



Mutuma v Mugure (Civil Suit E725 of 2021) [2024] KEMC 12 (KLR) (3 April 2024) (Judgment)

Neutral citation: [2024] KEMC 12 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT E725 OF 2021
JP ADUKE, SRM
APRIL 3, 2024

BETWEEN

LIAN NKATHA MUTUMA PLAINTIFF

AND

JOHN KHAGI MUGURE DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants after she sustained injuries following a road traffic accident on 10th August 2019 along Spine Road in an undisclosed town as per para 4 of the Plaintiff. In the plaint on record, the plaintiff avers she was a lawful pedestrian living her best life when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCR XXXX negligently and carelessly drove the said motor vehicle and while speeding abruptly and without due care caused it to lose control causing an accident causing the Plaintiff to suffer injuries.
2. The Plaintiff blames the Defendant and their agents/authorized servants for causing the said accident. The Plaintiff further avers that the said accident was solely caused by the negligence of the Defendant.
3. The particulars of injuries sustained by the Plaintiff are captured in para 6 of the Plaintiff while the particulars of alleged negligence are captured in para 4 of the Plaintiff. The Plaintiff prays for general damages for pain and suffering, special damages of KES 5,000/-, costs of the suit and interest at court rates.
4. Return of Service on Record shows that the defendants were served with the suit papers. The defence entered appearance, filed a defence and the suit proceeded to full hearing. The suit is defended. The plaintiff called one witness who testified on oath and who adopted her statements on record as her evidence in chief. The defence closed its case without calling any witnesses. Parties files and exchanged written submissions.
5. The issues for determination before this court are two:



1. Liability;
 2. Quantum
6. With respect to Liability, I have seen a copy of the Abstract from Police Records confirming further details in respect of the accident victim and the said motor vehicle registration number KCR XXXX. In particular, I have noted that the copy of Police Abstract on record as at the date of writing this judgment does not apportion any blame on the defendant herein. I have not seen a copy of the Motor Vehicle Search Records on record confirming that the defendant is the registered owner of the said motor vehicle KCR XXXX. I note, with concern, that the same is not included in the List of the Plaintiff's documents dated 28th January 2021. This proof of ownership was also not produced during the hearing of the Plaintiff's case. In the absence of any further supporting proof of ownership and evidence of conclusive report on who is to blame for the accident, I am unable to ascertain and apportion liability. In the circumstances, I find that the defendant is not liable. I have relied on section 8 of the [Traffic Act](#), Cap 403 Laws of Kenya and the reasoning of the court in *Wellington Nganga Muthiora v Akamba Public Road Services & Another* [2010] EKLR.

Quantum

7. Having found as above on the issue of liability, I find the suit unmerited, and dismiss the same. I make no award on costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY THIS 03RD APRIL 2023 AT 12PM.

In the presence of :

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff-

(Name, Signature, Date)

For the Defence:

(Name, Signature, Date)

