



**Kiarie & another v Ngarachu (Suing as the Legal Administrator of the Estate of Samuel Kariuki Ngarachu - Deceased) & another (Civil Appeal E1308 of 2023) [2025] KEHC 7989 (KLR) (Civ) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7989 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1308 OF 2023**

**AC MRIMA, J**

**JUNE 5, 2025**

**BETWEEN**

**IAN MWANGI KIARIE ..... 1<sup>ST</sup> APPELLANT**

**JOE MUGO MATHENGE ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PETER NJENGA NGARACHU (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF SAMUEL KARIUKI NGARACHU - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**VICTOR MAMWENGE ODUNGA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. R. Musiega (Senior Resident Magistrate) delivered on 30th October 2023 in Nairobi CMCC No. E4211 of 2022)*

**JUDGMENT**

1. Through a Plaintiff dated 5<sup>th</sup> August 2022, Peter Njenga Ngarachu, the 1<sup>st</sup> Respondent herein, being the legal representative of the Estate of Samuel Kariuki Ngarachu, sued Ian Mwangi Kiarie and Joe Mugo Mathenge, the Appellants herein, in Nairobi [Milimani] Chief Magistrates Civil Suit No. E4211 of 2022 [hereinafter referred to as ‘the suit’] for general damages, special damages of Kshs.280,440/= plus costs and interests as result of a road traffic accident that occurred on or about 6<sup>th</sup> September 2021, that claimed the life of Samuel Kariuki Ngarachu, [hereinafter referred to as ‘the deceased’], who was a pillion passenger aboard motorcycle registration number KMEW 362U [hereinafter referred to as ‘the motor cycle’] which was being driven by Victor Mamwenge Odunga, the 2<sup>nd</sup> Respondent herein.



The 2<sup>nd</sup> Respondent was enjoined as a Third-Party in the suit in respect of the accident which occurred along Kungu Karumba road.

2. It was the 1<sup>st</sup> Respondent's case that the 1<sup>st</sup> Appellant, who was the driver of the motor vehicle registration number KCD 990Q [hereinafter referred to as 'the vehicle'] registered and insured in the name of the 2<sup>nd</sup> Appellant, was solely liable for the accident that caused the death of the deceased. He pleaded that the 2<sup>nd</sup> Appellant was vicariously liable for the actions and omissions of the 1<sup>st</sup> Appellant as he was his authorized driver, servant and/or agent.
3. The suit was vehemently defended by the Appellants who filed a Statement of Defence dated 1<sup>st</sup> September 2022. The Appellants blamed the 2<sup>nd</sup> Respondent claiming that he was the one who caused/ and or contributed to the occurrence of the said accident. As stated above, the Appellants initiated third-party proceedings against the 2<sup>nd</sup> Respondent, but there is neither evidence of service of the third-party notice nor directions thereto. Nevertheless, the suit was canvassed by way of oral evidence. The 1<sup>st</sup> Respondent testified as PW1 and called a witness Cpl. Dicky Andete who testified as PW2, who was the Investigating Officer in respect of the accident.
4. The Appellants on the other hand also tendered evidence. The 1<sup>st</sup> Appellant testified as DW2 and called a witness one Edward Odundo who testified as DW1, who was a passenger aboard vehicle. At the close of parties' respective cases and subsequent filing of submissions, the trial Court rendered its judgment on 3<sup>rd</sup> October 2023 in favour of the 1<sup>st</sup> Respondent in the following terms: -
  - i. Appellants and 2<sup>nd</sup> Respondent [as a third-party held jointly and severally liable for accident.
  - ii. Pain and suffering - Kshs.10,000/=;
  - iii. Loss of expectation of life - Kshs.100,000/-;
  - iv. Loss of dependency - Kshs.5,000,000/=;
  - v. Special Damages - Kshs.60,550/=;
  - vi. Costs and Interest.
5. Aggrieved by the decision, the Appellants filed the instant appeal through a Memorandum of Appeal dated 28<sup>th</sup> November 2023 and preferred the following grounds: -
  1. That the learned trial magistrate erred in law and in fact in failing to critically analyse the evidence on the issue of liability and arrived at the erroneous finding blaming the appellants and the 2<sup>nd</sup> respondent jointly and severally.
  2. That the court failed to critically analyse and apply the causative role of the 2<sup>nd</sup> Respondent and the deceased and thus arrived at the erroneous finding blaming the appellants and the 2<sup>nd</sup> Respondent jointly and severally.
  3. That the learned trial magistrate erred in law and in fact in completely misapprehending the principles governing the assessment of damages, thereby arriving at an erroneous decision with regard to general damages.
  4. That the learned trial magistrate failed to exercise his discretion judiciously in awarding general damages.
  5. That the learned trial magistrate erred in law and in fact by double awarding the respondent's estate both under the *Law Reform Act* and *Fatal Accidents Act*.



6. In this matter, the appeal centred on the trial Court's findings on liability and quantum. Pursuant to the directions of this Court, the appeal was canvassed by way of written submissions. The Appellant's submissions were dated 7<sup>th</sup> April 2025 while the 1<sup>st</sup> Respondent's submissions were dated 2<sup>nd</sup> April 2025.

7. This being a first appeal, the Court is well aware of its role as reiterated in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1 EA 123 as follows: -

...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 make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence....

8. With the foregoing role in mind, this Court will now re-look at the twin issues of liability and quantum.

9. On the issue of liability, it is on record that the accident involved the motor cycle and the vehicle. To that end, the Appellants initiated third party proceedings where the trial Court issued a third-party notice against one Victor Mamwenge Odunga, the 2<sup>nd</sup> Respondent herein, who was the rider of the motor cycle. The Court ordered service on the third party. According to the record, there is no evidence of service of the third-party notice. There is also no evidence that the Court took out any directions involving the third party. However, in the impugned judgment, the trial Court yielded itself on the liability thus: -

... Based on the foregoing I find that the defendant [sic] and the third-party motor cycle are to blame for the accident and I hold them 100% liable jointly and severally...

10. As the third-party proceedings were not settled well by the trial Court through directions and the third party was not served or at all, then the finding by the trial Court that the third party was to blame for the accident jointly with the Appellants cannot legally stand. With such a finding, the impugned judgment cannot hold and it must give way to a trial which will uphold procedural fairness on all parties. That is the intent of Article 50(1) of *the Constitution*.

11. On the basis of the above finding, the discussion herein has to come to an end since any further consideration on the aspect of quantum of damages will be only academic and will neither serve any purpose nor aid any party.

12. To that end, the following final orders hereby issue: -

(a) The appeal is hereby allowed and the judgment in Nairobi [Milimani] Chief Magistrates Civil Suit No. E4211 of 2022 delivered on 3<sup>rd</sup> October 2023 is hereby set-aside and quashed.

(b) The suit shall be re-tried by any Magistrate other than Hon. Rawlings Liluma, SRM.

(c) Since the error at hand was on the part of the Court, there shall be no order as to costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF JUNE, 2025.**

**A. C. MRIMA**

**JUDGE**



Judgment virtually delivered in the presence of:

**Mr. Karanja**, Learned Counsel for the Appellants.

**No appearance** for Learned Counsel for the 1<sup>st</sup> Respondent.

**No appearance** for the 2<sup>nd</sup> Respondent.

**Amina/Abdirazak** – Court Assistants.

