



**Macharia v Abaga & 2 others (Civil Suit 2550 of 2020)
[2023] KEMC 85 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 85 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
CIVIL SUIT 2550 OF 2020
JP ADUKE, SRM
MARCH 30, 2023**

BETWEEN

SAMUEL MACHARIA PLAINTIFF

AND

GILBERT OTERO ABAGA 1ST DEFENDANT

KEFA OSIEMO MACHEGWA 2ND DEFENDANT

CHARLES OBARE MACHEGWA 3RD DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 17th February 2020 in Nairobi. In the plaint filed on 25th June 2020, the plaintiff avers its driver was driving motor vehicle registration number KBH 956X when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KCL 829S negligently and carelessly drove the said motor vehicle, caused it to lose control and ram into KBH 956X causing damage to the plaintiff's car. The plaint does not state whether or not the insurer brings this suit in the Plaintiff's name under the doctrine of subrogation.
2. The Plaintiff blames the Defendants 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 Defendants and their agents/drivers/servants.
3. The particulars of damages occasioned to the Plaintiff's car are captured in para 5 of the Plaint as "loss and damage" while the particulars of alleged negligence are captured in para 4 of the Plaint. The Plaintiff prays for special damages of KES 287,160/-, 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 Defendants entered appearance. The suit is before me defended. The plaintiff called 2 witnesses who



testified and adopted their statements on record as their evidence in chief. The defence case was closed in their absence without any witnesses being called.

5. The issues for determination before this court are liability and quantum:

1. Liability

With respect to liability, I have seen a copy of the Police Abstract on record which is not legible as such I am unable to ascertain who is to blame for causing the road accident herein. As at the date of writing this judgment, I have seen a copy of NTSA search records confirming the identity of the owner of the motor vehicle KCL 829S as the 1st defendant as at March 2020. The Police abstract before me is completely illegible. There is no investigation report from the police on record and nothing further to shed light on who was to blame for this accident. 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 1st, 2nd and 3rd defendants are 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.

2. Quantum

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 30TH MARCH 2023 AT 12PM.

In the presence of:

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff:

(Name, Signature, Date)

3. For the Defence:

(Name, Signature, Date)

