



**Musyoki (Suing as the Legal Representative of the Estate of Lawrence Lole
Musyoki - Deceased) v Darson Trading Limited & another (Civil Appeal
E108 of 2023) [2025] KEHC 15669 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E108 OF 2023
KW KIARIE, J
NOVEMBER 4, 2025**

BETWEEN

**PETER WAMBUA MUSYOKI (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF LAWRENCE LOLE MUSYOKI - DECEASED) APPELLANT**

AND

DARSON TRADING LIMITED 1ST RESPONDENT

MATHIAS MULI 2ND RESPONDENT

*(Being an appeal from the judgment and decree of the Makueni Chief Magistrate's Court,
CMCC No. E102 of 2022, by Hon. Martin N. Mutua (Senior Resident Magistrate))*

JUDGMENT

1. Peter Wambua Musyoki, the appellant, was the plaintiff in Makueni Chief Magistrate's CMCC No. E102 of 2022. He had sued for a claim of general and special damages following a road traffic accident involving their motor vehicle, with registration numbers KCW 411A, with the deceased. As a result of the accident, the deceased was fatally injured. The learned trial magistrate apportioned liability at 50:50.
2. The appellant was dissatisfied with the judgment on liability and filed this appeal through TMJ Advocates LLP. He raised the following grounds for appeal:
 - a. The learned magistrate erred in law and in fact by apportioning liability at the ratio of 50%:50% to the plaintiff against evidence placed before the honourable magistrate.
 - b. The learned magistrate erred in law and in fact by reaching a conclusion on liability that is contrary to the evidence before him, the established principles on assessment of liability and the appellant's submissions.



- c. In all the circumstances of the case, the findings of the learned magistrate, in particular the apportionment of liability, were characterized by misapplication of the law, misapprehension of facts of the case, consideration of irrelevant matters and wrong exercise of discretion.
3. The respondent opposed the appeals through Kimondo Gachoka & Company Advocates.
4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
5. It is trite law that no liability can be apportioned without fault. The Court of Appeal in *Kiema Mutuku vs Kenya Cargo Hauling Services Ltd* [1991] 2KAR 258 stated that:

There is as yet no liability without fault in the legal system in Kenya and a plaintiff must prove some negligence against the defendant where the claim is based on negligence.
6. The appellant presented evidence through CPL. Paul Mogesi (PW1), who blamed the driver of the offending motor vehicle. His reason was that the vehicle had no conductor. Since the deceased disembarked from the vehicle, it was evident that the driver drove off prematurely. The other witness who blamed the driver was Johnstone Mutisya Muasya (PW3). At the time of the accident, he stated he was at the scene. The deceased was knocked down while at the pedestrian lane.
7. Despite this evidence blaming the driver of the vehicle, the respondent did not tender any evidence in rebuttal. Without evidence of acts of omission or commission on the part of the deceased, the trial magistrate had no basis to apportion liability the way he did. I therefore set aside the judgment on liability. The same is substituted with a 100% liability to be borne by the respondent.
8. The appeal is allowed with costs.

DELIVERED AND SIGNED AT MAKUENI, THIS 4TH DAY OF NOVEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

