



REPUBLIC OF KENYA



KENYA LAW
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**Muhoro & another v Sheikh (Civil Appeal E006 of 2024)
[2025] KEHC 12068 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 12068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E006 OF 2024**

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

BETWEEN

WALLACE KARANJA MUHORO 1ST APPELLANT

PETER MBOGHOLI KITAWA 2ND APPELLANT

AND

AHMED SABIR TAHIR SHEIKH RESPONDENT

*(Being an Appeal by the from the Judgement delivered by Hon. Gatambia Ndungu,
Resident Magistrate on the 29th February, 2024 in Mombasa SCCC No. E223 of 2023)*

JUDGMENT

1. The Claimant/ Respondent filed a Statement of Claim dated 10/03/2023 seeking General and Special Damages as a result of material injury occasioned to his vehicle registration no. KCZ 739V Nissan Juke, after it was involved in an accident with the Respondent's vehicle registration no. KCQ 896B. He blamed the accident on the negligence of the 2nd Respondent who was the driver of the offending vehicle. The Claimant claimed against the Respondents Kshs. 896,000 being special damages suffered with costs of the suit.
2. The Appellant/ Respondents filed their "Statement of Defence" dated 03/07/2023 which was amended on 24/10/2023. They denied the allegations by the Claimant. Instead, they blamed the Claimant for the accident. It was stated that the Claimant negligently drove his unregistered Nissan Juke causing it to collide with the Respondent's vehicle causing it extensive damage. They prayed that the claim be dismissed with costs.
3. The matter proceeded by way of documents under Section 30 of the *Small Claims Court Act*. The trial court found the Claimant's vehicle to have been registered. The Claimant was found to have proved his case on a balance of probabilities. Judgment was entered in favour of the Claimant for Kshs. 896,000/ = with costs of the suit.



4. The Appellants/ Respondents being dissatisfied with the said judgement preferred the present appeal vide the Memorandum of Appeal dated 12/03/2024. They faulted the trial court for applying the wrong principles thereby awarding 100% liability against the Appellants, failing to consider the documents on record hence wrongly finding that the Claimant had proved his case on a balance of probabilities.
5. The Appellants stated that both drivers had a duty of care towards each other and faulted the trial court by finding that only the Appellants owed the duty of care towards the Respondent. It was prayed that the appeal be allowed, judgment on liability be set aside and this court proceed to make its own findings on liability. The Appellants prayed for costs of the appeal.
6. This being a first appeal, this court is under a duty to re-evaluate and re-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 *Selle vs Associated Motor Boat Company Ltd* [1968] EA 123 and *Peters vs Sunday Post Limited* [1985] EA 424)
7. In *Livestock Research Organization v Okoko & another* (Civil Appeal 36 A of 2021) [2022] KEHC 3302 (KLR) (29 June 2022) (Ruling), Justice R. E. Aburili, J. held as follows;

In other words, a first appeal is by way of retrial and this court, as the first appellate court, has a duty to re-evaluate, re-analyse and re-consider the evidence and draw its own conclusions, of course bearing in mind that it did not see witnesses testifying and therefore give due allowance for that. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated that

“[A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”

8. The appeal was canvassed by way of written submission. Both parties filed their rival submissions with supporting authorities.

Analysis and Determination

9. I have carefully considered the Record of Appeal, the submissions filed both for and against, the authorities cited as well as the law and I discern the following issues for determination: -
 - a. Whether this appeal has merits
 - b. Who bears the cost?
10. The appeal was on liability only.

Liability

11. I have perused through the statements by witnesses and documents filed as exhibits, as the matter proceeded by way of documents. In the Claimant’s Witness statement dated 08/05/2023, the Claimant stated that he was driving his motor vehicle registration no. KCZ 739V Nissan Juke near Nyali



