

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NUMBER E016 OF 2023

SAMUEL GATHUKU.....APPELLANT

-VERSUS-

BENARD KIMANI.....1ST RESPONDENT
PETER KAGARI MBUGUA.....2ND RESPONDENT
*(Being an appeal from judgment and decree in Chief Magistrate's Court at
Thika (O. Wanyaga SRM) civil case number E61 of 2021 dated 27-09-2023)*

JUDGMENT

The appellant who was the plaintiff in the trial court filed suit against the respondents claiming compensation for pain and suffering as a result of an accident that occurred on 2-07-2018 involving motor vehicle registration number KBK 340V owned by the 2nd respondent and at the time of the accident driven by the 1st respondent and in which the appellant was travelling and motor vehicle registration number KCN 827N. In their defence, the respondents denied liability and shifted it to the driver of motor vehicle registration number KCN 827N.

By judgment delivered on 27-09-2023, the trial court found that the appellant had failed to prove negligence on the part of the respondents as the vehicle to be blamed for the accident was KCN 827N and proceed to dismiss the suit with costs.

Being aggrieved by the above judgement, the appellant filed this appeal complaining that;

1. *The learned Magistrate erred in fact and in law in failing to find that the plaintiff having been a fare paying passenger aboard motor vehicle registration number KBK 340V TOYOTA matatu was owed a duty of care by the defendants and not third parties.*
2. *The learned Magistrate erred in fact and in law by failing to find that the driver of motor vehicle registration number KBK 340V TOYOTA matatu liable especially having failed to produce his driving license or to account for what evasive action he took to avoid the accident.*
3. *The learned trial Magistrate erred in law and in fact in relying on the evidence of police officers who blamed motor vehicle registration number KCN 827N HONDA for causing the accident without carrying out any investigations or preferring charges against the driver of the said vehicle thereby made a wrong decision.*
4. *The learned trial Magistrate erred in law and in fact in failing to find that it was the duty of the respondents to enjoin a third party if they felt that the third party was the cause or contributed to the occurrence of the accident. The learned trial Magistrate erred in shifting the said duty thereby made a wrong decision.*
5. *The learned trial Magistrate erred in fact and law in failing to find liability against the respondents hence made a wrong decision.*
6. *The learned trial Magistrate erred in law and in fact in finding that the appellant did not prove her case on a balance of probabilities thereby arriving on a wrong conclusion.*

7. *The learned trial Magistrate erred in law and in fact in dismissing the appellant's case against the weight of evidence thereby making a wrong decision.*

8. *In view of the circumstances set out herein above, the learned trial Magistrate totally misdirected herself in delivering judgement in favour of the respondents by failing to consider and appreciate the evidence on record tendered on behalf of the appellant.*

The cause of action in this matter was the same as in this court's civil appeal number E015 of 2023. The respondents who were the defendants in the lower court were the same as in this matter. Even the evidence of the defence in the trial court in this matter was adopted as the defendants' evidence in civil suit E627 of 2020 which bore civil appeal number E015 of 2023.

On 19-05-2025, the parties agreed and the court adopted the same, that submissions in civil appeal number E015 of 2023 do apply in this appeal. The same consent was repeated on 9-07-2025 and actually the submissions filed by the parties in this appeal are photocopies of those filed in civil appeal number E015 of 2023. The only differences in the two appeals are the name and identities of the appellant and the injuries sustained.

Based on the above, although the court did not formally consolidate the two appeals, I will not engage in analysis and determination because my decision in this matter will not be different from that I have made in civil appeal number E015 of 2023. For consistency which is a basic requirement in administration of justice, I do not see any reasons to depart from what I have said in civil appeal number E015 of 2023 and the judgment and reasonings and analysis therein are hereby adopted.

After going through the record of appeal in this matter and for reasons I have stated in my judgement in civil appeal number E015 of 2023, I do not see justification for holding otherwise. Just as in my said decision, this appeal is found lacking in merits and the same is hereby dismissed with costs.

Dated signed and delivered at Nairobi this 27th day of February 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Nyongesa for the appellant and Miss Waithera for the respondents.