



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIOMANI LAW COURTS**  
**CIVIL CASE NO. 1124 OF 1998**

**DONALD MWANGI MAINA ..... PLAINTIFF**

**VERSUS**

**STAGE COACH CO. LTD. .... DEFENDANT**

**JUDGMENT**

A rather young man, Donald Mwangi Maina the plaintiff in this case was waiting to travel to Nairobi from Mwirua. At the said bus stop terminals he heard the driver of a stage coach bus call out to people to board the vehicle for Ksh.100 only. He was surprised as the normal fare to Nairobi in any transportation is between 150/- to 200/- one way. He thought it was a good offer and boarded the bus.

They were ten passengers in total. He noticed that there was no bus conductor. He also admitted that he had never before seen a stage coach bus in the area. He thought it was a very good business.

As they travelled for about 20 kilometres (no one came to ask for the fare] the Bus registration number KAD 899D reached a bridge at Mwirua. The driver was unable to negotiate the bridge at such a fast pace. There was a corner before the bridge. The driver lost control and the vehicle had an accident.

It seems that the plaintiff lost consciousness and found himself at the Hospital at Muranga.

He sustained:-

- i) An abrasion on the dome of his head
- ii) Suffered a fracture of the upper end of the left tibia.

He was discharged from hospital on crutches.

The plaintiff sued the defendants Stage Coach Company Ltd.

The driver was not sued.

The defendants in their defence stated that the Plaintiff was an unlawful passenger.

The accident was inevitable and or an act of God.

The defendant called DW1, one Francis Waititu Gitira who was the then in charge of Contracts and Private Hire Portfolio. He worked for the defendants between 1988 to 1998 till his departure in August, 1998 for greener pastures. [www.kenyalawreports.or.ke](http://www.kenyalawreports.or.ke) 3

On the 27.11.95 he received an order from the British Army for the hire of 12 buses to transport soldiers from Archers Post to Nanyuki show ground.

He made arrangements for these buses to be at their destination the day before. All the buses completed their task the following day and all but one returned back to Nairobi.

The normal route would have been from Nairobi-Sagana - Nanyuki. Archers Post - Nanyuki - Nairobi.

The buses were to travel in a convoy.

It seems that vehicle registration No. KAD 899D went through Muranga area.

What this witness was therefor saying is that the driver of the said vehicle had gone off on his own frolic. He then was to return to Nairobi empty and not carry any passengers. (This explains why the plaintiff never found there to be a conductor on the bus).

The Plaintiff denied that the driver was a relative of his and was invited by him to board the bus. This point I note was not a defence nor part of the issues agreed upon.

The agreed issues can therefore be answered as follows:-

The defendant at all material time was the owner of the Motor vehicle registration KAD 899D. No proof of registration had been brought by the plaintiff from the registration of motor vehicle but DW1 confirmed that it was one of their vehicles that had been dispatched for private duties.

The plaintiff, I believe lawfully boarded the bus at the invitation of the driver. He did this in good faith and tempted at the very good offer given for the fare of 100/- instead of 200/-.

The defendants servant and or driver was negligent in the way he drove the vehicle. I believe negotiating a corner as you approach a bridge is NOT an act of God. The driver ought to have slowed down and taken due care.

The plaintiff sustained injuries. His advocate recommended a Quantum of Ksh.350,000 to Ksh.400,000/- whilst the advocate for the defendant recommended an award of Ksh.100,000/- to Ksh.120,000/-.

The most contention aspect in this case is whether the defendants are liable for damages to the injuries caused on the plaintiff.

The defendants state that the driver was the one who was personally liable. He has not been sued. The driver had gone off on his own frolic without the authority of the defendnats. His servant instructions is to return to Nairobi empty and in a convoy.

As to the Plaintiff the advocate for the plaintiff made no attempt to amend his plaint to state that the defendants are liable vicariously for the said act of the servant and driver.

This was a crucial aspect in the plaint. The Plaintiff is bound by his pleading.

I hereby rule that the defendants were not negligent in the aspect of damages against he plaintiff.

The negligence attributed wholly to the driver who had not been sued and appeared to have gone on his own frolic.

I would therefore dismiss this suit with costs to the defendants.

As to issue of quantum in the event that I would have made an award, I would have awarded Sh.100,000/- for Pain, Suffering and Loss of Amenities, with interest from the date of Judgement. I would have awarded costs to the Plaintiff.

The driver would have been held 100% liable.

This suit is otherwise dismissed with costs.

Dated this 2nd day of June 1999 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**