Oduor (Suing as the Legal Representative of the Estate of the Late Jackline Atieno Oteng'o) v Haji & another (Civil Appeal E024 of 2024) [2025] KEHC 5752 (KLR) (9 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5752 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CIVIL APPEAL E024 OF 2024

DK KEMEI, J

MAY 9, 2025

BETWEEN

SISILIA ADHIAMBO ODUOR (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JACKLINE ATIENO OTENG'O) ..... APPELLANT

AND

HUBBIE HUSSEIN AL HAJI ..... 1ST RESPONDENT

GRAND TRADERS LIMITED ..... 2ND RESPONDENT

(Being an appeal from the judgment and Decree of Hon. T.K. Nambisia (RM) delivered on 6th June 2024 in Ukwala Civil Case No. 58 of 2020)

JUDGMENT

1. The Appeal arises from the judgment and Decree of Hon. T.K Nambisia RM delivered on 6th June 2024 in Ukwala PMCC No. 58 of 2020.

2. Vide a Plaint dated 24th August 2020 and filed on 28th August 2020, the Appellant (Plaintiff) suing on behalf of herself and for the benefit of the dependants of the deceased under the Fatal Accident Act and the benefit of the deceased's estate under the *Law Reform Act*, pleaded that on 23rd September 2018 at Siaya County along Jera-Sega Murram Road, the 1st Respondent's motor vehicle registration number KBM 2X5R hit the deceased who was a lawful pedestrian causing her fatal injuries and as a result the deceased sustained and suffered loss and damages. The 1st Respondent claimed that the 2nd Respondent was the beneficial owner of the motor vehicle.

3. The Appellant pleaded particulars of negligence by the Respondents to be; driving the motor vehicle at an excessive speed; failing to observe the road traffic rules; failing to keep proper lookout on the said road; failing to give due regard to the safety of the deceased; failing to stop/swerve/slow to avoid the

accident; permitting the accident to occur; failing to apply brakes in sufficient time or at all to avoid the accident. The Appellant placed reliance on the doctrine of res ipsa loquitor.

4. The Appellant sought reliefs against the Respondents as follows: a). general damages under the Fatal Accident Act and *Law Reform Act*; b). Special damages of Kshs. 35,000.00; c). costs of this suit and interest on (a), (b), and (c) at court rates from the date of filing the suit.

5. In her statement dated 24th August 2020, the Appellant, who is the eldest daughter, stated that while at Busia County Referral Hospital, she found the deceased in deep pain as her legs had been fractured from the accident and were bleeding profusely. The deceased could not speak clearly. She stated that the deceased's legs were to be amputated, but unfortunately, she passed on whilst being prepared at around 1600 hours. She stated that the police informed her that the driver of the 2nd Respondent was to blame for the accident and that the motor vehicle was registered and insured in the name of the 1st Respondent. She stated that the deceased was the family breadwinner as she was a businesswoman dealing in wholesale cereals and vegetables at Sega and who earned enough to school and feed them.

6. In her witness statement, Beatrice Aluoch stated that on 23rd September 2018, while walking towards Sega with the deceased from a women's group meeting, the said motor vehicle, which was heading towards Jera, was driven recklessly towards them, causing her to jump into the bush on her left side. When she came out of the bush, she found the deceased's legs had been severely cut and were bleeding profusely. She was in shock when they were taken to Sega Mission hospital. She was later informed by the Appellant that the deceased had succumbed to the injuries and died while at Busia Referral Hospital.

7. In his Statement of Defence dated 12th October 2020, the 1st Respondent denied ownership of the motor vehicle since as at the time of the alleged accident and before the filing of the suit, the 1st Respondent informed the Plaintiff's advocate that he was not the owner and that he presented the agreement of sale dated 2nd February 2015 showing that the motor vehicle was sold by the 1st Respondent to the 2nd Respondent who thereafter took possession of the same immediately almost five years before the occurrence of the accident, thus it became the beneficial owner despite a transfer not being effected. That the motor vehicle was not being driven by the 1st Respondent, his driver and/or agent/servant. That the particulars of negligence and the applicability of the doctrine of res ipsa loquitor were denied. That the 1st Respondent admitted that demand and notice of intention to sue was made but pleaded that he made good by duly informing the Appellant that the motor vehicle had been sold to the 2nd Respondent. That the 1st Respondent pleaded that the case against him should be struck out for being wrongly joined in the suit with costs.

