



**Muchina v Wanjiku & 4 others (Civil Suit 9065 of 2019)  
[2023] KEMC 174 (KLR) (31 August 2023) (Judgment)**

Neutral citation: [2023] KEMC 174 (KLR)

**REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)  
CIVIL SUIT 9065 OF 2019  
JP ADUKE, SRM  
AUGUST 31, 2023**

**BETWEEN**

**ESTHER MUMBI MUCHINA ..... PLAINTIFF**

**AND**

**TIMOTHY GACHUHI WANJIKU & 4 OTHERS ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the defendants after she sustained injuries following a road traffic accident on 4<sup>th</sup> March 2018 in an undisclosed location. In the plaint on record filed on 10<sup>th</sup> December 2019, the plaintiff avers she was a lawful passenger aboard KBQ 678C in an undisclosed geographical location when the Defendants either acting as servant/agent/authorized driver of motor vehicle registration number KAQ 272J negligently and recklessly drove the said motor vehicle and caused it to collide with KBQ 678C and the Plaintiff sustained injuries.
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.
3. The particulars of injuries sustained by the Plaintiff are captured in para 4 of the Plaint while the particulars of alleged negligence are captured in para 4 of the Plaint. The Plaintiff prays for general damages for pain and suffering and loss of amenities of life, special damages, costs of the suit and interest.
4. Return of Service on Record shows that the defendants were served with the suit papers. The 1<sup>st</sup> and 2<sup>nd</sup> defendants never entered appearance. As a result, judgment in default of appearance was entered against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 11<sup>th</sup> June 2021. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants entered appearance and defended the suit. The suit proceeded to full hearing. PW1, the plaintiff, adopted and relied on her plaint on record as her evidence in chief. PW2, a police officer, testified on the circumstances of the



accident. The defence closed its case without calling any witnesses. Parties filed submissions. The issue for determination before this court is one:

1. Jurisdiction
5. The plaint does not disclose the geographical location of the accident. As it is, I am unable to ascertain whether or not the court has the geographical territorial jurisdiction to grant the prayers sought in the Plaint. In other words, it is not clear from the Plaint on record or from the testimony of PW1 on file whether or not the alleged road accident occurred in Nairobi or elsewhere. In view of this, I am unable to proceed to analyze the liabilities of the parties and any quantum that may or may not be applicable. On the strength of section 2 and section 15 ( c) of the *Civil Procedure Act*, Cap 21 Laws of Kenya, I hereby strike out the plaint dated 28<sup>th</sup> October 2019, with no orders on costs.

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 31<sup>ST</sup> AUGUST 2023**

In the presence of :-

Court Assistant: Benjamin Kombe.

Counsel for the Plaintiff- .....

(Name, Signature, Date)

For the Defence: .....

(Name, Signature, Date)

