

KENYA / JUDGMENT

Republic v Karanja [2026] KEMC 885 (KLR)

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COURT

Magistrate's Court

CASE / FILE NUMBER

Traffic Case E946 of 2026

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REPUBLIC OF KENYA IN THE MAGISTRATE COURT OF KENYA AT MOMBASA COUNTY COURT
NAME: MOMBASA MAGISTRATE COURT CASE NUMBER: MCTR/E946/2026 REPUBLIC VS JOHN
NGUGI KARANJA

JUDGMENT

BEFORE HON.JAMLICK MURIITHI MWENDA.

1. The accused person is charged with the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act, Cap. 403 Laws of Kenya.
2. The particulars of the offence are that on the 29th day of November 2025 at about 0140 hours along Makupa Causeway in Mombasa County within the Coast Region, being the driver of motor vehicle registration number KDS 683G/ZFG 982S FAW trailer, the accused drove the said motor vehicle along the said public road in a manner which was dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the road and the mode of traffic which was actually at that time or which might reasonably be expected on the road, in that he dangerously parked the said motor vehicle at the middle of the said road resulting in it being rammed into the rear by motor vehicle registration number KDG 832H, a Toyota Porte, thereby causing extensive damage to both motor vehicles and the death of the driver of the Toyota Porte, namely SIMON MWONGERA KABILU.
3. PW1 was Jeska Mukoya, the deceased's wife. She testified that on 29th November, 2025 she received information from a bodaboda rider that an accident had occurred at Kibarani and that she was required at the scene. She went to the scene and later to hospital where she identified the deceased as her husband.
4. She further testified that on 1st December 2025 she attended the post-mortem examination and identified the post-mortem report. She stated that she received information that the driver of the truck had parked the truck on the road without any indication and that her husband consequently rammed into the trailer from behind. She identified the accused person in court.

5. In cross-examination, PW1 stated that she heard the accused telling the police that he had parked the vehicle on the side of the road.
6. PW2 was Dr. Aisha Ali, a medical officer at Coast General Teaching and Referral Hospital. She produced the post-mortem report on behalf of her colleague, Dr. Saphia Aweso, who had conducted the post-mortem examination on 1st December 2025.
7. The doctor testified that the deceased had multiple external and internal injuries, including bruising and lacerations to the head and neck, dislocation of the left wrist, fracture of the right femur, multiple rib fractures, bilateral haemothorax, lacerations of the liver and spleen, massive haematoma, brain oedema and spinal column injury with complete dislocation of the neck.
8. The doctor formed the opinion that the cause of death was spinal injury with haematological shock and abdominal blunt trauma due to high-force trauma from a road traffic accident. The post-mortem report was produced in evidence.
9. PW3 was Michael Kasaine Lemako, a motor vehicle inspector. He testified that on 4th December 2025 he inspected the two motor vehicles involved in the accident at Makupa Police Station.
10. He testified that he inspected motor vehicle registration number KDG 832H, a Toyota station wagon, and noted extensive damage to, among other parts, the dashboard, engine, radiator, front steering, airbags, offside axle, suspension, bumper, grille, roof, seats, side mirrors, braking system, front electrical system, headlamps, front offside tyres and rims. He found no pre-accident mechanical defect.
11. He also inspected the trailer registration number ZF982S, which was being towed by motor vehicle registration number KDS 683G. He observed damage to the rear back plate, number plate and rear lamp but found no pre-accident defect. He produced the inspection reports for both motor vehicles.
12. PW4 was CPL Maxwell Kirimi, the investigating officer. He testified that on 29th November 2025 he received information concerning the accident and proceeded to the scene with his colleague.
13. Upon arrival near Delta Machinery, he found motor vehicle registration number KDS 683G, a FAW lorry towing trailer ZF982S, and motor vehicle registration number KDG 832H, a Toyota Porte, which had rammed into the rear of the trailer.
14. He testified that Toyota Porte had sustained serious damage and its driver was still inside the vehicle. The driver was removed and taken to Coast General Hospital. The deceased's body was subsequently taken to the mortuary.