8. The 2nd Respondent filed a Statement of Defence dated 14th October 2020, wherein ownership of the motor vehicle was denied. That it denied that the accident was caused by the negligence of the 2nd Respondent, its driver/servant or agent. That it denied the particulars of the accident, negligence, the applicability of the doctrine of res ipsa loquitor, or that the Appellant suffered loss and damages. That the accident was solely caused and/or substantially contributed to by the negligence of the Appellant.

9. The 2nd Respondent pleaded that the deceased failed to use the pedestrian crossing and failed to adhere to the traffic regulations on pedestrian safety and further failed to take any measures for their safety which were reasonable in the circumstances. That the Appellant ignored the hooting horn and glaring lights of the motor vehicle. The 2nd Respondent denied being issued with a demand and notice of intention to sue. The 2nd Respondent pleaded that the suit against it should be dismissed with costs.

10. In his statement, the 2nd Respondent's director Ismail Abdille, stated that their motor vehicle had not been involved in and/or caused any accident as alleged, and if it occurred, the same was solely caused and/or substantially contributed to by the negligence of the deceased.

11. In her reply to the 1st Respondent's Statement of Defence, the Appellant denied the 1st Respondent's averment that he was not the registered owner at the time of the accident, as the said motor vehicle was registered in his favour. That the 2nd Respondent did not indicate whether it was either a beneficial owner or owned the motor vehicle at the time of the accident for the 1st Respondent to be removed as a party in the suit. That the 1st and 2nd Respondents are both liable for the accident. The Appellant prayed that the Respondent's Statement of defence be dismissed and judgment be entered in her favour as prayed in the Plaint.

12. On 3rd August 2021, vide a consent dated 10th June 2021, whose import was that the 2nd Respondent was in possession of the suit motor vehicle, thus the 1st Respondent should be struck out as a party in the suit, the trial Court adopted the consent and that the 1st Respondent was struck out.

13. The Appellant lodged an application dated 2nd September 2021 seeking to set aside the consent order, which was supported by the Appellant's advocate Evan Oruenjo's affidavit sworn on the same date. The advocate averred that the NTSA search established the 1st Respondent as the registered owner of the motor vehicle that caused the fatal accident, as well as the police abstract. He averred that the Appellant was never informed about the consent or served with a copy to sign. He averred that the Respondents, by executing a consent without the input of the Appellant, would make the execution difficult against the 2nd Respondent, a company with no known address or assets.

14. On 29th March 2022, the learned trial magistrate vacated the consent order dated 10th June 2021 and directed the matter to proceed to hearing which kicked off in earnest on 8/11/2022.

15. PW1 No. 70XX10 Pc Eugene Masika was stood down for not being the author of the police abstract but Sgt Moseti.

16. PW2 Cecilia Adhiambo Oduor (Appellant), who is the deceased's daughter stated that she was in college and that her sister was in form three. She stated that she was alerted of the accident and that she rushed to the hospital in Busia where she found her in great pain and that she was to undergo amputation but that she died during the preparation. She urged the court to peruse her documents (Exhibit2-10). On being cross-examined, she stated that she did not have the deceased's documents to show her income. That she did not witness the accident. On re-examination, she stated that the names of both Respondents appear on the copy of search records.

17. PW3 Beatrice Aluoch Ochieng stated that the motor vehicle was being driven at a high speed. That she was in the company of the deceased when the accident took place and that she jumped. She later found the deceased's legs had been crushed. She stated that since she had been shocked, she found herself at Sega Mission Hospital. She stated that they were from Jera to Sega on the right side. She stated that she did not know the exact speed. She saw the driver, but she was in shock for 6 hours. In cross-examination, she stated that she told the deceased 'Huyu oria anaendeshanga vibaya na yeye ndio ako na hii gari.' She stated that she knew the motor vehicle and the driver.

