



**Wamweya v Mogire & another (Civil Suit E521 of 2022)
[2023] KEMC 315 (KLR) (14 November 2023) (Ruling)**

Neutral citation: [2023] KEMC 315 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E521 OF 2022
PA NDEGE, SPM
NOVEMBER 14, 2023**

BETWEEN

MARGARET WAMBUI WAMWEYA PLAINTIFF

AND

NEVILLE ONGERI MOGIRE 1ST DEFENDANT

BENSON O MAKORI 2ND DEFENDANT

RULING

1. On 30.05.2022, the plaintiff herein, MARGARET WANGUI WAMWEYA, vide a Plaint dated 25.05.2022, brought this suit against the 1st defendant herein, NEVILLE ONGERI MOGIRE, for compensation for injuries she alleged to have sustained as a result of a road traffic accident which occurred on the 10/04/2022. She pleaded that she was a pillion passenger at the time of the accident and that she wholly blames the 1st Defendant for the accident. She particularized the negligence she attributes on the 1st Defendant at paragraph 4 of the Plaint. The plaint was later amended on 09/06/2022, to add the 2nd Defendant, BENSON O. MAKORI, who is alleged to be the beneficial owner and/or the insured of the motor vehicle herein.
2. The records herein, indicate that a Statement of Defense dated 03/08/2022 was filed via e-mail, in which the Plaintiff's claim was denied, and in the alternative, negligence was attributed to the owner and/or rider of the motor cycle on which the plaintiff is alleged to have been riding at the time of the accident, and/or the plaintiff herself.
3. On 23/08/2022, a Request for Judgment dated 22/08/2022 was filed by the Plaintiff. The same was however never acted on. There are however some remarks 'Defense filed on 04/08/22' on it which cannot however be attributed to any judicial officer as they have not been signed.
4. Thus, the judgment in default that was entered against the defendants herein on 05/06/2023 appears to have been entered in error. The subsequent ex parte proceedings mainly for the assessment of general



damages, including the hearing on 11/07/2023, are therefore hereby deemed irregular. There was also no request and entry of judgment against the 2nd Defendant herein and any ex parte proceedings for assessment of general damages against him is also therefore irregular.

5. The defense having been filed herein, it was only fair that the plaintiff was supposed to serve the defendants with the hearing notice. *The Constitution*, 2010, requires all parties to a trial, whether civil, criminal or otherwise, to promote the principle of fairness; which I do believe employs the principle of openness and transparency.
6. The decision in Juma and others vs AG and another (2003) 2 EA 461 best explains the meaning of a fair trial as follows:

The adjective 'fair' describing the requisite hearing requires the court to ensure that every hearing or trial is reasonable, free from suspicion of bias, free from clouds of prejudice, every step is not obscured and in whatever is done it is imperative to weigh the interest of both parties alike for both and make an estimate of what right is reciprocally just." (emphasis, mine).

7. The Supreme Court has also severally interpreted the Judiciary's mandate under Article 159(2) (d) of *the Constitution* as follows: -

The essence of that provision is that a Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone and which suits all situations of dispute resolution. On the contrary, the Court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case, and conscientiously determine the best course. (Raila Odinga & 5 Others v IEBC & 3 Others [2013] eKLR at Para. 218.)

8. It is however not that late for the Plaintiff to involve the defendants herein. I do therefore set aside all the ex parte proceedings herein Suo moto. The judgments entered on 05/06/2023 are therefore hereby set aside. The plaintiff to take a date for pretrial which must be served on the defendant as per the address of service in the Statement of Defense filed herein. It will be of no use to proceed with the trial herein ex parte when there is a defense duly filed herein.
9. The proceedings herein have therefore been re-opened for the above purpose.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 14TH DAY OF NOVEMBER, 2023

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel: Tombe

Defense Counsel: N/A

The plaintiff: N/A

1st Defendant: N/A

2nd Defendant: N/A

