



**Wasai & another (Suing as the personal representative of the Estate of the Late Erickson Marinda Majala alias Erick Kaka Marinda) v Data Rush Services Ltd (Civil Appeal E020 of 2025) [2025] KEHC 16283 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16283 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E020 OF 2025  
AN ONGERI, J  
NOVEMBER 3, 2025**

**BETWEEN**

**CHRISTINE ANYANGO WASAI ..... 1<sup>ST</sup> APPELLANT**

**ROPHENCE WAWUDA MAJALA ..... 2<sup>ND</sup> APPELLANT**

**SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE  
LATE ERICKSON MARINDA MAJALA ALIAS ERICK KAKA MARINDA**

**AND**

**DATA RUSH SERVICES LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. A. M. Obura (CM)  
in Voi CMCC No. E178 of 2023 delivered on 14th February 2025)*

**JUDGMENT**

1. The Appellants Christine Anyango Wasai And Rophence Wawuda Majala (Suing on behalf of the Estate of Erickson Marinda Majala Alias Erick Kaka Marinda (Deceased) were the Plaintiffs in Voi CMCC No. E178 of 2023.
2. The Appellants sued DATA RUSH SERVICES LTD, the Respondent in this appeal seeking special damages in the sum of Kshs. 101,810/= with interest at commercial rates from the respective date on which the payment became due until payment in full.
3. The cause of action arose out of a road traffic accident that occurred on about 3<sup>rd</sup> April 2023 when the deceased was riding motor cycle registration No. KMDF 609J at Caltex Area along Mombasa – Nairobi Highway when he was hit by motor vehicle registration number KBL 089K Isuzu.
4. The Appellants alleged in the plaint dated 25<sup>th</sup> August 2023 that the Respondent’s driver carelessly, negligently and/or recklessly drove, managed and/or controlled motor vehicle registration number



- KBL 089K Isuzu that he caused it to collide with the deceased's motor cycle causing extensive damage to it.
5. The Respondent filed a statement of defence dated 25<sup>th</sup> October 2023 denying the Appellant's claim.
  6. The Appellants pleaded in the plaint that at the material time of the accident, they were the owners of the motor cycle registration No. KMDF 609J Isuzu having purchased it from Car and General (Trading) Limited.
  7. The Plaintiffs called three witnesses, P.C James Kilonzo (PW1) a motor vehicle assessor, Patrick Malasi (PW2) and the first Appellant CHRISTINE ANYANGO WASAI (PW3).
  8. PW1 produced the police abstract report which confirmed that the accident in question did occur on 2<sup>nd</sup> April 2023 at Caltex Area along Mombasa Nairobi Highway.
  9. The Appellants also called a motor vehicle assessor who assessed the material damages as follows:-
    - i. Repair costs of the motor cycle Kshs. 91,060/=
    - ii. Copy of records Kshs. 1,100/=
    - iii. Company search Kshs. 650/=
    - iv. Demand letter Kshs. 5,000/=
    - v. Assessment charges Kshs. 4,000/=Total Kshs. 101,810/=
  10. The Respondent did not adduce any evidence. The trial court found that liability was established at 100% in a related suit Voi CMCC No. E152 of 2023 involving the same parties.
  11. However, the court found that ownership of the motor cycle registration number KMDF 609J was not proved on a balance of probabilities and dismissed the Appellant's suit.
  12. The Appellants have appealed against the said dismissal of the suit on the following grounds:-
    - i. That the Honourable Magistrate erred in both law and fact in totally ignoring and/or failing to take into account the oral evidence and documentary evidence by the Appellant.
    - ii. That the Honorable Magistrate erred in law and facts by failing to appreciate that ownership of the motor cycle Reg. No. KMDF 609J was never disputed during the hearing and at no given time any person claims ownership of the Motor Cycle apart from the deceased through the Plaintiffs who was in actual possession of the Motor Cycle apart from the deceased through the Plaintiffs who was in actual possession of the motor cycle at the time the accident happened.
    - iii. That the Honorable Magistrate erred in law and facts by failing to appreciate that liability for the damage to the motor cycle was apportioned at 100% as against the Respondent.
    - iv. That the Honorable Magistrate erred in law and facts by failing to find that the Appellant had proved their case on a balance of probability and deserved to be granted the orders they sought in their plaint.
    - v. That the Learned Magistrate erred in law and fact and misdirected herself by acting on wrong and unsound principles and provisions of the Law.