18. PW4 No. 71XX9 Pc Eugene Masika attached to Bondo Traffic Base produced the police abstract dated 12th May 2020. He stated that the scene was visited by him Sgt Moseti. That the motor vehicle veered onto the left side and knocked down the pedestrians. He stated that the driver of the motor vehicle escaped from the scene and was never traced or charged. He stated that the driver of the motor vehicle was to blame for the accident. On being cross-examined, he stated that the pedestrians are supposed to

walk on the right side of the road, but they were walking on the left side of the road. The driver hit a bump and veered off the road. The road was rough and not a highway. The accident could have been avoided. He stated that he was the one who drafted and signed the police abstract.

19. The 1st and 2nd Respondents' cases were closed without calling any witnesses. Their advocates submitted that they would rely on the pleadings.

20. In her judgment, the subject of this appeal, the learned trial magistrate dismissed the Appellant's suit against the 1st and 2nd Respondents with costs. The learned trial magistrate observed that the Appellant produced a copy of the records that established the 1st Respondent was the previous registered owner of the suit motor vehicle, and one Nelson Kirwa as the current registered owner as at 21st September 2010. According to the learned trial magistrate, there being a motor vehicle sale agreement dated 2nd February 2015 between the 1st and 2nd Respondents and the accident happening in September 2018, it was not proved that the suit motor vehicle was owned by the 2nd Respondent on the material date. The learned trial magistrate held that as per the copy of records produced as P Exh 2, the current owner as at the time of the search in June 2020 was one Nelson Kirwa but as per the police abstract dated 12th May 2020 which was filed almost 2 years after the accident, the owner of the suit motor vehicle was the 1st Respondent. Having analysed contradictory documents to each other as to who owned the motor vehicle at the time of the accident, the learned trial magistrate opined that the Court was incapable of making a finding on who was to blame for the accident. According to the learned trial magistrate, the fact that the Respondents did not tender contrary evidence to the ownership of the suit motor vehicle, the Appellant failed to satisfy the trial court on a balance of probability that the 1st Respondent was the registered owner and the 2nd Respondent was the beneficial owner of the suit motor vehicle at the time of the accident.

21. Aggrieved, the Appellant lodged a Memorandum of Appeal dated 20th June 2024, contending that:

    1. The learned trial magistrate erred in fact and in law by failing to consider that at the time of the Fatal Accident, i.e, on 23rd September 2018, the motor vehicle KBM 215R that caused the accident that took the life of the deceased was owned by the 1st Respondent.

    2. The learned trial magistrate erred in law and fact by not taking into consideration the copy of police abstract and OB Record produced by PW3 PC Eugene Masika, the traffic police officer, which showed the 1st Respondent as the owner of the motor vehicle KBM 215R that caused the accident that killed the deceased. Further, the witness stated that the motor vehicle details were taken immediately after the accident as recorded in the occurrence book.

    3. The learned trial magistrate erred in fact and law for failing to consider the copy of the search record from NTSA that the vehicle was only transferred to Nelson Kirwa after the fatal accident.

    4. The learned trial magistrate erred in law and fact by dismissing the Appellant's suit by considering the evidence which was not on record. Further, the learned trial magistrate determined the suit considering issues not pleaded by the Defendants.

    5. The learned trial magistrate erred in law and fact by determining that the 1st Respondent did not owe the deceased pedestrian a duty of care yet they were the owners of the vehicle at the time of the accident.

    6. The learned trial magistrate erred in fact and law by not considering that the issue of ownership of the motor vehicle KB 215R that caused the fatal accident was determined by the Court

in an application for review of a decision discharging the 1st Respondent from the suit. The application is dated 2nd September 2021 and a ruling was to be delivered on 23rd March 2022.

7. The learned trial magistrate erred in law by misapplying the law of evidence, particularly Section 107-110 of the *Evidence Act* by taking into consideration irrelevant issues of ownership when the issue that was before her was to find the 1st Respondent vicariously liable, the liability and quantum of general and special damages.

