



**CEC Roads & Infrastructure County Government of Embu  
& another v Njuki & 2 others (Environment and Land Appeal  
E018 of 2022) [2025] KEELC 5864 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5864 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E018 OF 2022**

**AK BOR, J  
JULY 2, 2025**

**BETWEEN**

**CEC ROADS & INFRASTRUCTURE COUNTY GOVERNMENT OF  
EMBU ..... 1<sup>ST</sup> APPELLANT**

**THE COUNTY GOVERNMENT OF EMBU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JULIANO KIVUTI NJUKI ..... 1<sup>ST</sup> RESPONDENT**

**PEANCO COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**MCA RUNYENJES CENTRAL WARD ..... 3<sup>RD</sup> RESPONDENT**

*(Appeal arises from the judgment of Hon J.W Gichimu, Senior Principal  
Magistrate, delivered on 24/11/2022 in Runyenjes PM ELC Case No. 15 of 2020)*

**JUDGMENT**

1. This appeal arises from the judgment of Hon J.W Gichimu, Senior Principal Magistrate, delivered on 24/11/2022 in Runyenjes PM ELC Case No. 15 of 2020- Juliano Kivuti Njuki v Peanco Company Limited, the Member of County Assembly (MCA) Runyenjes Ward, CEC Road and Infrastructure Embu County Government and the County Government of Embu.
2. The 1<sup>st</sup> Respondent's case before the Magistrate's Court was that he was the registered proprietor of all the land known Kagaari/Kigaa/183. He averred that on 23/5/2020, the 2<sup>nd</sup> Respondent, Peanco Company Ltd, without any excuse or justifiable cause, under the supervision of the 3<sup>rd</sup> Respondent, the MCA Runyenjes Central Ward, and with the blessing of the 1<sup>st</sup> and 2<sup>nd</sup> Appellants, the CEC Road and Infrastructure Embu County Government and the County Government of Embu encroached



and trespassed onto his land and excavated a road reserve using a heavy excavation machine and that that excavation alienated approximately 0.22 hectares out of his parcel of land.

3. That as a result of that excavation, he suffered loss and damage whose value he pleaded, was assessed and estimated to amount to Kshs. 1,607, 932.30. He contended that the 2<sup>nd</sup> Appellant was vicariously liable for the acts and omissions of the 2<sup>nd</sup> Respondent, the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> Appellant who committed the act complained of in the course of their duty. He made a claim against the defendants jointly and severally for the sum of Kshs. 1,607,932.30 plus costs of the suit and interest.
4. The Appellants filed a defence in which they denied that the 2<sup>nd</sup> Respondent acted with their blessing. They averred that the allegations made by the plaintiff were untrue, ambiguous, unsubstantiated and a misguided attempt to link the 2<sup>nd</sup> Respondent to them. They pointed out that they and the 3<sup>rd</sup> Respondent, the MCA Runyenjes Ward, fell under two independent arms of the Embu County Government, and that the 3<sup>rd</sup> Respondent falls under the Embu County Assembly. It was therefore inconceivable that the 3<sup>rd</sup> Respondent would directly supervise the 2<sup>nd</sup> Respondent on behalf of the Appellants.
5. The Appellants were emphatic that they were total strangers to the actions of the 2<sup>nd</sup> Respondent. It was their case that the 2<sup>nd</sup> Respondent is a limited liability company with power to sue and be sued in its own name and that the suit was defective for they were joined to the suit without any legal basis.
6. The trial court heard the suit and in its judgment delivered on 22/11/2022, the Learned Magistrate found in favour of the 1<sup>st</sup> Respondent. The trial court observed that the Appellants and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not testify and that they did not therefore challenge the 1<sup>st</sup> Respondent's claim. The court was satisfied that based on the evidence tendered before it, the 2<sup>nd</sup> Respondent encroached onto the 1<sup>st</sup> Respondent's land while constructing a road, and that in the course of the road construction, the 2<sup>nd</sup> Respondent damaged the 1<sup>st</sup> Respondent's trees and crops as tabulated in the valuation report produced in evidence.
7. The trial court was of the view that, that the evidence adduced by the 1<sup>st</sup> Respondent was not challenged and therefore the 1<sup>st</sup> Respondent had proved his case to the required standard. The court entered judgment in favour of the 1<sup>st</sup> Respondent against the Appellants and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents jointly and severally as prayed in the plaint. That is what led to this appeal.
8. In the memorandum of appeal dated 5/12/2022, the Appellants faulted the trial court for concluding that they were responsible for the actions of the 2<sup>nd</sup> Respondent and therefore vicariously liable for the offending actions without any legal basis. They contended that the Learned Magistrate erred by shifting the burden of proof from the 1<sup>st</sup> Respondent to them in proving that the 2<sup>nd</sup> Respondent had carried out the offending acts with the authority of the Appellants. They also challenged the finding that they were jointly and severally liable to meet the decretal sum awarded by the court.
9. The appeal was canvassed through written submissions. The Appellants and the 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed submissions which the court has considered. The main issue for determination is whether the appeal has merit and that the decision of the trial court should be reviewed and set aside.
10. The Appellants main argument is that the trial court erred by shifting the burden of proof to them. They urged that it was incumbent upon the 1<sup>st</sup> Respondent to prove not only that the 2<sup>nd</sup> Respondent carried out the excavation, but also that it did so with the authority or approval of the Appellants. During trial, only the 1<sup>st</sup> Respondent testified and he told the court that the 2<sup>nd</sup> Respondent had the heavy machinery and executed the road construction. Further, he testified that it was the 3<sup>rd</sup> Respondent who sent the 2<sup>nd</sup> Respondent to the site, and that the 3<sup>rd</sup> Respondent was present during



