



**Maina & another v Muma & another (Suing as legal representatives  
of the Estate of the Late Evarson Mwambui Mutuku) (Civil Appeal  
E1188 of 2023) [2025] KEHC 13833 (KLR) (Civ) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13833 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1188 OF 2023**

**WM MUSYOKA, J**

**OCTOBER 3, 2025**

**BETWEEN**

**EDWARD MURIITHI MAINA ..... 1<sup>ST</sup> APPELLANT**

**DAVID KARUGA KIBUTU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CAROLYNE BWARI MUMA & SKOLASKA MUENI MUTUKU (SUING AS  
LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE EVARSON  
MWAMBUI MUTUKU) ..... RESPONDENT**

*(Appeal from the judgement and decree of Hon. Ms. G. Omodho, Principal  
Magistrate, PM, in Milimani CMCCC No. 11945 of 2021, of 29th June 2023)*

**RULING**

1. The suit, before the trial court, was by the respondents, against the appellants. It was a fatal injury claim, arising from a motor traffic accident, involving the deceased person, whose estate the respondents are administering, and a motor vehicle owned and controlled by the appellants. The respondents had sought general damages under the *Law Reform Act*, Cap 26, Laws of Kenya, and the *Fatal Accidents Act*, Cap 32, Laws of Kenya, special damages and costs. It was alleged that that vehicle, registration mark and number KCG 119E, in which the deceased was a passenger, was so negligently driven that he, the deceased, fell off, and sustained fatal injuries.
2. The appellants resisted the claim, in a joint defence. They denied everything pleaded in the plaint, but averred in the alternative, that if any accident had occurred, the same had been caused solely by negligence on the part of the deceased, or he substantially contributed to it by his own negligence.



3. A trial was conducted. 2 witnesses testified for the respondents. The appellants did not adduce evidence. Judgment was delivered in favour of the respondents. Liability was assessed at 100%, Kshs. 3,405,169.60 was awarded for loss of dependency, special damages were awarded at Kshs. 50,550.00, Kshs. 100,000.00 for pain and suffering and Kshs. 100,000.00 for loss of expectation of life.
4. The appellant was dissatisfied, hence this appeal. The grounds are that the trial court erred in making the awards on liability and quantum; liability was not proved to the required standard; the evidence tendered was disregarded or ignored in totality; the submissions made and the authorities cited by the appellants were not considered; among others.
5. Directions were given, on 24<sup>th</sup> May 2024, for canvassing of the appeal by way of written submissions.
6. The file was placed before me, on 5<sup>th</sup> May 2025, during service week. I was informed that the respondents had filed an application, dated 25<sup>th</sup> April 2025, wherein it was claimed that there was duplicity, as the appellants had filed another appeal, with respect to the same judgement of the trial court, in Milimani HCCA No. E667 of 2023. That appeal was dismissed, whereupon the appellants filed the instant appeal.
7. I directed that the said application, dated 25<sup>th</sup> April 2025, be served, and be canvassed by way of written submissions, which were to be exchanged within 30 days. The matter was to thereafter be mentioned on 9<sup>th</sup> June 2025, before the Deputy Registrar at Milimani. A mention did happen on 9<sup>th</sup> June 2025, when it was indicated that the appellants had filed submissions, but the respondents had not. The file was then forwarded to me at Busia, for the writing of the ruling on the application.
8. I have perused the file of papers before me, and I have not come across a response, by the appellants, to the application, dated 25<sup>th</sup> April 2025, on the dismissal of the earlier appeal herein. That was what the appellant was expected to deal with, and not the appeal herein itself. The mention before the Deputy Registrar was to confirm whether the appellants had responded to that application. The file was supposed to be forwarded to me to deal with the issue of that duplicity, and not on the appeal herein on its merits.
9. There is no compliance with my directions of 5<sup>th</sup> May 2025. I am unable to write a ruling on the application, dated 25<sup>th</sup> April 2025. I shall return the file to the relevant registry for compliance. I believe the matter, of the duplicity, may be dealt with by any of the Judges at the Civil Appeals Division at the High Court at Milimani, Nairobi, thereafter. It is so ordered.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Munyu, instructed by Kimondo Gachoka & Company, Advocates for the appellants.

Ms. Sagwa, instructed by Shem Kebongo & Company, Advocates for the respondents.