13. The parties filed written submissions as follows; The appellants submitted that they are challenging the lower court's judgment, arguing that the magistrate erred in law and fact by dismissing their claim for special damages despite having found the respondent 100% liable for the accident.
14. The core of their submission is that the magistrate fundamentally ignored and failed to properly evaluate the evidence they presented.
15. They established that an accident occurred between the respondent's vehicle and their motorcycle, a fact corroborated by a police abstract that placed blame on the respondent.
16. The appellants contend that they proved ownership of the motorcycle through a copy of record and testimony, demonstrating that the deceased had purchased it from Car & General (Trading) Limited.
17. They argued that this ownership was never disputed by the respondent during the trial, nor did any third party come forward to claim the motorcycle.
18. The magistrate's finding that they failed to prove a nexus with Car & General was, therefore, an erroneous exercise of discretion.
19. They relied on legal precedent which holds that a person in custody and control of a vehicle, a "special owner," has a valid claim, especially when ownership is not contested.
20. Furthermore, the appellants presented an assessment report from a qualified assessor detailing the extensive damage to the motorcycle, which rendered it a write-off.
21. The credentials of this assessor were never challenged, and the respondent did not produce a counter-report.
22. The appellants asserted that they discharged their burden of proof on a balance of probabilities, and the burden then shifted to the respondent, who failed to adduce any evidence to rebut their claim.
23. They also highlighted that the respondent has already settled a related fatal injury claim arising from the same accident, reinforcing the respondent's liability.
24. The appellants concluded that the magistrate acted on wrong legal principles by requiring proof of absolute ownership in a context where it was not legitimately in dispute, thereby denying them a fair trial and the compensation they deserved.
25. Consequently, they pray for the appeal to be allowed, the magistrate's judgment set aside, and for costs to be awarded to them in both the High Court and the lower court
26. The Respondent's argument was that the trial court was correct in dismissing the Appellant's suit because the Appellants failed to prove that the deceased was the owner of the motorcycle, which was a prerequisite for claiming special damages for its repair.
27. The Respondent submitted that the trial court properly considered all the evidence presented. The crux of the case was that, despite a finding of 100% liability against the Respondent, the Appellants could not benefit from an award for material damage because they did not establish ownership of the motorcycle.
28. The evidence on record, specifically the motor vehicle search certificate, identified "CAR & GENERAL (TRADING) LIMITED" as the registered owner both at the time of the accident and afterward.



29. Furthermore, the assessment report for the damages was addressed to this same company, reinforcing its status as the proprietor and the insured party.
30. The Respondent argued that the Appellants did not meet the legal burden of proof to rebut the presumption of ownership established by the registration under Section 8 of the [Traffic Act](#).
31. Further, that they failed to provide any evidence, such as a sale agreement, proof of payment, or testimony from the registered owner, to demonstrate that the deceased was the beneficial or actual owner.
32. That the mere fact that the deceased was riding the motorcycle at the time of the accident is not sufficient proof of ownership.
33. Consequently, the Appellants did not discharge their legal burden under Sections 107 and 109 of the [Evidence Act](#) to prove this essential fact.
34. Therefore, the Respondent urged the court to find that the trial magistrate made no error in dismissing the suit.
35. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to come up with its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses.
36. The issues for determination are as follows:-
  - i. Whether the Appellants proved ownership of the motor cycle.
  - ii. Whether the trial court was right in dismissing the Appellant's case.
  - iii. Whether the appeal should be allowed.
37. On the issue as to whether the Appellant proved their case to the required standard, the Appellant averred in the plaint dated 25<sup>th</sup> August 2025 that she had bought the motor cycle from Car and General (Trading) Ltd with her husband and they had not effected the transfer.
38. Based on the evidence and submissions presented, and upon a fresh evaluation as the first appellate court, I find that the trial magistrate erred in law and fact in dismissing the appellants' suit.
39. The central issue was whether the appellants, as the personal representatives of the estate of the deceased, proved their beneficial ownership of the motorcycle registration number KMDF 609J.
40. An appellate court is not bound by the trial court's findings of fact and is entitled to arrive at its own conclusions based on the evidence on record.
41. While it is true that the official search from the Registrar of Motor Vehicles indicated "CAR & GENERAL (TRADING) LIMITED" as the registered owner, this does not conclusively extinguish a claim from a beneficial owner.
42. The legal presumption of ownership under Section 8 of the [Traffic Act](#) is rebuttable.
43. The appellants, through the testimony of PW3 Christine Anyango Wasai, adduced uncontroverted evidence that she and her late husband purchased the motorcycle from Car and General (Trading) Limited for Kshs. 65,000.
44. This evidence of beneficial ownership was never challenged by the respondent through cross-examination or by leading contrary evidence.



- 45. The principle that a person in possession and control of a vehicle, often termed a "beneficial owner," has a sufficient proprietary interest to maintain a claim for damages is well-recognized, particularly where, as here, no other person has come forward to claim the property.
- 46. Furthermore, the trial court's finding that liability for the accident was established at 100% against the respondent in a related suit was a critical factor that was not given due weight.
- 47. The respondent's driver was found to be solely responsible for the collision that caused the damage to the motorcycle.
- 48. Having conceded liability for the accident itself, it was incumbent upon the respondent to specifically challenge the appellants' standing to sue for the resultant damage.
- 49. The respondent failed to do so. The appellants discharged their burden of proof under Sections 107 and 109 of the *Evidence Act* by presenting a coherent and unchallenged narrative of purchase and possession.
- 50. The burden then shifted to the respondent to rebut this evidence, which it failed to do. The burden of proof shifts to the defendant once a plaintiff has established a prima facie case.
- 51. Regarding the quantum of special damages, the law is trite that they must not only be specifically pleaded but also strictly proved.
- 52. The appellants provided a detailed assessment report from a qualified motor vehicle assessor, which itemized the repair costs and other incidental expenses, totaling Kshs. 101,810.
- 53. The respondent did not challenge the assessor's qualifications or the contents of the report, nor did it provide a counter-assessment.
- 54. In the circumstances, the appellants strictly proved the special damages as required by law.
- 55. Consequently, the appeal is merited and is hereby allowed.
- 56. The judgment of the trial court in Voi CMCC No. E178 of 2023 delivered on 14th February 2025 is set aside and is substituted with an order entering judgment in favour of the appellants against the respondent for the sum of Kshs. 101,810.
- 57. This amount shall attract interest at court rates from the date of filing the suit in the subordinate court until payment in full.
- 58. The respondent shall also bear the costs of both the subordinate court case and this appeal.
- 59. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF NOVEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

.....for the Appellants

.....for the Respondent

