



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CIVIL APPEAL NO. E143 OF 2024**

**MARY KIANIRA (Suing as Legal Representative of the  
estate of JULIUS THURANIRA (deceased)**

**..... APPLICANT**

**VERSUS**

**CATHOLIC DIOCESE OF ISIOLO .....1<sup>ST</sup>**

**RESPONDENT**

**JAMES ALONGO ..... 2<sup>ND</sup>**

**RESPONDENT**

*(Being an appeal from the judgment of T.M Mwangi (C.M) dated and delivered in MERU CMC No. E020 of 2023 on 30<sup>th</sup> August, 2024).*

**JUDGMENT**

**Background**

1. The appellant filed suit in the lower court seeking general and special damages, together with costs.

2. The suit arose as a result of an accident that occurred on 5/11/2022 at Kathare, along Meru-Isiolo road involving motor vehicle Reg. No. KCT 589A and motorcycle registration number KMCG 030 R. as a result, the deceased who was the rider of the said motorcycle, succumbed to his injuries.
3. After hearing the parties, the trial magistrate dismissed the appellant's case on the ground that she had proven that the respondent was the registered owners of the said mother vehicle at the time of the vehicle.
4. Aggrieved by the said judgment by the said judgment the appellant lodged a Memorandum of Appeal dated 10/09/2024 which set out the following grounds: -
  - 1) The learned trial magistrate erred in law and in fact by considering extraneous circumstances and facts that were not pleaded or even contested by the parties hence arriving at a wrong decision.
  - 2) That learned trial magistrate erred in law and fact by rendering a decision that went against the weight of the evidence tendered.

- 3) That the learned trial magistrate erred in law and in fact by failing to find that the respondents were owners of the suit motor vehicle registration number KCT 589A.
- 4) That the learned trial magistrate erred in law and in fact by failing to find that the appellant produced a motor vehicle search which indicated that the suit motor vehicle registration number KCT 589A was duly registered in the 1<sup>st</sup> respondent's name.
- 5) That the learned trial magistrate erred in law and in fact by failing to appreciate or find that the appellant's case and evidence was unchallenged.
- 6) The learned trial magistrate erred in law and fact by disregarding established legal precedent and thereby erroneously arriving at a wrong conclusion.
- 7) The learned trial magistrate erred in law and fact by dismissing the appellant's case in light of the evidence adduced.
- 8) The learned trial magistrate erred in law and fact by failing to consider the appellant's submissions.

- 9) The judgment in the circumstances of the case was such that a manifest travesty of justice occurred therein.
- 10) The decision of the learned trial magistrate was plainly wrong, bad in law and in the eyes of a court of equity and therefore erroneous.
5. The appeal was canvassed by way of written submissions.
6. For the appellant it was submitted that:
7. Being a first appellate court, this court's duty is to re-evaluate the evidence adduced and arrive at its own independent conclusion (see **Selle vs Associated Motor Boat Co. Ltd**).
8. There was no dispute as to the occurrence of the accident and that the deceased sustained fatal injuries.
9. This was confirmed by the police officer (PW1) the plaintiff (PW2) and an eyewitness (PW3).
10. During the trial the appellant produced a copy of record dated 1/12/2022 which showed that the 1<sup>st</sup> respondent was the registered owner of motor vehicle registration No. KCT 589A as at that date.

11. The trial court dismissed the claim on the ground that there was no proof that the 1<sup>st</sup> respondent was the registered owner as at the date of the accident.
12. This appeal revolves around that singular issue.
13. The question to be answered is whether the copy of records was sufficient to prove the ownership of motor vehicle KCT 589A.
14. The trial magistrate thought it was not as it did not indicate who the registered owner was on 5/11/2022, when the accident occurred.
15. The degree of proof in civil cases is well known that is a balance of probability. In **William Kabogo Gitau Vs George Thuo and 2 Others (2010) eKLR** the court held that...

**“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as**

**opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”**

16. In **Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another (2015) eKLR**, the judges of Appeal held that:

**“Denning J. in Miller Vs Minister of Pensions (1947) 2 ALL ER 372 discussing the burden of proof had this to say;-**

**“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not**

**enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will loose, because the requisite standard will not have been attained.”**

17. Now, the copy of record from NTSA was issued less than a month after the accident. It showed that the 1<sup>st</sup> respondent was the registered owner of the said vehicle. There is no indication of a previous owner.

18. The law is quite clear on proof of ownership of a motor vehicle. Section 8 of the Traffic Act provides that:-

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

19. The section provides the general rule with regard to ownership of the motor vehicle but there may be circumstances where this may vary. Registration of a person is

prima facie evidence of ownership but the contrary may be proved.

20. The copy of records from NTSA was effective on the date it was issued. There was no indication of any changes of ownership so that 1<sup>st</sup> defendant /respondent was deemed to have been the registered owner. The time difference is less than a month.
21. In my conclusion, the trial magistrate elevated the degree of proof to a level that is more than a balance of probabilities. Once the copy of records was tendered showing that the 1<sup>st</sup> respondent was the registered owner of the vehicle, barely a month after the accident, there is a balance of probabilities she appellant had established that fact.
22. In my view, that evidence adduced was sufficient to prove ownership of the vehicle.
23. In **Meru Civil Appeal No. E085 of 2023 Vincent Mutembei-vs- Nache Sike Luba**, I considered a similar issue and came to the same conclusion.

24. Therefore, I am inclined to set aside the order dismissing the suit on that fact of ownership of the vehicle. I find that the appellant duly proved the ownership.
25. The parties did not submit on the issue of liability.
26. However, looking at the evidence of the police officer (PW1) and the eyewitness (PW3) the 1<sup>st</sup> respondent's vehicle hit the deceased's motorcycle from behind. The driver was adjudged culpable for the accident. Thus, I uphold the trial magistrates finding on liability.
27. No appeal was argued on the issue of quantum. Nevertheless, I have considered the authorities presented before the trial court.
28. On damages for pain and suffering, I find that the award of Kshs.75,000/- was not unreasonable and I uphold it.
29. On loss of expectation of life, I uphold the award of Kshs.150,000/-.
30. On loss of dependency, the deceased was said to have been a farmer and a boda boda rider. The appellant did not avail any proof of his income but that did not prevent the court from awarding the dependants the damages for loss of

dependency. The trial magistrate adapted a minimum wage of Kshs.15,000/-.

31. In my view, the court could also have made a global award, recognizing that the deceased earned income to sustain his family.

32. I find that the issue of the multiplier was not ideal in such circumstances.

33. I award Kshs.1,000,000/- as a global award.

34. Thus, the judgment of the lower court is set aside and it is substituted with an order that the plaintiff/appellant's suit succeeds.

35. Judgment is entered against the respondents jointly and severally as follows:-

1) General Damages

a) Pain and Suffering - Kshs.75,000/-

b) Loss of expectation of life - Kshs.150,000/-

c) Loss of Dependency - Kshs.1,000,000/-

2) Special Damages - Kshs.261,000/-

**Total award - Kshs.1,486,000/-**

3) The appellant shall have the costs of this appeal and the suit in the lower court.

**Dated, signed & delivered at Meru this 8<sup>th</sup> day of May, 2026.**

***H.M. NYAGA***

**JUDGE**