



**Dzuya v Karanja (Civil Appeal E346 of 2023)
[2025] KEHC 12085 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 12085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E346 OF 2023**

**F WANGARI, J
JUNE 16, 2025**

BETWEEN

ROBERT KATAMA DZUYA APPELLANT

AND

PETER NJOROGE KARANJA RESPONDENT

*(Being an appeal against the Judgement of Hon. Samuel Gatambia, RM
in Mombasa SCCC No. E250 of 2022 delivered on 31st October, 2023)*

JUDGMENT

1. Through the Statement of Claim dated 27/10/2022, the Claimant/ Respondent claimed Special Damages being material injuries as a result of an accident that occurred on 07/12/2019 involving the Claimant's motor vehicle registration no. KCQ 179G and the Respondent's motor vehicle registration no. KCH 402P. The claimant blamed the Respondent's driver for negligence that caused the accident.
2. The Respondent's driver was said to carelessly drive the vehicle without due care and attention and at an excessive speed causing his vehicle to hit the Claimant's vehicle. The Claimant's vehicle was extensively damaged. The Claimant was compensated by his Insurer, MUA Insurance (Kenya) Ltd which incurred Kshs. Kshs. 330,090/= . The claim was brought on behalf of the insurer under the doctrine of subrogation. He prayed that the claim be allowed with costs.
3. In his Response to Statement of Claim dated 10/01/2023, the Respondent blamed the Claimant for the accident due to his negligence. He was said to drive his vehicle without due regard to other road users. He denied that the Claimant's vehicle was damaged as claimed. He prayed that the claim be dismissed with costs.
4. The matter proceeded for hearing and liability was entered against the Respondent/ Appellant at 100%. Special Damages of Kshs. 330,090/= was also awarded. Costs were awarded to the Claimant/ Respondent.



5. Aggrieved by the finding of the Trial Court, the Appellant/ Respondent lodged a Memorandum of Appeal dated 29/11/2023 hence this Appeal. The appeal was on liability. The trial court was said to have misapplied the law by finding that the Claimant had proved his case to the prejudice of the Appellant.
6. The appeal was canvassed by way of written submissions. Both parties complied by filing their rival submissions in support of their positions.

Submissions

7. The Appellant filed submissions dated 02/12/2024 submitted that the Claimant did not testify and the only eye witness was the Respondent's driver, Bahati Mkarae, DW3, and whose evidence was uncontroverted. Reference was also made to the evidence of Police Officers who testified that they did not know who was to blame for the accident as they only relied on the O.B extract. The Appellant stated that the Claimant did not prove his case in the lower court.
8. The Respondent in the submissions dated 04/03/2025 stated that the Claimant/ Respondent through the witnesses proved his case. He gave a summary of the Appellant's and Respondent's witnesses. He said that the police officers blamed the Appellant for the accident after investigations were concluded. The prayed that the appeal be dismissed with costs to the Respondent.

Analysis

9. 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 v Sunday Post Limited* [1958] EA 424 and *Selle & Another v. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)

Liability

10. The trial court found the Appellant/ Respondent 100% liable for the accident. From the evidence on record, the Claimant did not testify. The Police Officer, P.C John Omide stated that the Appellant's motor vehicle was to blame for ramming into the Respondent's vehicle. He produced the Police Abstract as exhibit. On cross examination, he admitted that investigations had not been concluded. He relied on the O.B extract as he did not have the police file. The officer who visited the accident scene was not available to testify. He said he could not tell as a fact who was to blame for the accident as the investigations had not been concluded. The rest of the witnesses were from the insurance company and the assessor.
11. On the other hand, the Appellant called the Police Officer who produced the Police Abstract. He gave evidence that he relied on the O.B which stated that the Appellant's driver was to blame for the accident. The Appellant called his driver to testify. He gave evidence that the Claimant's vehicle which was being driven in front of the Respondent's vehicle suddenly had its brakes applied. The Respondent's vehicle was hit from behind and it rammed into the Respondent's vehicle.
12. The only eye witness was the Respondent's driver. The Police Officers could not testify on what happened to the scene of accident. They relied on the report in the O.B in giving their testimony. The Investigating Officer was not available to testify. They both confirmed that the matter was still under investigation and they could not tell who was to blame for the accident.



13. I do concur with the submissions by the Respondent that there being no other eye witness other than that on the Respondent's driver, his evidence remains uncontroverted. Failure to call the Claimant as a witness was detrimental to the Claimant's case. I disagree with the findings of the trail court that liability was proved, based on the discussion herein above. Judgment on liability is hereby set aside.
14. The issue of costs, the award is discretionary. In order to bring litigation to an end, each party to bear its own costs.

Determination

15. In the upshot, I make the following orders: -
 - a. The Appeal has got merits and is allowed on the following terms;
 - i. Judgment dated 31/10/2023 is hereby set aside and substituted with Judgment of this court dismissing the Claim.
 - b. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 16TH DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of;

N/A by the Appellant

Ms. Kioko h/b for Njoki Advocate for the Respondent

Ms. Getrude, Court Assistant