8. The learned trial magistrate failed to properly evaluate and/or analyze the evidence and submission tendered by the Appellant. Consequently, the learned trial magistrate misapprehended the crux and/or gist of the matter before the Court and arrived at a passionate judgment.

9. The learned trial magistrate misapprehended the evidence tendered by the parties and failed to note that the Respondents never called any witnesses to testify on the matter to deny liability in case there was a contention on the issue thereby arriving at a per incuriam indecision.

10. The judgment of the learned trial magistrate is deficient and devoid of reasons for such determination. Consequently, the judgment sought to be impeached is contrary to Order 21 Rules 4 and 6 of the Civil Procedure Rules, 2010.

22. The Appellant prays that the judgment be set aside, reviewed, varied, and/or quashed and substituted with an order allowing the Appellant's suit. The Appellant urges this Court to apportion 100% liability on the 1st Respondent, assess and award general and special damages for loss of life expectancy, pain and suffering, dependency, and/or any other award as the court deems fit in accordance with the Fatal Accident Act and the *Law Reform Act*. The Appellant seeks the costs of this appeal and the lower court to be borne by the 1st Respondent.

23. The Appellant in her submissions dated 19/1/2025 submitted that the 1st Respondent was the registered as the owner of the motor vehicle KBM 215R on the date of the accident as confirmed by the copy of the police abstract and copy of search records as well as by the evidence of PW3 who maintained that the 1st Respondent was the registered owner of the vehicle. The Appellant contended that the trial court's decision should be overturned since the alleged Nelson Kirwa who is said to have bought the vehicle must have been introduced after the accident to defeat justice. It was also submitted that the Respondents are not allowed to depart from the averments in their pleadings. Further, it was submitted that the Respondents opted not to tender evidence and closed their case without calling witnesses and hence the Appellant's evidence remained uncontroverted. It was finally submitted that a court of law will not grant a remedy which has not been applied for and thus the trial court went into error when it made a determination on issues that were not pleaded and not placed before it for determination.

24. I have considered the appeal in light of the evidence on record and submissions on behalf of the parties. I find the issue for determination is whether the Appellant's case was proved on a balance of probabilities.

25. This being a first appeal, the role of this Court is to re-evaluate and subject the evidence to afresh analysis to reach an independent conclusion as to whether or not to uphold the decision of the Trial Court. The court also takes note of the fact that it did not have the benefit of seeing or hearing the witnesses testify and therefore has to make an allowance for the same. (Selle vs. Associated Motor Boat Co. [1968] EA 123).

26. Odunga J. (as he then was) China Wi Yu Company Limited vs Ronald Manthi David [2021] KEHC 1626 (KLR) stated that this Court is under a duty to delve at some length into factual details

and revisit the facts as presented in the trial Court, analyze the same, evaluate it and arrive at its independent conclusions, but always remembering, and giving allowance for it, that the trial Court had the advantage of hearing the parties.

27. In Abok James Odera t/a A.J Odera & Associates vs John Patrick Machira t/a Machira & Co. Advocates [2013] e KLR, about the duty of the first appellate court;

> " This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess, and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way"

28. In Ephantus Mwangi and Another vs Duncan Mwangi Civil Appeal No. 77 of 1982 [1982-1988] 1KAR 278 the Court of Appeal held that:

> " A member of an appellate court is not bound to accept the learned Judge's findings of fact if it appears either that (a) he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

29. It is not in dispute that there was an accident involving the deceased and motor vehicle registration No. KBM 215R on the material date which led to the death of the deceased. It is also not in dispute that the registration details of the vehicle showed that the ownership had changed hands from the 1st Respondent to the 2nd Respondent and subsequently to one Nelson Kirwa.

30. The Appellant being the claimant was under obligation to prove her case within the legal threshold of proof. The legal burden of proof was on the Appellant to prove her claim on a balance of probabilities. It was therefore incumbent upon the Appellant to prove her assertions pleaded in the Plaint.

