



REPUBLIC OF KENYA



KENYA LAW
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**Muthoni v Bere & 2 others (Civil Suit E016 of 2025)
[2025] KEHC 7769 (KLR) (Civ) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL SUIT E016 OF 2025

SN MUTUKU, J

MAY 27, 2025

BETWEEN

ANGELA MUTHONI PLAINTIFF

AND

ABDULLAHI SAGO BERE 1ST DEFENDANT

BLUE NILE (EAST AFRICA) LIMITED 2ND DEFENDANT

TSUSHO CAPITAL (KENYA) LIMITED 3RD DEFENDANT

RULING

Background

1. The Plaintiff, Angela Muthoni, initiated this suit against the three defendants vide a Plaint dated 4th September 2018. The case was given No. 273 of 2018. The suit arises from a road traffic accident alleged to have occurred on or around 2nd December 2015. The motor vehicle in question is KCF 702P HINO Lorry allegedly belonging to the the 2nd and 3rd defendants and driven by the 1st Defendant.
2. The said motor vehicle is alleged to have been driven negligently, carelessly and recklessly that it caused a collision with motor vehicle number KCC 070Z belonging to Boniface Kipande Nzano, deceased, as a result of which the latter sustained fatal injuries.
3. The Plaintiff, who is the widow of the deceased and personal representative of the estate of the deceased, seeks against the defendants, damages arising from the *Fatal Accidents Act* and the *Law Reform Act*, costs of the suit and interest.



4. The matter was transferred to the Chief Magistrate's Court for hearing and determination on 22nd May 2023 for reasons that the matter was within the jurisdiction of that court. The case was given the lower court number MCCC 230 of 2023.
5. The Plaintiff was not satisfied with that order. She moved this court through a Notice of Motion dated 12th April 2024.

Notice of Motion

6. The Applicant seeks to have CMCC No. 230 of 2023 transferred back to the High Court for trial basing this prayer on the grounds that the anticipated damages they are seeking, which include loss of future earnings, will be about Kshs 40,000,000.
7. The Application was served on the Defendants through the email info@tindimunsyasiadvocates.com, as shown in the Affidavit of Service dated 2nd May 2025. The defendants did not attend court to oppose the application or file a replying affidavit.

Determination

8. I have considered the application. My view is that it is the court that has the conduct of a matter that is mandated to assess the amount of damages payable to a party who moves the court to determine a dispute. It is only after the evidence has been adduced and has been subjected to the test and the relevant law has been applied that the court is able to determine the award of damages payable. Therefore, it cannot be stated, with certainty, that the Plaintiff in this matter will obtain the amount of the award of damages anticipated.
9. However, this court will not lock its doors to a party who seeks its intervention in a matter like this one. The Application is not opposed and I see no reason to decline the orders sought. The Defendants will not be prejudiced in any manner. They will have their day in court to defend their case.
10. I will and do hereby allow the Notice of Motion dated 12th April 2024 and grant the prayers sought. Given that the file assigned to this application is not a miscellaneous file, the High Court case will retain Civil Case No. E016 of 2025.
11. Parties will proceed before the Deputy Registrar of this Court for directions on the compliance with Order 11 of the Civil Procedure Rules before it can be given a date for hearing.
12. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 27TH MAY 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Wanjala holding brief for Mr. Kimeru for the Applicant.

No attendance by the Respondent

