



Miyawa (Suing as the Legal Representative of the Estate of Boaz Miyawa (Deceased)) v Millers & 2 others (Civil Appeal E048 of 2024) [2025] KEHC 19136 (KLR) (22 December 2025) (Judgment)

Neutral citation: [2025] KEHC 19136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E048 OF 2024
WM MUSYOKA, J
DECEMBER 22, 2025**

BETWEEN

**JOSHUA MIYAWA (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF BOAZ MIYAWA (DECEASED)) APPELLANT**

AND

**LEMMY MILLERS 1ST RESPONDENT
JAFTHA KIONGA MURURU 2ND RESPONDENT
JULIUS LIMIRI M'TTABARI 3RD RESPONDENT**

*(Appeal from judgement and decree by Hon. EC Serem, Resident Magistrate,
RM, of 9th September 2024, in Busia CMCCC No. E288 of 2021)*

JUDGMENT

1. The suit, at the primary court, was by the appellant, against the respondents. The appellant sought compensation in general and special damages, for pain and loss that the deceased had suffered on account of a road traffic accident, that happened on 10th July 2017, along the Busia-Kisumu Road, involving motor vehicle registration mark and number KCK 136C, belonging to or controlled by the respondents, and motorcycle registration mark and number KMCT 222R, on which the deceased was a pillion passenger. He alleged that the driver of KCK 136C negligently drove that vehicle, hence it hit the motorcycle, KMCT 222R, fatally injuring the deceased.
2. The respondents resisted the claim; through a defence they filed, dated 11th January 2022. They denied everything pleaded in the plaint. In the alternative, they averred that the accident in question was caused by negligence on the part of the rider of the motorcycle, KMCT 222R.
3. A trial was conducted. The appellant presented 2 witnesses, while the respondents presented 1, the 2nd respondent. Judgement was delivered, on 9th September 2024. The court was unable to attribute



liability on the respondents. It opined, if liability were to be apportioned to the respondents, that Kshs. 100,000.00 could be awarded for pain and suffering; Kshs. 100,000.00 for loss of expectation of life; Kshs. 1,000,000.00 for loss of dependency; and Kshs. 15,200.00 for special damages.

4. The appellant was dissatisfied by the terms of that judgement, and filed the instant appeal. The appeal is grounded solely on liability.
5. Directions were taken, on 7th July 2025, for canvassing of the appeal by way of written submissions. I have seen and read written submissions by both sides.
6. On liability, the appellant called a police officer, given that he himself did not witness the collision. That police witness did not himself investigate the case, for he was relying on investigations conducted by another officer, who had, allegedly, gone on transfer. He testified that the investigating officer himself did not visit the scene, and did not draw a sketch of the scene. That would mean that he relied on information that he got from those who were at the scene. He said that the point of impact was in the middle of the road, but he could not tell whether it was on the yellow line or not. He explained that the rider of the motorcycle was overtaking. He said that the record did not indicate that the vehicle had encroached on the lane for the motorcycle.
7. The driver of the accident vehicle, the 2nd respondent herein, relied on his witness statement. He said he saw 3 motorcycles approaching from the opposite side, racing each other. The traffic was slow, as there were many vehicles on the road. He explained that the collision happened when of the competing motorcyclists attempted to overtake the rest. He strayed into the lane of his vehicle, and hit its right panel. The rider and his passenger fell to the surface of the road. He blamed the rider, for not keeping to his lane, of speeding, and of overtaking when it was not safe to do so.
8. Faced with those 2 narratives, the trial court found that the appellant had not proved his case, that the respondents were liable in negligence. I agree. The burden was on the appellant, to prove negligence. The evidential burden could only shift to the respondents upon the appellant adducing adequate evidence of negligence. He did not adduce adequate evidence on negligence, to trigger such a shift. He was not himself privy to the accident; and, therefore, he could not help the court.
9. His witness, the police officer, did not help either. He did not investigate the accident. The investigations, he was relying on were not adequate, for the investigator never visited the scene himself. The narrative, the police witness gave, was more helpful to the respondents. He said that the collision happened at the middle of the road, and he had no evidence that the 2nd respondent had encroached on the lane for the motorcycle. He stated that the motorcycle was overtaking, when the collision happened. The testimony, by the 2nd respondent, was on all fours with that of the police witness, in many aspects.
10. Based on that, it cannot be concluded that the trial court went wrong, in the manner that it evaluated the evidence, and assessed liability. The appellant did not prove his case, on negligence, to the required standard. I agree with the respondents, negligence was not established, and they could not be found liable. I shall find, as I hereby do, that the appeal herein has no merit, and I, accordingly, dismiss it, with no order as to costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 22ND DAY OF DECEMBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.



Advocates

Ms. Juma, instructed by Okeyo Ochiel & Company, Advocates for the appellant.

Ms. Satia, instructed by Kitiwa & Company, Advocates for the respondents.

