



Manji Food Industries Ltd v Mwanzia & Kitisya (Suing as the Administrators of the Estate of Justus Mwanzia) & another (Civil Appeal E046 of 2024) [2025] KEHC 18945 (KLR) (17 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E046 OF 2024
CJ KENDAGOR, J
DECEMBER 17, 2025**

BETWEEN

MANJI FOOD INDUSTRIES LTD APPELLANT

AND

TERESIAH MUENI MWANZIA & SUSAN WASYA KITISYA (SUING AS THE ADMINISTRATORS OF THE ESTATE OF JUSTUS MWANZIA) 1ST RESPONDENT

ROBERT M'IKIARA 2ND RESPONDENT

(An appeal against the Judgment and Decree of the Chief Magistrates Court at Makueni by Honourable P. Gesora (CM) dated 12th April 2026 in Civil Case No. 207 of 2016)

JUDGMENT

1. This appeal arises from the judgment of the Chief Magistrate's Court at Makueni delivered on 11th April, 2024 in Makueni CMCC No. 207 of 2016. In the said suit, the Plaintiffs, suing as the administrators of the estate of the late Justus Mwanzia Kitusa, sought damages under the [Law Reform Act](#) and the [Fatal Accidents Act](#) following a road traffic accident that occurred on 29th November, 2013 along the Machakos–Wote Road at Kilala junction.
2. The Plaintiffs' case before the trial court was that the deceased was riding an unregistered motorcycle when motor vehicle registration number KAQ 692Z, allegedly owned by the 2nd Defendant and driven by the 1st Defendant as agent or servant of the 2nd Defendant, veered off its lane and collided with the motorcycle, as a result of which the deceased sustained fatal injuries. Negligence was pleaded against the driver of the said motor vehicle, and the Plaintiffs prayed for general damages, special damages, costs, and interest.



3. The Defendants entered an appearance and filed a joint statement of defence dated 10th April, 2017. They denied the occurrence of the accident in the manner pleaded, denied negligence, and put the Plaintiffs to strict proof. In the alternative, the Defendants contended that, if an accident occurred, it was wholly or substantially caused by the deceased rider's negligence. The 2nd Defendant further denied being the registered or beneficial owner of motor vehicle KAQ 692Z and denied any nexus between itself and the said vehicle.
4. The matter proceeded to hearing. The Plaintiffs called one witness, the 1st Plaintiff, who testified that the deceased was her husband. She adopted her written statement but conceded that she was not present at the scene of the accident and did not witness its occurrence. The Defendants called one witness, John Kilundo, who testified that he was travelling in motor vehicle KAQ 692Z at the material time and that the accident occurred when the motorcycle emerged from a feeder road and collided with the motor vehicle.
5. Upon considering the evidence and submissions, the trial Court found the Defendants wholly liable for the accident and entered judgment on liability at 100% against them. On quantum, the court awarded damages under the heads of pain and suffering, loss of expectation of life, loss of dependency, and special damages, culminating in a total award of Kshs.1,014,880/=.
6. Aggrieved by the said judgment, the Appellant lodged the present appeal on the following grounds:
 - a. That the Honourable Chief Magistrate erred in law and fact in holding that the Appellant was liable for the accident whereas the 1st Respondents did not prove any liability or negligence against the Appellant for the accident whatsoever.
 - b. That the Honourable Chief Magistrate erred in law and fact in failing to hold that the Appellant had proved that the deceased rider was solely liable for negligence that caused the accident, and in completely disregarding the weight of the Appellant's evidence.
 - c. That the Honourable Chief Magistrate erroneously held, without any evidence, that it was motor vehicle registration number KAQ 692Z that collided with the unregistered motorcycle, whereas the evidence adduced was that it was the unregistered motorcycle that collided with motor vehicle KAQ 692Z when it joined the road carelessly and without warning into the path of the said motor vehicle.
 - d. That the Honourable Chief Magistrate erred in law and fact in failing to find that the 1st Respondents had failed to prove that the Appellant was the registered or beneficial owner of motor vehicle registration number KAQ 692Z, and that there was no proof of any nexus between the Appellant and the said motor vehicle upon which liability could attach.
 - e. That the Honourable Chief Magistrate erred in law and fact in awarding an excessive award on loss of dependency which was not supported by any proof of the deceased's income or dependency, thereby arriving at an erroneous estimate of damages contrary to the authorities cited by the Appellant.
 - f. That the Honourable Chief Magistrate erred and misdirected himself in law in failing to adequately consider the written submissions and authorities filed and relied upon by the Appellant on the issues of liability and quantum.
 - g. That the Honourable Chief Magistrate erred and misdirected himself in law and fact by awarding the 1st Respondents special damages that were not strictly proved by evidence of receipts.



