



**Atieno v Njiru (Civil Appeal E421 of 2022)**  
**[2024] KEHC 14929 (KLR) (Civ) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14929 (KLR)

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

**CIVIL**  
**CIVIL APPEAL E421 OF 2022**

**JM NANG'EA, J**  
**NOVEMBER 28, 2024**

**BETWEEN**

**ROSE CAROLINE ATIENO ..... APPELLANT**

**AND**

**EPHANTUS KARIUKI NJIRU ..... RESPONDENT**

*(Being an appeal from the Judgement and decree of the Chief  
Magistrate's Court, Milimani Commercial Courts (Hon. J A Aduke-  
RM) delivered on 14th of June 2022 in Milimani MCCC No.9384 of 2019)*

## **JUDGMENT**

### **Grounds of Appeal and reliefs sought**

1. The appellant herein is challenging the said learned trial magistrate's judgement in which he struck out the suit before him with the costs.
2. The appellant's Grounds of Appeal as per Memorandum of Appeal dated 17<sup>th</sup> June, 2022 may be condensed as hereunder:
  - a. That the learned trial magistrate erred in law by striking out the suit
  - b. That the learned trial magistrate erred in law and fact by finding that the registered ownership of a vehicle involved in the subject accident was not proven contrary to the evidence adduced.
  - c. The learned trial magistrate erred by failing to consider the appellant's submissions.
3. The appellant therefore prays for setting aside of the judgment dated 14<sup>th</sup> June 2022 and further that this court does make its own determination on both liability and quantum of damages awardable to the appellant.



## Background of the appeal

4. The appellant sued the Respondent in the lower court for general damages under the *Fatal Accidents Act* and The *Law Reform Act*; Special damages totalling to Kshs. 72,800/=, the costs of the suit and interest. The cause of action arises from a road traffic accident in which Kennedy Odhiambo Miser, in respect of whose estate the appellant brought the suit, was allegedly knocked down by the respondent's motor vehicle registration number KCC 995N owing to careless or negligent driving of the vehicle thereby causing him fatal injuries.
5. The respondent filed defence admitting ownership of the subject vehicle and occurrence of the accident. He, however, traverses the claim of negligent driving of the vehicle and in turn attributes occurrence of the accident to the deceased's own negligence. The respondent urged the court to dismiss the suit with costs.
6. The appellant gave oral evidence stating that the deceased was her son aged 30 at the time of his demise. She didn't witness the accident in question. In support of the evidence she exhibited various documents including receipts supporting the claim for special damages and a copy of a "blank Motor Vehicle Copy OF Records". The appellant called no other witness.
7. The respondent called the driver of the accident vehicle (Dickson Maina Karuma). He told the court that the deceased had suddenly crossed the road giving him no time to swerve and/or apply brakes. Inevitably, the vehicle hit the deceased who succumbed to his injuries. The witness blamed the deceased for crossing the road when it was not safe to.
8. Upon full hearing of the suit the learned trial magistrate noted as follows regarding evidence of ownership of the accident vehicle;-

"I have seen a Blank Copy Of The Motor Vehicle Copy Of Records printed on 26<sup>th</sup> June, 2018. As at the date of writing this judgment, I note that the soft copy of the said document is equally unavailable on the Judiciary CTS portal for verification. In the absence of this information, I am unable to ascertain the ownership of the motor vehicle as at the date of the road traffic accident herein. This confirmation and chronology from the documents available on the record settles the issue of liability. For avoidance of doubt, I find that I am unable to ascertain the liability apportionment on a balance of probability in view of lack of nexus as aforementioned." (sic)
9. Regarding the issue of quantum of damages, the learned trial magistrate thought that he could not determine the point without also deciding the issue of liability. The court then struck out the suit with costs.

## The Parties' Submissions

10. Learned Counsel for the parties made rival submissions on both liability and the quantum of damages. I will not, however, analyse the submissions for reasons that will become apparent hereafter.

## Determination

11. The learned trial magistrate was duty bound to determine the issues of liability for the claim and quantum of damages awardable, if any, one way or the other based on the evidence proffered. Even where a trial court dismisses a suit for want of proof of the defendant's liability, established judicial practice still requires the court to assess general damages it would have awarded had liability been proven, for the benefit of the appellate court in event of an appeal (see the case of Kamau vs Coast Bus



(Mombasa) Ltd. Civil Appeal 76 of 2022) (2024) KRHC 3232 (KLR) (5 April 2024) (Judgement). The learned trial magistrate therefore seriously misdirected himself in the manner in which he rendered his judgment. I don't, however, think that it is appropriate for this court to determine both liability and quantum of damages awardable, if any, so as not deny the parties the right to a first appeal to this court.

12. In the circumstances, the matter is remitted to the Chief Magistrate Milimani Commercial Courts who is hereby directed to allocate the file to a magistrate of competent jurisdiction other than Hon. J. A. Aduke Resident Magistrate to prepare and deliver judgment in accordance with the law on priority basis and in any event not later than 60 days after being seized of the file. As this turn of events was caused by the trial court's error, the parties will bear their own costs of this appeal.

**J. M NANG'EA, JUDGE.**

**JUDGEMENT DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024 IN THE PRESENCE OF:**

The Appellant's Advocate, Mr Kuyoh

The Respondent's Advocate, Absent

**J. M NANG'EA, JUDGE.**

