



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 3636 OF 1981**

ALFRED MUHUHO.....PLAINTIFF

AND

PIUS MWANGI WANGEREKA.....DEFENDANT

JUDGMENT

Luthuli Avenue forms a "T" junction with River Road and is on the left hand side of River Road as one proceeds from Ngara.Road to Tom Mboya Street,

On the ,2nd January, 1931 at about 6.30 a.m. the plaintiff says he was driving his matatu along River Road towards Tom Mboya Street at about 30 Kilometres per hour, or about 18 miles per hour. As' he approached Luthuli Avenue, which was to his lefthand side. the defendant emerged from it. The plaintiff said that the defendant's vehicle entered fully into River Road and turned right. He said there was a collision, and the impact took place very close to the junction and about 3 - 4 feet from the plaintiff's lefthand side of River Road. He said there were no cars traveling along River Road at the time. nor were there any parked on either side of River Road,

An interesting element of the plaintiff's evidence was that he was certain that the collision was squarely head-on. He cited the similar damage to the two cars front bumpers, front head lights, radiators, windscreens etc as proof that the collision was head-on. The damage to both cars was considerable, and the plaintiff attributed it to the speed of the defendant.

A striking feature of the plaintiff's evidence was that he maintained that when he first saw the defendant's car he was about 9 yards from the junction. I know that assessments of distance, especially when made in "the agony of the moment" are unreliable, and I am prepared to allow a certain amount of latitude to the plaintiff in his assessment, but even allowing double that assessment the plaintiffs traveling time from the junction was about two seconds

The plaintiff said he applied his brakes to give the defendant a chance to enter River Road, but did not swerve in either direction He told me that at the time of the accident he was on his correct side with his off-side wheels about two feet from the centre of the road.

The defendant's story was very different. He said that on reaching the junction he stopped and looked to the right and left. He said he saw a vehicle about 80 yards away to his right. He said he entered River Road in first gear, turned to the right and changed into second gear. He said he had traveled about 60 yards when a white vehicle emerged from behind the one he had previously seen and was about to pass it out, That white vehicle was driven by the plaintiff. The defendant said that at the time he was traveling at 30 Kilometres per hour. He said he braked, but he was unable to swerve because of the presence of the vehicle the plaintiff's car was passing, and a lorry which was parked on the defendant's left-hand side,

The defendant said that the bumper, the headlamps and the radiator grill of the plaintiff's car were

damaged, bearing out what the plaintiff said, but gave no details of the damage to his own car. He say, however, that it was not very badly damaged, but it cost shs.9,000 to have it repaired,

It was said by the plaintiff that the cars collided squarely head-on. That had been .contradicted and I accept it as being substantially correct. That being so one has to visualise the two cars coming into collision, radiator to radiator, so to speak, and try to visualize how that situation could come about.

If the defendant, whether he stopped or not being, I think, immaterial, had emerged on to River Road and his car collided with that of the plaintiff in the way the plaintiff says what would mean that at the time of impact the left front wheel of the plaintiffs car would have been opposite the right-hand front wheel of the defendant's car. If that were so the defendants right-hand front wheel would have been about 3 - 4 feet from his right hand side of the road If the impact was square as the plaintiff said, then the defendant's car must have been parallel to its accept side of the road, and 3-4 feet from that side. If that were correct it must, I think, follow that the defendant had turned through an angle of approximately 90° to get into that position. Even if he emerged from Luthuli Avenue driving diagonally to the right he must have nearly turned through a right-angle to have reached that position. When one remembers that the plaintiff described the point of impact as being near the junction that would imply that the defendant steered his car very strongly, indeed violently, to get it into the head-on situation the plaintiff described; and the nearer the impact was to the junction the harder the defendant would have to steer towards the right.

It did occur to me that it was possible that the defendant was moving and only saw the plaintiff when an accident appeared to be inevitable, and realising he could not cross the plaintiff's path without being struck on the right hand side tried violently to swerve to the right to pass the plaintiff's car on its left-hand side, Such a lactic would verge on the suicidal and absurd when, if that situation existed, the defendant could have served to the left with a much greater chance of success-

When one has regard to the plaintiff's evidence as to the distance of the point of impact from the function (and again I would be disposed to be generous to him in my allowance for erroneous assessment) and that the collision was head-on it is very difficult to visualise it taking place as the plaintiff described it,

I am much more disposed to accept the story of the defendant: that he had turned to the right into River Road and had completed the turn.

I believe that the defendant had traveled for some distance along River Road when the collision took place. I am of the opinion that the only logical conclusion that I can reach is that the accident occurred as the defendant described it,

One matter occurs to me and that is that it is possible that the plaintiff's car was hidden by the car that the defendant says the plaintiff was passing at the time of the collision, and, therefore, he was guilty of negligence in endeavouring to cross the vehicle when another vehicle was obscured by it.

The answer to that is that situation was never alleged by the plaintiff.

The plaintiff has failed to satisfy me that the defendant was guilty of any negligence and I dismiss the plaintiffs claim with costs

dated this 3rd day of January, 1984.

J P TRAINER

JUDGE