



Chania Cool Company Limited & another v Loyo & another (Suing as Administrators of the Estate of Kahaso Katana Thoya - Deceased) (Civil Appeal E178 of 2023) [2025] KEHC 3480 (KLR) (21 February 2025) (Judgment)

Neutral citation: [2025] KEHC 3480 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E178 OF 2023
M THANDE, J
FEBRUARY 21, 2025**

BETWEEN

CHANIA COOL COMPANY LIMITED 1ST APPELLANT

BERNARD MWARIRI NJANI 2ND APPELLANT

AND

KENGA CHARO LOYO 1ST RESPONDENT

CHARO KENGA CHARO 2ND RESPONDENT

**SUING AS ADMINISTRATORS OF THE ESTATE OF KAHASO KATANA
THOYA - DECEASED**

*(An Appeal from the Judgment of Hon. R. M. Amwayi, Principal
Magistrate delivered on 17.5.23 in Kaloleni Civil Suit No. E153 of 2022)*

JUDGMENT

1. The Appellants have filed the Appeal herein, challenging the decision of trial court in respect of a suit that was instituted against them by the Respondents, under the *Fatal Accidents Act* and the *Law Reform Act* on their own behalf and on behalf of the deceased's dependents. They claimed both general and special damages arising from a road traffic accident. The Respondents' case was that on 10.8.21, the deceased was lawfully walking heading to Taru when upon reaching Taru Township, as she was about to cross the road, the Appellants' vehicle registration number KBC 917S suddenly approached from the Nairobi side over speeding and without due regard to pedestrians and veered off the road and knocked the deceased down, as a result of which the deceased sustained fatal injuries.
2. The Appellant opposed the plaint vide a statement of defence dated 10.11.22 in which they denied the occurrence of the accident and the Respondents of making a false claim. They further stated that



if the accident did occur, which they denied, the same was caused or substantially contributed to by the negligence and recklessness of the deceased.

3. In the impugned judgment delivered on 13.1.23, the learned Magistrate awarded the Respondents the following sums:

Liability against the Appellants 100%
Pain & suffering Kshs. 50,000/=
Loss of expectation of life Kshs. 100,000/=
Loss of dependency Kshs. 1,221,080/=
Special damages Kshs. 50,000/=
Total Kshs. 1, 421,561/=
Costs and interest at court rate.

4. The summarized grounds of which are that the learned Magistrate erred in fact and in law by:
1. relying on the wrong principles in determining liability hence arriving at a wrong decision.
 2. relying on the wrong principles and failing to apply precedents applicable in assessing damages.
 3. failing to consider the evidence on record hence arriving at a wrong decision unsustainable in law.
5. The Appellant prayed that the appeal be allowed with costs and that the judgment delivered on 17.5.23 be set aside and the suit against the Appellants be dismissed with costs.
6. The Court has re-examined the entire record and given due consideration to the submissions by the parties' respective counsel. This being a first appeal, the Court is under a duty to reconsider and re-evaluate the evidence and draw its own conclusion. However, the Court must make due allowance with respect to the fact that it has neither seen nor heard the witnesses. These principles were set out in *Selle and another –vs- Associated Motor Boat Company Ltd.& Others (1968) EA 123* by Sir Clement De Lestang, V. P. as follows:

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should made due allowance in this respect.

7. The Appellants submitted that the police abstract indicated that the matter was still under investigation. Further that the details surrounding the accident were not clearly presented, as the police abstract did not assign blame to anyone. The Appellants contended there were no eye witnesses and that the testimonies of PW1 and PW2 were essentially hearsay. Further that in the witness statement dated 22.6.22, the 1st Respondent stated that he was told the deceased was crossing the road, while the police report stated that the deceased was struck at the edge of the road. No diagram was provided to specify the exact location where the deceased was hit, which could assist in determining liability, as the evidence suggests that the deceased may have attempted to cross the road when the motor vehicle was already approaching. They further contend that the motor vehicle was within its designated lane and that it was the deceased who attempted to cross the road at an unsafe time. Further that the Respondents did not substantiate their claims on a balance of probabilities as they failed to



demonstrate the particulars of negligence on the part of the Appellants. It is the Appellants' assertion therefore that the Respondents did not prove their case on a balance of probabilities.

8. In response to the Appellants' submissions, the Respondents submitted that the trial court made a very good analysis and determination as to why the Appellants' liability was 100%. The Respondents submitted that the investigating officer stated that he visited the scene and that the accident occurred at the edge of the road. He added that after completing investigations recommended the driver of the vehicle to be charged with causing death by dangerous driving. The Respondents further submitted that the Appellants' driver conceded that he knocked the deceased on the extreme left of the vehicle and that after inspection, the vehicle was found to have faulty lights.
9. In its judgment, the trial court stated that the deceased was hit on the edge of the road and not in the middle of the road. The record further shows that the DW1 Charles Macharia Mburu, the Appellants' driver was charged with the offence. He stated that the traffic case is still ongoing thereby corroborating the investigating officer's testimony that he recommended that DW1 be charged with the offence of causing death by dangerous driving. This therefore negates that Appellants' contention that the matter is pending under investigations.
10. In the case of Margaret Kannes Muyanga v Jamal Abdulkarim Musa [2020] eKLR, cited by the Appellants, the court therein found that the police abstract could not be relied upon given that the investigating officer was not called as a witness. In the present case, the investigating officer testified and confirmed that the deceased was hit on the edge of the road and the Appellant's driver charged with the offence of causing death by dangerous driving. Further, the driver conceded that he knocked the deceased on the extreme left of the vehicle and that after inspection, the vehicle was found to have faulty lights. In light of all this, my finding is that the trial court cannot be faulted for apportioning 100% liability on the Appellants.
11. Although the Appellants faulted the trial court's finding on quantum, they did not submit on the same. The ground is therefore deemed to have been abandoned.
12. The upshot is that I find no reason to interfere with the finding of the trial court. The Appeal fails and is dismissed with costs to the Respondents.

DATED SIGNED AND DELIVERED IN MALINDI THIS 21ST DAY OF FEBRUARY 2025

M. THANDE

JUDGE

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