



Abson Motors Limited v Maina (Suing as the Personal Representative/Legal Administrator of the Estate of the Late Lucy Wanjiku Maina - Deceased) (Civil Appeal E118 of 2024) [2026] KEHC 2745 (KLR) (19 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E118 OF 2024
WA OKWANY, J
FEBRUARY 19, 2026**

BETWEEN

ABSON MOTORS LIMITED APPELLANT

AND

**LUKA WAINAINA MAINA (SUING AS THE PERSONAL REPRESENTATIVE/
LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE LUCY WANJIKU
MAINA - DECEASED) RESPONDENT**

*(Being an appeal from the judgment of Hon. Nathan Shiundu Lutta (CM)
delivered on 25th September 2024 in Naivasha CMCC No. E952 of 2022)*

JUDGMENT

1. The respondent sued the Appellant before the trial court seeking damages under the *Fatal Accidents Act* and the *Law Reform Act* following the death of the deceased who was knocked down by motorcycle KMG 094R on 3rd April 2022 along Nakuru–Nairobi Road.
2. The trial magistrate entered judgment in favour of the respondent holding both defendants 100% liable and awarding damages including loss of dependency of Kshs 700,000.
3. Aggrieved by the trial court’s decision, the Appellant filed this appeal challenging findings on both liability and quantum raising nine grounds.
4. The appeal was canvassed by way of written submissions.



5. As submitted by both parties, this court is enjoined to re-evaluate the evidence and draw its own independent conclusions bearing in mind that it neither saw nor heard the witnesses. This principle was succinctly stated in *Selle v Associated Boat Co. Ltd* [1968] EA, where the court held;

“An appeal to this court from the High Court is by way of re-trial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are; that this court must consider 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 to respect in particular matters...”

6. Similarly, in *Abok James Odera t/a A.J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* (2013) eKLR the court stated:

“...we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not...”

7. From the grounds and submissions I find that the following four broad issues arise for my determination: -

- a. Whether the respondent proved liability against the appellant.
- b. Whether the appellant rebutted statutory ownership and vicarious liability.
- c. Whether dependency was proved.
- d. Whether the trial court erred in the award of damages.

Liability And Ownership/Vicarious Liability

8. The Appellant’s position was that it had sold the motorcycle on 4th March 2022 prior to the accident. The Appellant produced delivery note, sales order, invoice and indemnity form. The Appellant noted that the rider had not been identified and that there was no proof of agency/employee relationship.

9. The Respondent, on the other hand, held the position that registration records showed the Appellant as registered owner of the motorcycle in question and that the indemnity form and documents did not conclusively prove transfer. According to the Respondent, the Appellant did not discharge the burden of proof. He maintained that the rider was arrested and was found to be the agent of the defendant.

10. Section 8 of the *Traffic Act*, Cap 403 provides that: -

“The person in whose name a vehicle is registered shall unless the contrary is proved, be deemed to be the owner of the vehicle.”

11. The above statutory provision contains a presumption of ownership that is rebuttable.

12. The Court of Appeal has repeatedly affirmed that registration is merely prima facie proof of ownership which may be displaced by proof of sale or possession. This is the position that was taken in *Jared Magwaro Bundi & Another v Primarosa Flowers Limited* [2018] eKLR where it was held that: -

“...Section 8 recognizes registration book or the Registrar’s extract of the record as prima facie evidence of title ... unless the contrary is proved on a balance of probabilities...”



13. In *Ignatius Makau Mutisya v Reuben Musyoki Muli* [2015] eKLR the court held that the presumption that the person registered as owner is the actual owner is rebuttable.
14. In *Chile Kenya Motors Ltd v Bencho* [2024] KEHC 15832 (KLR) it was held that: -

“...the appellant was therefore able to prove that despite the fact that the motor cycle was in its name at the time of the accident, it had already sold it...”
15. Taking a cue from the holding in the above cited cases, this court agrees that ownership follows proof, not mere registration.
16. In the instant case, the Appellant produced the delivery note, retail sales order, tax invoice, receipt and indemnity documents all dated 4th March 2022 which date was one month before the accident. The authenticity of the said documents was not impeached during cross-examination.
17. The Respondent argued that the absence of a written sale agreement cast doubt on the alleged sale of the motorcycle. My finding is that a sale agreement is not the only evidence capable of proving transfer in commercial sale of motorcycles conducted daily in business. Indeed, in most instances, such transactions are effected, actualised or confirmed through sales receipts, delivery notes, tax invoices or indemnity forms.
18. The Respondent led no evidence identifying the rider or proving that he was servant/agent of Appellant. I find that under Sections 108 to 110 of the *Evidence Act*, the burden rested on the Respondent to prove that the rider was the Rent’s employee or agent. This burden was not discharged, in which case, vicarious liability could not attach to the Appellant. I find guidance in the decision in *HCM Anyanzwa & Others v Luigi De Casper* [1981] KLR 10 where it was held that vicarious liability depends not on ownership but on the delegation of tasks or duty.
19. I therefore find that the trial magistrate erred in assuming that the rider was the servant/agent of Appellant.
20. I find that Respondent failed to prove liability against the Appellant on a balance of probabilities.

Loss Of Dependency

21. The appellant challenged award for dependency arguing that no proof was rendered.
22. The trial court rendered itself as follows: -

“...there was no indication she was working and whilst pleadings show that the deceased was survived by two children, there was no evidence that they were dependent on her...”
23. Despite this finding, the trial court awarded Kshs 700,000 for loss of dependency.
24. The respondent, on his part, contended that dependency was proved, relying on disability of one child and letters of the area Chief.
25. I however note that no dependant testified and no documentary evidence of financial support was produced. In *Gerald Mbale Mwea v Kariko Kihara* (1997) eKLR the Court of Appeal held: -

“...we are unable to accept the respondent’s argument that a 52-year-old son and a 48-year-old son were the deceased’s dependants...”



26. In David Sakari Wasike v Barisi [2021] KECA 145 (KLR) it was held: -

“...dependency is always a question of fact to be proved by he who asserts it...”

27. The burden therefore rested on the Respondent which burden was not discharged. I find that this case is distinguishable from the cases cited by the Respondent such as China Civil Engineering v Mwanyoha Kazungu Mweni & another [2019] eKLR because dependency was proved therein.

28. I find that the award for loss of dependency was therefore unfounded.

Damages

29. Having found that liability was not proved, the claim for damages automatically falls.

30. I further find that even if liability was proved, the award of Kshs 700,000 was excessive given that the deceased was above 75 years old, no dependency was proved and multipliers and multiplicands not applied.

31. The principles guiding interference with awards of damages are well stated in Kemfro Africa Ltd t/a Meru Express Services v Lubia [1985] eKLR where it was held that; -

“...the court must be satisfied that the judge took into account an irrelevant factor, or left out of account a relevant one, or that the amount is so inordinately high or low that it must be a wholly erroneous estimate of the damage.”

32. In the present case, I find that the threshold for interference with an award is satisfied.

Disposition

33. For the foregoing reasons I find that the instant appeal is merited and I therefore allow it in the following terms: -

- a. The judgment of the Chief Magistrate in Naivasha CMCC No. E952 of 2022 delivered on 25/09/2024 is hereby set aside in its entirety.
- b. The suit against the appellant in the lower court is dismissed.
- c. Damages awarded under all heads are vacated.
- d. Costs of the appeal and of the subordinate court are awarded to the Appellant.

34. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

19/02/2026

For Appellant Ms Njogu

For Respondent Owuor

Court Assistant Karani

File closed