7. The appeal was canvassed by way of submissions.

Submissions:

8. For the Appellant, counsel submitted that the trial Court erred in law and fact in holding the Appellant wholly liable for the accident in the absence of proof of negligence. It was contended that the only witness called by the Plaintiffs did not witness the accident and therefore did not adduce any direct evidence as to how the accident occurred. Counsel pointed out that the 1st Respondent expressly admitted on cross-examination that she was not present at the scene.
9. It was further submitted that the police abstract produced in evidence did not attribute blame to the driver of motor vehicle registration number KAQ 692Z, the matter having been indicated as “P.U.I”. Counsel argued that no traffic charges were ever preferred against the said driver, and that there was therefore no factual basis upon which negligence could be inferred against him.
10. On the burden of proof, the Appellant relied on Sections 107 and 108 of the *Evidence Act* and the decision in *Kiema Mutuku v Kenya Cargo Hauling Services Ltd* [1991] 2 KAR 258, where the Court of Appeal held that there is no liability without fault in Kenya and that a plaintiff must prove negligence against a defendant where a claim is founded on negligence. Counsel also cited *Eastern Produce (K) Limited v Christopher Atiado Osiro eKLR* in support of the proposition that parties are bound by their pleadings and that the burden of proof lies with the party alleging negligence.
11. The Appellant submitted that the only eyewitness to the accident was the defence witness, John Kilundo, whose evidence was that the deceased rider emerged suddenly from a feeder road and collided with the motor vehicle despite the driver attempting to apply emergency brakes. Counsel argued that the trial Court misdirected itself by disregarding this evidence and by inferring negligence from the severity of the impact alone. Reliance was placed on *Treadsetters Tyres Ltd v John Wekesa Wepukhulu eKLR*, where the Court emphasised that negligence must be proved and cannot be inferred merely from the occurrence of an accident.
12. On ownership, counsel submitted that the Appellant had expressly denied being the registered or beneficial owner of motor vehicle registration number KAQ 692Z, and that no evidence was adduced to establish any nexus between the Appellant and the said motor vehicle. It was argued that liability could not attach in the absence of proof of ownership or control.
13. On quantum, the Appellant submitted that the award for loss of dependency was excessive and unsupported by evidence. It was contended that there was no proof of the deceased’s income or dependency and that, in such circumstances, the trial court ought to have adopted the global sum approach rather than the multiplier approach. Counsel relied on *Albert Odawa v Gichimu Gichenji eKLR* and *Mwanzia v Ngalali Mutua & Kenya Bus Service (Msa) Ltd*, where Ringera J. stated that the multiplier approach must be abandoned where the facts do not facilitate its application.
14. Further reliance was placed on *Antony Njoroge Ng’ang’a v James Kinvanjui Mwangi & 2 others eKLR* and *Gilbert Kimatare Nairi & another v Civiscope Limited eKLR*, where Courts upheld global awards in circumstances where income was not proved.
15. In the alternative, counsel submitted that even if the multiplier approach were to be applied, the trial court erred in adopting a minimum wage of Kshs.10,071/=. It was argued that under the Regulation of Wages (Agricultural Industry) (Amendment) Order, 2013, the applicable minimum wage for an unskilled agricultural worker in 2013 was Kshs.4,854.35/=:, and that the award ought to have been substantially lower.



