



**Gichuhi v Onyango & 2 others (Civil Appeal E1157 of 2023)
[2025] KEHC 15757 (KLR) (Civ) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15757 (KLR)

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

CIVIL

CIVIL APPEAL E1157 OF 2023

WM MUSYOKA, J

NOVEMBER 3, 2025

BETWEEN

STANLEY NJOROGE GICHUHI APPELLANT

AND

DOUGLAS AOL ONYANGO 1ST RESPONDENT

FAWZI MOHAMED SAID 2ND RESPONDENT

JOSEPH MWANGANGI 3RD RESPONDENT

(Appeal from the ruling and order, of Hon. Wendy K. Micheni, Chief Magistrate, CM, of 19th October 2023, in Milimani MCCC No. E4525 of 2020)

JUDGMENT

1. The appellant had sued the respondents at the trial court. He alleged that he was lawfully walking, within Dandora Phase 5, in the Moroto area, in Nairobi, when he was hit by motor vehicle, registration mark and number KBQ 785A, which was allegedly owned or controlled by the respondents. He sustained injury, and suffered pain and loss. He attributed negligence on the respondents, and sought to recover compensation from them.
2. The 1st and 3rd respondents entered appearance and filed defence. They admitted the accident, but denied liability, attributing negligence on the appellant instead. The 2nd respondent did not appear nor file defence, and interlocutory judgment was entered against him on 31st August 2021.
3. Liability, as between the appellant and the 1st and 3rd respondents, was resolved, on 24th February 2022, by a consent recorded that day at 90:10. The appellant testified on 23rd March 2022, on the aspect of quantum. The Judgment was delivered, on 28th November 2022, with general damages being awarded



- at Kshs. 1,200,000.00; specials at Kshs. 400,000.00; future medical expenses at Kshs. 400,000.00; with costs and interests.
4. The appeal herein does not turn on the judgment itself, but on orders allegedly made in a ruling, allegedly delivered on 19th October 2023. The grounds of appeal revolve around the trial court not appreciating sections 3A and 80 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, when dealing with review; failing to appreciate the concept of error on the face of the record; incorrectly construing the consent order recorded by the parties on 24th February 2022; and failing to appreciate that admitted facts need not be proved. It is sought that the ruling of Hon. Wendy K. Micheni, CM, be substituted with an order allowing the review application.
 5. I see, in the record of appeal, a Motion, dated 17th August 2023, seeking review of the judgment, dated 2nd December 2023, with respect to grant of witness expenses of Kshs. 30,000.00, the attendance fees for a doctor the respondent called to testify. I have very scrupulously perused the original trial record, and I have not come across the original Motion, dated 17th August 2023, nor even a copy thereof.
 6. It is alleged that Hon. Micheni, CM, delivered a ruling on 19th October 2023, on the Motion, dated 17th August 2023. I have very scrupulously perused the original trial court records, and I have not come across the original ruling that Hon. Micheni, CM, allegedly delivered on 19th October 2023, neither have I seen a copy thereof. I have also religiously scoured through the record of appeal, and I have not encountered a copy of the said ruling. I have perused the index to that record of appeal, and I do not see an item relating to that ruling. In short, a copy of that ruling has not been availed, either in the original trial records or in the record of appeal.
 7. I have gone through the handwritten notes in the original trial record, and I have not chanced upon a ruling, in the hand of Hon. Micheni, CM, dated 19th October 2023, or delivered on that date. According to both the original trial records and the typed record of appeal, no ruling was delivered on 19th October 2023. Indeed, nothing significant was recorded as having happened on 19th October 2023.
 8. The handwritten notes, for 19th October 2023, say as follows:

“19/10/2023
Before Hon. Wendy K. Micheni, CM
C/A Collins
Mr. Mwangi – Plaintiff/Applicant
Mention: Monday 8:15 a.m. on 27th November 2023.”
 9. Clearly, no ruling was delivered on 19th October 2023, whether on the Motion, dated 17th August 2023, or any other. According to the 2 versions of the trial records, the original trial notes and the record of appeal, no ruling was delivered before 19th October 2023 or after that date, on the Motion, dated 17th August 2023. As I have not found the impugned ruling, in either of the 2 records before me, and as I cannot even trace footprints on its delivery in the record, it can safely be concluded that that ruling is non-existent.
 10. As the appeal herein is premised on that non-existent ruling, it would be my conclusion that it is not well founded. Without the alleged ruling, there is nothing for me to determine. Consequently, I have no option, but to dismiss the appeal herein, with costs.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 3RD DAY OF NOVEMBER 2025.



WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Mwangi, instructed by BW Kamunge & Company, Advocates for the appellant.

Mr. Mugambi, instructed by Morara Apiemi & Nyangito, Advocates for the respondents.