31. Section 107(1) of the *Evidence Act*, Cap 80 provides that:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

32. However the burden may shift to the Defendant to disprove the alleged claim. This is the evidential burden of proof which is well captured under Sections 109 and 112 of the *Evidence Act*.

33. The Court of Appeal in Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another [2005] 1 EA 334 held that:

> " As a general proposition under section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the Court to believe in its existence which is captured in sections 109 and 112 of the Act."

34. The standard of proof is well captured in the case of Palace Investment Ltd v. Geoffrey Kariuki Mwenda & Another (2015) eKLR, where the Court held that:

Denning J. in Miller v Minister of Pensions (1947) 2 ALL ER 372 discussing the burden of proof had this to say; -

"That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it is more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained."

35. Kimaru J. (as he then was) in William Kabogo Gitau Vs George Thuo & 2 others (2010) 1 KLR 526 stated that;

> "In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleased in his case are more likely than not to be what took place.in percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposite party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegation that he made has occurred."

36. As noted from the foregoing authorities, the Appellant was supposed to prove her case on a balance of probabilities. The Respondent had opposed the Appellant's case in the lower court on the main reason that the ownership of the vehicle that caused the accident was not proved against them. In this appeal, the Respondent has also raised two germane issues namely that the ownership of the vehicle is not attributable to the Respondents in any way and secondly that the present counsel for the Appellant has not complied with the provisions of Order 9 Rule 9 of the Civil Procedure Rules. As regards the issue of ownership of the vehicle, both Respondents have distanced themselves and hence it was incumbent upon the Appellant to present evidence that the vehicle was owned by the Respondents at the time of the accident. The evidence tendered before the lower court showed that the ownership of the vehicle was in the name of one Nelson Kirwa as at 21/9/2010. That being the position, it is clear that as at the time of the accident on 23/9/2018, the ownership of the vehicle was in the name of one Nelson Kirwa Ng'eny. Indeed, the copy of records of motor vehicle presented before the lower court proved so. Hence, the Respondent was under obligation to have sued the said Nelson Kirwa Ng'eny or sought to bring him on board into the proceedings. She did not do so. It is instructive that under Section 8 of the *Traffic Act* that the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. If the search of the motor vehicle through the NTSA showed that the said Nelson Kirwa Ng'eny was the registered owner of the vehicle as at 21/9/2010 and that there is no evidence that as subsequent transfer has been made in favour of the Respondents herein, then the Appellant failed to prove her case against the Respondents. That the Respondents were the registered owners of the vehicle at the time of the accident. The lower court record show that the learned trial magistrate was convinced that the Appellant did not manage to prove her case under the provisions of Section 107 of the *Evidence Act*. the learned trial magistrate stated as follows:

> "Section 107 and 109 of the *Evidence Act* equally mandate that any party asserts a fact, to prove that fact. Given that neither of the documents tendered by the plaintiff prove who owned the suit motor vehicle at the time of the accident, and the same are contradictory to each other, this court is incapable of making a finding on who is to blame for the accident."

11. The trial court analyzed the evidence of ownership as follows:

"In the instant suit the plaintiff produced a copy of records that showed the 1st Defendant (now Respondent) was the previous registered owner of the suit motor vehicle and one

> Nelson Kirwa as the current registered owner. The date of registration is 21/9/2010. There is also a motor vehicle sale agreement on record between the 1st Defendant and the second defendant, however, the accident having occurred in September 2018 this does not prove the suit motor vehicle was owned by the 2nd Defendant on the material date. The police abstract however indicates that the owner of the suit motor vehicle at the time of the accident is the 1st Defendant.

Looking at the sentiments of the learned trial magistrate, the fact that the police abstract had the name of the 1st Respondent as the owner of the vehicle, that alone is not sufficient proof of ownership of the vehicle because the requisite legal documents are a logbook or a search of motor vehicle verified by the NTSA. As noted above, the search from NTSA indicated that the vehicle was still registered in the name of Nelson Kirwa Ng'eny. The Appellant did not manage to avail evidence that the ownership of the vehicle had changed into the names of the Respondents. I find in the absence of such evidence, the Respondents' case was not proved on a balance of probability as regards the issue of ownership of the accident vehicle.

