



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Wanyenye (Civil Appeal E011 of 2024)
[2025] KEHC 8462 (KLR) (Civ) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

CIVIL

CIVIL APPEAL E011 OF 2024

KW KIARIE, J

JUNE 17, 2025

BETWEEN

JOSPHAT BIARU MWANGI APPELLANT

AND

PETER NJOMO WANYENYE RESPONDENT

*(Being an appeal from the ruling in Engineer Senior Principal Magistrate's
SPMCC No. E089 of 2022 by Hon. E.N. Wanjala – Principal Magistrate)*

JUDGMENT

1. Josphat Biaru Mwangi, the appellant, was the plaintiff in Engineer Senior Principal Magistrate's SPMCC No. E089 of 2022. He had brought a claim for general and special damages following a road traffic accident involving motor vehicle KAH 806J, which collided with the motorcycle KMEV 020V he was riding. He sustained injuries and subsequently filed the suit. The claim was dismissed.
2. The appellants were dissatisfied with the judgment and filed this appeal through Wanjohi Wawuda & Company Advocates. He presented the following grounds of appeal:
 - a. The learned trial magistrate erred in law and fact in finding that the appellant did not prove his case on a balance of probability and in dismissing the appellant's suit with costs.
 - b. The learned trial magistrate erred in law, in analyzing the evidence before her, and in finding that the appellant was the author of his misfortune.
 - c. The learned trial magistrate erred in law and in fact by not properly analyzing the evidence adduced for the plaintiff (appellant) that the defendant (respondent) was blamed for causing the accident by the traffic police officers who witnessed the accident.



- d. The learned trial magistrate erred in fact and law in failing to find liability against the respondent, which decision was unjust, against the weight of evidence and was based on points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - e. The learned trial magistrate erred in failing to adequately consider all the evidence and submissions regarding liability and quantum of damages, resulting in a miscarriage of justice for the appellant.
3. The respondent was represented by Kimondo Gachoka & Company Advocates. He did not file any grounds of opposition or submission.
 4. As the first appellate court, I recognise my responsibility to thoroughly examine all the available evidence, given that I did not have the opportunity to observe the witnesses during their testimony. The *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123 case sets the precedent that the first appellate court must review and assess the evidence presented in the trial court and draw its conclusions accordingly.
 5. The appellant testified that he collided with the vehicle before him while using his motorcycle. During his evidence in chief, his witness, PC Wilson Mbuvi (PW3), stated that the motorcycle rider struck the motor vehicle's rear when its brakes failed. However, during cross-examination, he changed his account, claiming that the lorry had reversed slightly due to a steep hill. This created a self-contradiction and contradicted the appellant, who did not testify to the lorry reversing.
 6. Joseph Kimani Mutonya, the respondent, testified that the motorcyclist hit his vehicle from the rear while entering a petrol station.
 7. There is no doubt that prima facie, the appellant failed to keep a safe distance and cannot blame the respondent. The learned trial magistrate cannot be faulted.
 8. The appeal is dismissed. As the respondent did not participate in this appeal, there will be no orders regarding costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 17TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