16. On special damages, the Appellant submitted that save for the motor vehicle search fee, the special damages awarded were not strictly proved by receipts. Reliance was placed on *Zacharia Waweru Thumbi v Samuel Njoroge Thuku* eKLR for the principle that special damages must not only be pleaded but must also be strictly proved by documentary evidence.
17. For the 1st Respondents, it was submitted that the trial Court properly evaluated the evidence and correctly found the Appellant wholly liable for the accident. Counsel argued that the fact of the accident was not in dispute and that the deceased died on the spot, which pointed to excessive speed on the part of the motor vehicle.
18. It was further submitted that the defence witness's testimony did not demonstrate that reasonable steps were taken to avoid the accident, and that the trial Court was entitled to draw adverse inferences from the absence of testimony by the driver of the motor vehicle.
19. On the issue of traffic charges, the 1st Respondents submitted that the absence of a traffic prosecution did not absolve the driver of civil liability. Reliance was placed on *Kennedy Nyangoya v Bash Hauliers* eKLR and *Jennifer Mathenge v Patrick Muriuki Maina* HCCA No. 43 of 2015, where Courts held that a police abstract merely proves the occurrence of an accident and does not determine negligence.
20. On intoxication, counsel submitted that the allegation was neither pleaded nor proved and was therefore properly disregarded by the trial Court. Reliance was placed on *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* eKLR and *Charles Masoso Barasa & another v Chepkoech Rotich & another* HCC No. 49 of 2011, where Courts reiterated that parties are bound by their pleadings.
21. On quantum, the 1st Respondents submitted that the awards made were reasonable and within the discretion of the trial court, and that the application of the minimum wage and multiplier approach was justified in the circumstances. They urged the court not to interfere with the exercise of discretion.

Issues:

22. The Appellant formulated seven grounds of appeal. Upon consideration, several of the grounds raise overlapping questions of fact and law and may be condensed for purposes of determination. In particular, grounds (a), (b) and (c) raise the same broad question concerning liability for the accident, while grounds (e) and (f) are intertwined on the issue of quantum.

Determination:

23. This being a first appeal, this court is under a duty to re-evaluate and re-analyze the evidence tendered before the trial court and to draw its own conclusions, while bearing in mind that it neither saw nor heard the witnesses testify and should therefore accord due allowance to that fact.
24. It was held in *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123 that:

“An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
25. It is trite that liability in a claim founded on negligence arising from a road traffic accident cannot be imposed in a vacuum. A Court must first satisfy itself that there exists a legal nexus between