- Bliss Hotel when the Respondent's vehicle registration no. KCQ 896B was driven negligently driven causing it to lose control leaving its lane and colliding with his vehicle causing extensive damage.
12. The accident was reported to Nyali Police station, investigations were conducted and subsequently, the Office of the Director of Public Prosecution recommended for the prosecution of the Respondent's driver. He said he was driving at a speed of about 10km/hr. but said the Respondent's driver was driving at an excessive speed.
 13. There was an eye Witness Statement dated 08/05/2023 by John Forsyth, who was on the material date was driving his motor vehicle reg. no. KCT 115M, Mitsubishi Outlander when an oncoming car which was being driven at a high speed was dangerously overtaking and was approaching his car. In order to avoid a collision, he drove his vehicle off the road to a complete stop. He checked his side mirror to see what would be before the other road users. That is when he heard a loud bang. He saw the vehicle ram head on into the other vehicle.
 14. He got out of the car to check on the condition of the occupants of the vehicle of both cars. Together with other members of public, they helped remove the injured occupants from the vehicle wreckage. One of the injured was the Claimant who could not stand on his feet. His vehicle registration no. KCZ 739V was also extensively damaged indicating a huge impact. He blamed the driver of motor vehicle KCQ 896B for failing to control his vehicle and overtaking without due regard to other road users. The Claimant relied on inter alia the Accident Assessment Report, Police Abstract and the Letter from the ODPP.
 15. The 2nd Respondent in his Witness Statement dated 20/04/2022 stated that he was driving his taxi registration no. KCQ 896B at Links Road keeping to his left facing Nyali Centre. On reaching Bliss Hotel, there was an unregistered vehicle that was being driven in a zigzag manner. The vehicle came to his lane and hit his vehicle. His vehicle was pushed to the opposite side of the road causing his vehicle to bang into the generator of Bliss Hotel. He lost consciousness and came to in hospital.
 16. The 1st Respondent, the registered owner of motor vehicle KCQ 896B. he was informed that his vehicle was involved in an accident. He proceeded to Nyali Police station and took photos of the vehicle which were produced as exhibits. He said the Claimant's vehicle had no registration number. He also took photos of the expired insurance sticker.
 17. Turning to the merits of the appeal, I note that the Trial Court found that the Claimant's vehicle was properly registered. He relied on the Assessment Report, the pleadings and the Police Abstract. Both parties admitted owning their respective vehicles. It was upon the Appellants/ Respondents who alleged that the vehicle was not registered to prove the same. The same was not done.
 18. I have looked at the photos produced by both parties. The photos by the Claimant had the number plate on the Nissan Juke. The photos relied on by the Respondents had no number plate on the Nissan Juke. The Respondents ought to have produced further evidence in support of their allegations that the vehicle was not registered. A copy of records of motor vehicle from NTSA would have shown when the vehicle was registered. I do concur with the trial court that the Claimant's vehicle was registered.
 19. On the issue of negligence, both drivers blamed each other for the accident. The Claimant had an eye witness, one John Forsyth who gave an account of what transpired prior to the collision of the vehicles. His evidence corroborated that of the Claimant. I have also considered the evidence by the 2nd Respondent driver. He says it was the impact of the collision that pushed his car to the extreme opposite side thus hitting the transformer at Bliss hotel.
 20. It cannot be reconciled how a vehicle which was allegedly on its lane, and the collision taking place at the extreme end of its lane, only for the vehicle to be pushed to the extreme end of the opposite



direction and damage the transformer at Bliss Hotel. I find the evidence of the Claimant and his witness believable, that the Respondent driver was on the wrong by encroaching into the opposite lane at a high speed hence causing the material damages.

21. I note that both parties have conflicting Police Abstracts. In the absence of the evidence by the Traffic Police Officer to explain the discrepancies, the evidence on both abstracts have got no evidential value. I find that the trial court was right in finding the Respondents 100% liable for the accident. I find no reason to disturb the findings of the trial court.
22. On the issue of costs, a careful reading of Section 27 indicates that it is trite law that they follow the cause or event. (See Sir Dinshah Fardunji Mulla in his book *The Code of Civil Procedure*, 18th Edition, 2011 reprint 2012 at 540). It is, that costs must follow the event unless the court, for some good reasons, orders otherwise. The import is that a successful party is entitled to costs unless he or she is guilty of any misconduct or there exists some other good reasons and or cause for not awarding costs to the successful party. I thus award the costs of this appeal as well as before the Trial Court to the Respondent.
23. Flowing from the foregoing, I proceed to make the following orders: -
 - a. The appeal has got no merits and is hereby dismissed.
 - b. Costs to the Respondents.
 - c. This file is closed.

It is so ordered.

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

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F. WANGARI

JUDGE

In the presence of:

Mr. Shikely Advocate for the Appellants

Mr. Mramba Advocate for the Respondent

Ms. Getrude, Court Assistant

