



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NYERI**

Civil Appeal 215 of 1995

M'IRUANJI MUCHAI APPELLANT

AND

BROADWAYS BAKERY 1ST RESPONDENT

KIBAKI MAIKWE 2ND RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Kenya
(Mr Justice R Kuloba) delivered at Meru on 22nd September, 1993**

In

H.C.C.C. NO 196 OF 1991)

JUDGMENT OF THE COURT

The appellant filed proceedings in the superior court against the respondents to record damages on behalf of the children of his brother who was killed in a motor accident involving a motor vehicle owned by the first respondent but being driven by the second respondent.

Negligence was alleged and particularized in the plaint but no evidence was given to prove it. On that basis the Judge found negligence not proved and dismissed the appellant's claim. There can be no doubt at all that the Judge was right because as this Court held in the case of Kiema Muthuku v Kenya Cargo Handling Services Ltd (1991) 2 KAR 258, there is, as yet, no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence.

There is also the secondary point whether the appellant had a locus standi in the first place to bring this suit as there is no evidence that he had taken out letters of administration of the estate of his deceased brother. This point was not canvassed before the Judge, and we are not deciding this appeal on it, only that we mention it in passing.

For these reasons this appeal must fail and it is dismissed with costs to the respondents.

Dated and delivered at Nyeri this 16th day of May, 1996.

JE GICHERU

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JUDGE OF APPEAL

RO KWACH

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JUDGE OF APPEAL

RSC OMOLO

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JUDGE OF APPEAL