- the defendant and the offending motor vehicle, whether by way of registered ownership, beneficial ownership, or agency.
26. The statutory position can be traced to section 8 of the *Traffic Act*, Cap 403 Laws of Kenya, which provides as follows:
- “The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”
27. Registration is therefore prima facie evidence of ownership. Where a party alleges ownership otherwise than by registration, the burden lies upon that party to prove the alleged beneficial interest.
28. In *Samuel Mukunya Kamunge v John Mwangi Kamuru*, Nyeri H.C. Civil Appeal No. 34 of 2002, Okwengu J. (as she then was) held that: -
- “It is true that a certificate of search from the Registrar of Motor vehicles would have shown who was the registered owner of motor vehicle according to the records. That however, is not conclusive proof of actual ownership of the motor vehicle as section 8 of the *Traffic Act* provides that the contrary can be proved. This is the recognition of the fact that often times motor vehicles change hands but the records are not amended.”
29. In this matter, a cursory perusal of the Plaintiff reveals that it was averred that the Appellant was the beneficial owner of motor vehicle registration number KAQ 692Z. The Appellant, in its defence, expressly denied both registered and beneficial ownership and put the Plaintiffs to strict proof.
30. The Plaintiffs relied on a copy of records from the Registrar of Motor Vehicles. That document shows that motor vehicle registration number KAQ 692Z was jointly registered in the names of the 2nd Respondent and Equity Bank Limited. The Appellant’s name does not appear on the register. By operation of section 8 of the *Traffic Act*, that document constituted prima facie proof that the registered owners of the motor vehicle were the persons named therein.
31. No evidence was adduced to rebut that statutory presumption. No material was placed before the trial court, at least none that can be seen, to demonstrate how the alleged beneficial ownership by the Appellant arose. There was no evidence of possession, control, use, or authority over the motor vehicle, nor was there any evidence establishing an agency relationship between the Appellant and the driver of the vehicle, who, in any event, is unnamed, including in the police abstract itself.
32. The Appellant submitted that, in the circumstances, it was inconceivable how it found its way into the suit. I could not agree more. Once the copy of records was produced, and in the absence of any rebuttal evidence, the burden resting upon the Plaintiffs to demonstrate beneficial ownership was not discharged.
33. In *Jared Magwaro Bundi & Another v Primarosa Flowers Limited* (2018) eKLR the Court of Appeal reviewed previous cases on beneficial ownership of motor vehicle and held that:
- “It was therefore held in *Muhambi Koja* (supra) that section 8 of the *Traffic Act* recognizes registration book or the Registrar’s extract of the record as prima facie evidence of title to a vehicle and the persons in whose name the vehicle is registered is presumed to be the owner thereof unless the contrary is proved. The burden is discharged if, on a balance of probabilities, it is shown that as a matter of fact the vehicle had been transferred but not yet registered, to a de facto owner, a beneficial owner or a possessory owner. Such an owner



though not registered for practical purposes may be more relevant than that in whose name the vehicle is registered.”

34. None of the exceptions exposit in the above matter were born out of the facts of this case. The Appellant further submitted that, despite the issue having been expressly pleaded, denied, and addressed in the submissions, the learned magistrate did not determine it. A perusal of the judgment bears this out. There is no analysis of the copy of the records and no finding on whether the Appellant bore any legal or factual connection to the motor vehicle.
35. Failure to do so, in my view, amounted to an error of law. The learned magistrate’s omission to interrogate and determine the issue of ownership or beneficial interest was indeed a grave misdirection. Liability was imposed upon the Appellant without first establishing the legal basis upon which such liability could attach.
36. On that basis alone, the finding against the Appellant cannot hold.
37. That said, and in view of the finding on ownership, it would serve no useful purpose to interrogate the evidence on negligence, as that would be akin to engaging in a purely academic exercise, which is wholly divorced from the dispositive finding already made.
38. Upon reading the judgment of the learned magistrate, I note that the judgment does not specify whether liability was entered jointly or severally against the Appellant and the 2nd Respondent.
39. The record further shows that although the Appellant and the 2nd Respondent initially filed a joint statement of defence, counsel subsequently ceased acting for the 2nd Respondent pursuant to an unopposed application dated 4th August, 2022. Judgment was entered against the defendants- 2nd Respondent included. The learned magistrate was nonetheless required, at the stage of final judgment, to indicate the basis upon which liability was being imposed clearly and whether such liability was joint, several, or otherwise. The judgment is silent on this aspect.
40. In the end, it has not escaped notice that this appeal concerns only the liability of the Appellant. The 2nd Respondent did not appeal, and no issue has been placed before this Court regarding the propriety of the judgment as against him. Accordingly, nothing in this judgment should be understood as disturbing the findings or orders of the trial court as against the 2nd Respondent.

Disposition:

41. For the foregoing reasons, the appeal is allowed.
42. Accordingly;
 - a. The judgment of the Chief Magistrate’s Court at Makueni delivered on 11th April, 2024 in Makueni CMCC No. 207 of 2016 is hereby set aside to the extent that it relates to the Appellant;
 - b. The suit against the Appellant in the said matter is dismissed;
 - c. The Appellant shall have the costs of the appeal.
43. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 17TH DAY OF DECEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Thuo, Advocate for Appellant

Ms. Kyalo, Advocate for Respondent

