJEH ..... RESPONDENT**

*((Being an appeal from judgment and decree of Senior Principal Magistrate's Courts  
Nyando (J.M. Wekesa SPM) civil case number E041 of 2020 dated 8-11-2023))*

**JUDGMENT**

**Judgment.**

1. When this matter came for directions on 3-12-2024, this court was informed that the appeal was related to civil appeal number E195 of 2023 and the two should be heard together. The appellant has argued that the respondent in this matter sued the wrong motor vehicle, that is KCJ 7X0G instead of KCT 7X0G. I have looked at the plaint and witness statements which shows that letter 'J' was overwritten with a pen as letter 'T'. I also note that the documents produced as exhibits in the matter were in respect of motor vehicle registration number KCT 730G.
2. The respondent's submissions before the subordinate court made reference to KCT 730G. The proceedings show that the parties proceeded with the hearing on understanding that the case involved KCT 739G and not KCJ 730G especially where the parties agreed to have civil suit number E042 of 2020 to be a test suit on liability.
3. It is no doubt that the cause of action in this matter is an admitted accident which occurred on 15-11-2020 involving motor vehicle registration number KCJ 730J which in some areas is overwritten by hand as KCT 730J and motor cycle registration number KMDZ 953M. The respondent herein was a pillion passenger in the motor cycle while the rider was the respondent in civil appeal number E195 of 2023. The appellant in both cases was the appellant herein.



4. It is unlikely that the motor cycle on which the respondent was riding in was involved in two accidents with two motor vehicles at the same time and place. On 27-03-2022 when the matter appeared before the trial court the appellant's counsel told the court that the respondent would only testifying on injuries as they had agreed on liability in case No E042 of 2020. Further the proceedings of the same day show a court order allowing an amendment as prayed although it is not clear what was being amended. In these circumstances this court will proceed on assumption that the accident in issue in this matter involved motor vehicle registration number KCT 730G belonging to the appellant.
5. In her judgement dated 8-11-2023, the trial court restated that liability on the accident was decided in case number E042 of 2020 which she proceeded to adopt in her judgment. The said test suit was the subject of this court's civil appeal number E195 of 2020 in which I have already held for reasons stated therein that the respondent had not proved his case on liability against the appellant. I have no reason to depart from the judgment I have made in the other appeal which I will upload in this matter for purposes of information and details.
6. At the end, this appeal is allowed and the lower court's suit is ordered dismissed with costs. There will be no orders as to costs of the appeal.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT**