- the excavation. On cross-examination, he admitted that he did not have direct evidence linking the Appellants to the construction, but reasoned that the county government must have given the tender to the 2<sup>nd</sup> Respondent.
11. The Appellants submitted that roads in Kenya are governed by the [Kenya Roads Act](#) No. 2 of 2007 which establishes the Kenya National Highways Authority, Kenya Urban Roads Authority and the Kenya Rural Roads Authority. Each of these agencies has distinct functions and classes of roads under its mandate. The County Governments have also been allocated roads for management. It was their case that the road in question did not fall within its mandate, a fact they pleaded in their defence and that the 1<sup>st</sup> Respondent failed to ascertain whether that road fell under the mandate of the 2<sup>nd</sup> Appellant or if the expansion work was being undertaken by an agent of the National Government. It was their submission that the road is classified as a Kenya Rural Roads Authority (KeRRA) road and was therefore not one it was mandated to manage. The Appellants added that the 1<sup>st</sup> Respondent did not produce any evidence to establish a nexus between the Appellants and the road works.
  12. The 1<sup>st</sup> Respondent submitted that access roads and foot paths are devolved functions of the county government and that the Appellants cannot therefore disassociate themselves from the construction of an access road by the 2<sup>nd</sup> Respondent.
  13. The finding of the trial court was that the Appellants were vicariously liable for the wrongful acts of the 2<sup>nd</sup> Respondent during the road expansion. [Black's Law Dictionary](#) defines vicarious liability as liability that a supervisory party, such as an employer, bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties. From this definition, one must prove the existence of a relationship between the supervisory party and the associate as well as the actionable conduct.
  14. In this case, there was no evidence adduced before the trial court showing that the 2<sup>nd</sup> Respondent was contracted, instructed, or supervised by the Appellants. The 1<sup>st</sup> Respondent's belief that the County Government must have given the tender was purely speculative and was not supported by any evidence. The Learned Magistrate inferred liability from the failure by the Appellants and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's failure to testify. The 1<sup>st</sup> Respondent bore the burden of proving that the Appellants authorised or sanctioned the acts complained of especially since the suit was primarily based on vicarious liability.
  15. The 1<sup>st</sup> Respondent did not prove the existence of a relationship between the supervisory party and the associate for vicarious liability to arise for the wrongful acts complained of. The trial court erred in holding the Appellants vicariously liable for the acts of the 2<sup>nd</sup> Respondent in the absence of evidence establishing such liability. It was neither proved that the 2<sup>nd</sup> Respondent undertook the road construction complained of nor was the alienation of the 2<sup>nd</sup> Respondent's land during the road expansion.
  16. The appeal is allowed. The judgment of the trial court is set aside.
  17. Each party shall bear its own costs of the appeal.

**DELIVERED VIRTUALLY AT EMBU THIS 2<sup>ND</sup> DAY OF JULY 2025.**

**K. BOR**

**JUDGE**

In the presence of:

Ms. R. Omamo holding brief for Mr. H. Wamwea for the Appellants



Mr. A. Male holding brief for Mr. J. Kiongo for the 2<sup>nd</sup> Respondent

No appearance for the Respondents