37. The Respondents also challenged this appeal on the ground that learned counsel for the Appellant has not complied with the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010 and that the Appellant's law firm of M/s Ogenga Advocates is improperly on record for failing to first seek leave of the court to come on record after the judgment had been delivered in the matter on 6th June 2024, before any other order or orders. The Respondents also contended that the Appellant has failed to rectify this state of affairs. The suit filed by M/s Oruenjo Kibet & Khalid on behalf of the Appellant. However, by the time of rendering judgment, Mr. Oruenjo who was in personal conduct of the matter was deceased and that his brief was held for the last half of the suit predominantly by Mr. Ogenga who is 'purportedly' on record for the Appellant in the present appeal. Under Order 9 Rule 9 of the Civil Procedure Rules, it is mandatory for an advocate or a party coming on record post-judgment to first seek leave by way of a formal application or obtain consent from the outgoing counsel. The said Rule provides as follows:

> " when there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be affected without an order of the court –
>
> a. Upon an application with notice to all the parties; or
>
> b. Upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

The foregoing provision is coached in mandatory terms and that an advocate or a party wishing to come on record post judgment must seek leave by way of formal application or obtain consent from the outgoing advocate. In the case of James Ndonyu Njogu vs Muriuki [2020] eKLR, the court while striking out an application filed by counsel post judgment in contravention of the provisions of Order 9 Rule 9 of the Civil Procedure Rules held as follows;

> " Although the Applicant has a Constitutional right to be represented, yet where there are clear provisions of the law regulating the procedure of such presentation, the same should be adhered to. The procedure set out under Order 9 Rule 9 above is mandatory and thus cannot be termed as a mere technicality."

Learned counsel for the Appellant has maintained that this appeal is a new suit and that he does not need to seek leave of court or secure a consent from the former advocate. It is noted that the Appellant's

former advocate Mr. Oruenjo has since died and therefore the issue of consent does not arise. However, the present counsel ought to have filed an application seeking leave to come on record for the Appellant post judgement. This was not done. Under Order 9 Rule 9(5) of the Civil Procedure Rules an advocate acting for a party shall be considered to be acting for the party until the final conclusion of the cause or matter including any review or appeal. This then demands that the present counsel for the Appellant ought to have sought leave so as to properly come on record for the Appellant post judgment. Hence the Respondents contention that the appeal is incompetent and improperly before the Court and has been filed by Counsel who was previously not on record and without leave of the court.

38. Finally, it has been contended by the Appellant's counsel that the Respondents in the lower court did not tender evidence and therefore the Appellant's evidence should have been deemed as uncontroverted. On that score alone, counsel for the Appellant has faulted the trial court for failing to take note of the fact that the Appellant's case was not challenged in any way by the Respondents. Whereas that view is valid in certain circumstances, the provision of Section 107 of the *Evidence Act* is the gateway for any party in a suit to fulfil before the suit can be deemed to have been proved. In the present scenario, the Appellant was under obligation to prove her case on balance of probabilities. It was immaterial whether or not the Respondents filed pleadings or presented rebuttal evidence since the burden of proof lay upon her to discharge. The Appellant should not use the excuse that the Respondent did not tender evidence to claim that a case should have been allowed by the trial court. As it can be seen, the Appellant failed to prove that the accident vehicle was registered in the names of the Respondents at the time of the accident on 23/9/2018. As the Appellant failed to prove her case within the requisite threshold of proof, the finding by the learned trial magistrate cannot be faulted.

39. In view of the foregoing observations, it is my finding that the Appellant's appeal lacks merit. The same is dismissed. The judgment of the trial court is hereby upheld. Each party to bear their own costs of this appeal.

DATED, AND DELIVERED AT SIAYA THIS 9TH DAY OF MAY, 2025

D. KEMEI

JUDGE

In the presence of:

Ogenga.....for Appellant

Ochanyo for Mohamed..... for Respondents

Okumu..... Court Assistant