



**Kimaile v Muthama and Mule (Suing as the Widow and Brother as Personal Representatives of the Estate of John Mutuku Mule - Deceased) & 2 others (Civil Appeal 127 of 2023) [2025] KEHC 9489 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9489 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL 127 OF 2023  
EN MAINA, J  
JUNE 26, 2025**

**BETWEEN**

**BENJAMIN MUISYO KIMAILE ..... APPELLANT**

**AND**

**EVALINE NDUNGWA MUTHAMA AND MUTUNGA MULE (SUING AS THE WIDOW AND BROTHER AS PERSONAL REPRESENTATIVES OF THE ESTATE OF JOHN MUTUKU MULE - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**MAKINDU MOTORS LTD ..... 2<sup>ND</sup> RESPONDENT**

**PETER MULLEY T/A MULLEYS SUPERMARKET LIMITED .... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal against the Judgement of the Honourable M. Opanga (PM) in Kangundo SPMCC No. 25 of 2019 delivered on 25/05/2023)*

**JUDGMENT**

1. The Respondent successfully sued the Appellant herein for compensation for fatal injuries sustained by John Mutuku Mule (deceased) in a road traffic accident which occurred on or about 11<sup>th</sup> June 2016.
2. Briefly, the case was that on or about 11<sup>th</sup> June 2016 at about 1900 hrs. along Kangundo- Nairobi road at Kantafu area, the Appellant's driver and or agent so carelessly and negligently drove, managed and or controlled his motor vehicle Reg. No. KCA 370W Toyota Van such that he caused the same to loose control, leave its lane drive into the path of motor cycle Reg. No. KMDR 022W Skygo thereby occasioning a head on collision, as a consequence of which the deceased who was lawfully travelling in the motor cycle as a pillion passenger suffered fatal injuries.



3. After considering the evidence and submissions by both sides the trial Magistrate apportioned liability in the ratio of 50:50 in favour of the Respondents as against the Appellant and proceeded to award the Respondents damages as follows: - Special damages in the sum of Kshs.21,250/-; Pain and suffering Kshs.30,000/-; loss of expectation of life Kshs.130,000/-; loss of dependency Kshs.5,040,000/- which less 50% contribution is Kshs.2,610,625/-.
4. Aggrieved by the Judgment, the Appellant preferred this appeal on grounds that: -
  - a. The learned trial magistrate erred in fact and in law in finding that the applicant was entitled to liability apportionment of 50%.
  - b. The learned trial magistrate erred in law and in fact in finding that the respondent was entitled to the said liability apportionment that was too high in view of the evidence. The same was not justified.
  - b. The learned trial magistrate erred in fact and in law in finding that the appellant was 50% liable for the accident and yet the evidence tendered clearly blamed the 3<sup>rd</sup> and 2<sup>nd</sup> respondents wholly.
  - c. The learned trial magistrate erred in fact and in law in failing to consider the appellant's evidence and submissions.
  - d. The learned trial magistrate erred in law and in fact in failing to consider conventional awards of similar cases
5. The appeal was to be canvassed by way of written submissions but as at the time of writing this judgment, only the 1<sup>st</sup> Respondent's submissions were on record. On the day of the judgment this court inquired into the submissions of the Appellant and was informed by Counsel for the Appellant that they did not file any.
6. As the appellant failed to file the submissions which was the mode of prosecuting the appeal, there is no material on the basis of which this appeal can be considered and in the premises, the appeal fails and is dismissed with costs to the Respondent for want of prosecution, save that the damages under the *Fatal Accidents Act* shall be to the benefit of the widow of the deceased together with her children if any and the parents of the deceased if still living, but not for the benefit of the brother of the deceased.

Orders accordingly

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JUNE, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Muoro for Wanjiku for the Appellant

Ms Omari for the Respondents

Geoffrey – Court Assistant