15. The investigating officer testified that the trailer was parked on the side of the road and stated that vehicles were parked there as they moved slowly into the yard. He further stated that when he arrived at the scene, the lorry's hazard lights were on and its headlights were also on. He prepared a rough sketch plan and subsequently a fair sketch plan showing the position of the vehicles at the scene. He testified that the Toyota Porte appeared to have been travelling at speed, although he did not find skid marks at the scene.
16. The investigating officer further testified that he forwarded the investigation file to the Office of the Director of Public Prosecutions and directions were given that the accused be charged. He stated that he personally did not agree with the decision to charge the accused.
17. At that juncture, the prosecution closed its case, a ruling on a case to answer was done on the same day and this Court found that the accused had a case to answer and placed him on his defence.
18. The accused gave sworn evidence and denied the charge. He closed his defence without calling any other witness.
19. In his defence, the accused stated that he was driving the said lorry and trailer on the material night. He stated that he was proceeding to Kibarani to load materials used in the manufacture of cement before travelling to Tororo, Uganda.
20. He testified that the vehicle's lights were functioning properly and that after crossing the Makupa Bridge he slowed down to join a queue. Before he could stop, he heard a loud bang. He alighted from the vehicle and found that motor vehicle registration number KDG 832H had rammed into the rear of his trailer and had been extensively damaged.
21. He stated that a passerby called Makupa Police Station, police officers arrived at the scene and the driver of the Toyota Porte was removed from the vehicle and taken to Coast General Hospital. The Toyota Porte was towed to Makupa Police Station. He recorded a statement and was subsequently remanded.
22. The accused produced photographs of the scene as Exhibit 1(a)-(c) and at that juncture, the defence case was closed. Issues for Determination
23. Having considered the evidence on record, I find the following issues for determination:
 - a) Whether the accused was the driver of motor vehicle registration number KDS 683G/ZF982S at the material time;
 - b) Whether the deceased died as a result of the road traffic accident;
 - c) Whether the accused drove or left the motor vehicle in a manner which was dangerous to the public within the meaning of Section 46 of the Traffic Act; and
 - d) Whether the dangerous manner in which the accused drove or left the motor vehicle caused the death of the deceased.

24. Section 46 of the Traffic Act provides, in material part, that a person commits the offence where he causes the death of another by driving a motor vehicle on a road recklessly or at a speed or in a manner dangerous to the public, or by leaving any vehicle on a road in such a position, manner or condition as to be dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic actually on the road or which might reasonably be expected to be on the road.....
25. The fact that an accident occurred and a person died does not, by itself, establish the offence. The prosecution must establish the particular dangerous act or manner of driving attributable to the accused and a causal connection between that conduct and the death.
26. In *John Njeru v Republic* [1980] eKLR, the Court of Appeal sitting at Mombasa stated that ..to justify a conviction for causing death by dangerous driving, there must be a situation which, viewed objectively, was dangerous and there must also be some fault on the part of the driver causing that situation...
27. In that decision, the Court adopted the principle in *Atito v Republic* [1975] EA 278.
28. Similarly, in *Timothy Orwenyo Missiani v Republic* [1979] KECA 19 (KLR), the Court of Appeal sitting at Nairobi while quoting Megal LJ at page 224 in *R vs Gosney*(1971) ALL ER 220 explained that the fault required does not necessarily involve deliberate misconduct, recklessness or moral blame. It involves a failure or falling below the care or skill of a competent and experienced driver in the circumstances of the case. Even a slight lapse may, depending on the circumstances, constitute sufficient fault.
29. More recently, the High Court at Murang'a in *Mwaniki v Republic* [2023] KEHC 20130 (KLR) at paragraph 19, Lady Justice C.W Githua reiterated that proof of the occurrence of an accident in which a person died is by itself insufficient. The prosecution must additionally prove that the accident was caused by the accused's dangerous driving, having regard to all the circumstances surrounding the accident.
30. Now turning to the issues of determination, On the first issue, there is no dispute whatsoever that the accused was the driver of motor vehicle registration number KDS 683G towing trailer ZF982S at the material time.
31. Indeed, the accused himself admitted in his sworn defence that he was driving the said motor vehicle on the material night. This issue therefore requires no further consideration. I find as a fact, that the accused was the driver of the subject motor vehicle at the material time.

