



**Chege v Mbugua & 4 others (Civil Suit 5339 of 2015)
[2023] KEMC 125 (KLR) (8 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 125 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CIVIL SUIT 5339 OF 2015
JP ADUKE, SRM
MAY 8, 2023**

BETWEEN

PATRICK MAINA CHEGE PLAINTIFF

AND

THOMAS NGURE MBUGUA & 4 OTHERS DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the defendants following a road traffic accident on 27th June 2015 in Nairobi. In the plaint filed on 9th Sept 2015, the plaintiff avers he was driving motor vehicle registration number KBK 587W when the Defendant and his servant/agent/authorized driver of motor vehicle registration number KBW 251U and KBQ 640C negligently and carelessly drove the said motor vehicles, caused them to ram into KBK 587W causing damage to the plaintiff's car.
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 damage occasioned to the Plaintiff's car are captured in para 6 of the Plaint while the particulars of alleged negligence are captured in para 6 and 7 of the Plaint. The Plaintiff prays for special damages, costs of the suit and interest at court rates. The Plaint does not state whether or not the plaintiff's insurer claims against the Defendants under the principle of subrogation of rights.
4. Return of Service on Record shows that the defendants were served with the suit papers. The Defendants entered appearance and filed a defence. The plaintiff called one witness who testified on oath. PW1 adopted his witness statement on file as his evidence in chief. The Defence Case was closed without calling any witnesses on account of absence of the defence on the date of trial. Parties filed and exchanged written submissions.
5. The issues for determination before this court are liability and quantum:



Liability

6. With respect to liability, I have seen a copy of the Police Abstract on file which blames the driver of motor vehicle KBW 251U for causing the road accident herein. I have, however, not seen a copy of the copy of Motor Vehicle Copy of Records confirming the identity of the owner of the motor vehicle KBW 251U as the defendants herein as at the date of the road accident. The plaintiff's lists of documents do not have this information. The provisions of the *Traffic Act* on proof of ownership/ registration of motor vehicle cannot be downplayed in road traffic accident cases. No clarification issued on this issue at trial. In the absence of congruence between the police abstract and a copy of the motor vehicle copy of records showing the registered owner as at the date of the road traffic accident herein, I find the defendants not liable.
7. For the avoidance of doubt, in the absence of any further supporting proof of ownership as at the date of the accident or thereabout, I am unable to ascertain and apportion liability. In the circumstances, I find that the 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.

Quantum

8. 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 08TH MAY 2023 IN THE ABSENCE/PRESENCE OF THE PARTIES AT 1PM.

In the presence of :-

1. Court Assistant: Benjamin Kombe.

2. Counsel for the Plaintiff-

(Name, Signature, Date)

3. For the Defence:

(Name, Signature, Date)

