



**Blue Rings Products Ltd v Wachira (Civil Appeal E261 of 2024)
[2025] KEHC 12082 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 12082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E261 OF 2024**

**F WANGARI, J
JUNE 23, 2025**

BETWEEN

BLUE RINGS PRODUCTS LTD APPELLANT

AND

JAMES KAMAU WACHIRA RESPONDENT

*(Being an Appeal from the Judgment of Hon. Sogomo
delivered on 02/08/2024 in Msa SRMCC No. E1531 of 2023)*

JUDGMENT

1. Through a Complaint dated 11/12/2023, the Plaintiff/ Appellant claimed under the doctrine of subrogation, Special Damages as a result of material injury caused to motor vehicle registration no. KAZ 898V which was extensively damaged in an accident that occurred on 15/12/2020, involving m/ v KBQ 973L belonging to the Defendant/ Respondent.
2. It was pleaded that the Defendant/ Respondent's vehicle was carelessly and negligently driven and lost control thereby causing the vehicle to hit the Plaintiff's vehicle which was extensively damaged. The matter proceeded by way of formal proof after the Defendant failed to enter appearance nor file the Statement of Defence, and interlocutory judgment entered.
3. The Trial Court thereafter proceeded to render Judgment on 02/08/2024 where the suit was dismissed with no orders as to costs for want of proof of liability. The court stated that if liability against the Defendant had been proved, it would have awarded Special Damages of Kshs. 170,434/=.
4. Aggrieved by the finding of the Trial Court, the Plaintiff/ Appellant lodged a Memorandum of Appeal hence this Appeal. The appeal was on liability only.
5. Upon filing this appeal, this court directed that the appeal be disposed of by way of written submissions. The Respondent did not participate in the appeal, The Appellant complied by filing its



submissions dated 30/08/2024. It was prayed that the lower court Judgment be set aside and in its place, Judgement be entered in favour of the Appellant on liability.

Analysis

6. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (see *Peters vs Sunday Post Limited* [1958] EA 424 and *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)
7. The appeal is on liability. The Appellant submitted that the interlocutory judgment having been entered against the Defendant, liability was not an issue and all that remained was the issue of assessment of damages.
8. The principles guiding the appellate court's power to interfere with the trial court's finding on liability are well settled. In *Khambi & Another vs. Mahithi and Another* [1968] EA 70, it was held that:

“It is well settled that where a Trial Judge has apportioned liability according to the fault of the parties, his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge”
9. The Respondent never testified in the lower court not did he file his Statement of Defence. The evidence of the Plaintiff remained uncontroverted. That is the reason as to why the Interlocutory Judgment was entered against the Defendant. The matter was scheduled for hearing for assessment of damages. I do concur with the submissions of the Appellant that when the Interlocutory Judgment was entered, the question of liability was a non-issue. (See [Peter Njoroge Kamau v The Hon. Attorney General](#) [2017] eKLR.
10. I find that this is a case where disturbance of the judgment on liability is merited. The judgment on liability is hereby set aside and substituted with the judgment on liability against the Respondent. There being no evidence adduced by the Respondent countering the claim of Special Damages, the same is awarded as prayed.
11. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the [Civil Procedure Act](#). The court reserves its discretion on whether to award costs to either party. The Respondent did not participate in the proceedings. The Appellant will bear his own costs.

Determination

12. In the upshot, I make the following orders: -
 - a. The Appeal has merits and is allowed on the following terms;
 - i. Judgment of the lower court on is hereby set aside and substituted with judgment of this court finding the Respondent liable.
 - ii. Consequently, the award of Kshs. 170,434/= as Special Damages is awarded.
 - b. The Appellant to bear his own costs.
- It is so ordered.



DATED, SIGNED AND DELIVERED AT MOMBASA ON 23RD DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of;

Ms. Vanani Advocate for the Appellant

N/A by the Respondent

Ms. Getrude, Court Assistant