32. The second issue is whether the deceased died as a result of the accident. PW2 produced the post-mortem report and gave detailed evidence concerning the multiple injuries sustained by the deceased. The injuries were consistent with high-force trauma arising from a road traffic accident. The doctor's conclusion was that the cause of death was spinal injury with hematological shock and abdominal blunt trauma due to high-force trauma from a road traffic accident.
33. This evidence is corroborated by the investigating officer, who found the deceased trapped inside the Toyota Porte immediately after the accident and arranged for his removal and transportation to Coast General Hospital.
34. There is therefore no serious contest on this issue. I find that the deceased died from injuries sustained in the road traffic accident of 29th November, 2025.
35. The third issue is whether the Accused's Conduct was Dangerous. This is the central issue in the case. The prosecution's case is not merely that an accident occurred. Its case is that the accused left or parked the trailer in such a position on the road that it constituted a danger to other road users and that the deceased's vehicle subsequently rammed into its rear.
36. The evidence must therefore be considered objectively. The question is whether, having regard to the nature and use of the road, the position of the vehicle and the traffic reasonably expected at the time, the position in which the accused left the vehicle was dangerous to other road users and whether that dangerous situation was attributable to the accused.
37. There is an important aspect of the evidence which the Court must acknowledge. PW4, the investigating officer, testified at one point that the trailer was parked on the side of the road and that this was where vehicles parked while moving slowly into the yard. He also testified that when he arrived at the scene, the lorry's hazard lights were on and its headlights were on.
38. The Court cannot speculate as to when the hazard lights were switched on. There was no independent eyewitness who testified that the hazard lights were already on before the collision. Equally, PW1's evidence concerning the absence of warning indications was information she received from other persons at the scene and, to that extent, is not direct evidence of what occurred immediately before the collision.
39. However, those matters do not dispose of the case. The Court must consider the entire body of evidence, including the physical evidence contained in the sketch plans and the evidence of the investigating officer concerning the position of the vehicles.
40. The sketch plans produced by PW4 are particularly significant. They show the position of the trailer in relation to the road and the bicycle lane. The evidence before the Court establishes that a substantial portion of the trailer occupied the roadway while another portion extended towards the bicycle lane.

41. The accused was driving a large commercial vehicle comprising a lorry and trailer. Such a vehicle, when left in a position extending substantially into a roadway during the hours of darkness, presents an obvious risk to approaching motorists unless it is positioned and adequately illuminated in a manner that gives sufficient warning of its presence.
42. The Court of Appeal's decision in *John Njeru v Republic* [1980] eKLR (supra) is instructive. The Court emphasized that the dangerous situation must be assessed objectively and that there must be fault on the part of the driver causing that situation.
43. Equally instructive is *Pravin Megji Shah v Republic* [1982] eKLR, where the Justice E O'kubasu sitting at the High Court at Nyeri considered the position of a vehicle and its effect upon other road users and held that a sudden danger created by a driver's conduct may constitute dangerous situation where the driver failed to ensure that it was safe to create that situation.
44. In the present case, the Court is not required to find that the accused deliberately intended to endanger the deceased. Neither is it necessary to establish some extraordinary degree of recklessness. The issue is whether, objectively considered, the manner in which the trailer was left on the roadway fell below the standard of care expected of a competent driver in the circumstances. I find that it did.
45. The accused was in control of a large commercial vehicle which, according to the sketch plan, was positioned partly upon the roadway and partly towards the bicycle lane. The vehicle was stationary at approximately 1.40 a.m. on a public road. A motorist approaching from behind was therefore confronted with a stationary obstruction occupying part of the roadway.
46. The fact that the trailer was struck from behind does not, by itself, establish the accused's guilt. However, in the circumstances of this case, the position of the trailer, its size, the time of night and the fact that the Toyota Porte collided with its rear establish that the trailer had created a dangerous obstruction to other road users.
47. I have also considered the evidence of PW4 that the Toyota Porte appeared to have been travelling at speed. However, there is no evidence before Court establishing the precise speed at which the Toyota Porte was travelling. There were no skid marks observed at the scene. The assertion that the deceased was speeding therefore cannot, on the evidence before Court, be treated as a proven fact capable of displacing the other evidence.
48. More importantly, even if the deceased had been travelling at a relatively high speed, that would not automatically absolve the accused if the prosecution has independently established that the accused created a dangerous obstruction on the roadway. The Court must determine whether the accused's conduct was itself a substantial cause of the dangerous situation.

49. The answer, on the totality of the evidence, is in the affirmative. I therefore find that the prosecution has proved beyond reasonable doubt that the accused left/parked the subject motor vehicle in a position or manner which was dangerous to the public.
50. On the last issue on whether the Dangerous Conduct Caused the Death, the evidence establishes a clear sequence of events. The accused's trailer was stationary on the roadway. The Toyota Porte approached from behind and collided with the rear of the trailer. The Toyota Porte sustained extensive damage. Its driver sustained multiple severe injuries and subsequently died.
51. PW3, the motor vehicle inspector, confirmed the extensive damage to the Toyota Porte, particularly to its front portion, and the corresponding damage to the rear portion of the trailer. He found no pre-accident mechanical defect in either vehicle which could explain the collision.
52. PW2's medical evidence establishes that the deceased sustained high-force traumatic injuries consistent with the collision and died as a result thereof. The causal chain is therefore not based merely on inference from the fact of death. It is supported by the physical position of the vehicles, the damage to the vehicles, the medical evidence and the investigating officer's evidence.
53. I have considered whether the conduct of the deceased may have been a contributing factor. The evidence that he was travelling at speed is not sufficiently established to enable the Court to make a positive finding on the precise speed of the Toyota Porte. In any event, the prosecution was required to prove that the dangerous situation created by the accused caused the fatal collision.
54. On the evidence before me, I am satisfied beyond reasonable doubt that it did.
55. I have carefully considered the accused's defence. His evidence was that he had slowed down after crossing Makupa Bridge to join a queue and that, before he could stop, he heard a loud bang. He then discovered that the Toyota Porte had rammed into the rear of his trailer.
56. This aspect of his evidence is, in material respects, consistent with the prosecution evidence that the Toyota Porte collided with the rear of the trailer. The difficulty with the defence is not whether the accused heard the collision or whether the Toyota Porte struck the rear of the trailer. Those facts are substantially undisputed.
57. The issue is why the trailer was in that position on the road and whether the position in which it had been left was dangerous to other road users.
58. The photographs produced by the accused do not, in my assessment, displace the evidence contained in the sketch plans and the testimony of the investigating officer concerning the position of the vehicles.

59. I have also considered the evidence of the investigating officer that he personally did not agree with the decision by the ODPP to charge the accused. That evidence does not determine the guilt or innocence of the accused. The decision whether the prosecution case has been proved rests ultimately with this Court upon evaluation of the evidence placed before it.
60. The accused's defence therefore does not raise a reasonable doubt when considered against the totality of the prosecution evidence.
61. Before I conclude, the Court must express its strong disapproval of the investigating officer's gratuitous statement and conduct that he did not agree with the decision of the ODPP to charge the accused. An investigating officer has no prosecutorial mandate. His duty is to investigate, gather evidence and place the investigation file before the competent prosecutorial authority. Once the ODPP has made a lawful decision to prosecute, it is not for the investigating officer to publicly distance himself from, or purport to undermine, that decision from the witness box.
62. The witness is reminded that criminal justice is an institutional process, not a platform for individual officers to ventilate disagreements with decisions made by constitutionally mandated authorities. If he disagrees with a prosecutorial decision, there are proper institutional channels for expressing that disagreement. The witness box is not one of them.
63. The Court will therefore disregard that statement entirely. Investigating officers would do well to remain within the limits of their mandate and conduct themselves with the discipline expected of officers entrusted with the administration of criminal justice.
64. Having carefully considered all the evidence, I find that the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt.
65. Accordingly, the accused person is hereby found guilty and convicted under section 215 of the CPC of the offence of causing death by dangerous driving contrary to Section 46 of the Traffic Act, Cap. 403 Laws of Kenya. DATED, SIGNED AND DELIVERED AT MOMBASA THIS 17th DAY OF SEPTEMBER 2026.

HON. JAMLICK MURIITHI MWENDA (RESIDENT MAGISTRATE) In presense of:

1. Accused person
2. Mr.Yassir- Prosecutor
3. C/A Getrude

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