



**Buildway (K) Ltd v Ogolo (Civil Appeal E569 of 2023)  
[2024] KEHC 8973 (KLR) (Civ) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E569 OF 2023**

**AM MUTETI, J**

**JULY 24, 2024**

**BETWEEN**

**BUILDWAY (K) LTD ..... APPELLANT**

**AND**

**REMJIUS OKONGO OGOLO ..... RESPONDENT**

*(Being an appeal against the Judgment of the adjudicator V. M. Mocheche delivered on 22nd July 2022 appeals against the whole of the judgment)*

**JUDGMENT**

1. The appellant raises Nine (9) grounds of Appeal as hereunder:-
  - a. that the decision of the adjudicator was against the weight of evidence.
  - b. that the adjudicator exhibited bias in finding that the appellant was to blame for the accident;
  - c. That the Respondent did not discharge the burden of proof at the hearing thus his case was not proved.
  - d. that the Respondents evidence was fraught with errors and inconsistencies to disentitle the Respondent of any compensation.
  - e. that the adjudicator failed in his duty to analyze the Evidence produced in court before arriving at his decision.
  - f. that the learned Adjudicator failed to attach weight to the submissions filed by the appellant.
  - g. that the learned honourable magistrate acted capriciously and disregarded the principles of Equity hence arriving at a wrong decision in law.



## Analysis

2. It is the decree in the lower court matter was issued on the 29<sup>th</sup> August 2022. It is the appellant's prayer that this court allows the appeal with costs, based on the above stated grounds.
3. The appellant in his submissions dated 23<sup>rd</sup> January 2024 has framed two issues for determination. According to them the issues are:-
  - a. Whether the learned honourable adjudicator erred in law and in fact, misdirected herself and based her conclusion on non-existent evidence when she found that the appellant was to blame for the accident.
  - b. Whether the learned Honourable Adjudicator erred in law and in fact by holding the appellant 100% liable and condemning him to pay damages.

## Duty of 1<sup>st</sup> Appellate Court

4. The duty of this court as a first appellate court is to reevaluate the Evidence tendered before the adjudicator and draw its own conclusions and findings whilst remembering that unlike the adjudicator this court did not have the advantage of hearing the witnesses. See *Abok James Odera T/A A. J. Odera and Associates v Patrick Michira t/a Michira & Co. advocates* [2013] eKLR.
5. In line with this duty this court besides considering the submissions by counsel for both parties has carefully scrutinized the record of the lower court to establish whether the adjudicator was wrong in his conclusions on liability of the Appellant based on the evidence.

The facts of the matter are that the Respondent was lawfully driving his motor vehicle Reg. No KBF XXX E along Mombasa road when the Appellant's authorised driver negligently and recklessly drove motor vehicle KBX XXX K on the same road causing the two vehicles to collide.
6. The (Respondent) called 3 (three) witnesses. CW1 Police Constable Jackiline Naiku informed the court that CPL CALEB blamed the driver of motor KBK XXX K for failing to keep distance thus causing the accident. The witness produced the Police Abstract as C Exhibit 1. The witness indicated that it is not in all cases where a driver is charged following an accident.
7. The second witness CW2 gave evidence and produced an invoice for the sum of Ksh. 197,412/= as prove of the repair costs for motor vehicle KBF XXX E.

The suit was by brought under the principle of subrogation. The witness worked for Madison insurance as Claims Manager. The witness confirmed indeed the vehicle was repaired at Extreme Customs Ltd. CW3 on his part confirmed that at the time of the accident the motor vehicle KBF belonged to him and was insured with Madison.
8. The appellant through the witness RW1 alleged that the driver of the motor vehicle KBF XXX E changed lanes abruptly from the left to the right. He maintains that he was not charged in court over the accident. According to him he was not at fault.

The witness was the driver of KBX XXX K. He admitted that he hit motor vehicle KBF XXX E from the rear. His reason for hitting the vehicle was that the motor vehicle changed lanes abruptly. The witness further admits he was meant to keep a distance of 70 metres. If indeed that was the distance he had kept the accident could not have occurred thus whether the Respondent changed lanes abruptly that would have been immaterial.
9. In my view, the Appellants driver was not wrongly held to be at fault.



10. In order for a driver to hit another from the rear it would obviously mean that the distance between the vehicles was not good enough to allow application of emergency brakes to avoid the accident.

The law requires that drivers be mindful of other road users thus the need to keep distance and regulate speed.

11. It is the view of this court that the Adjudicator was right in arriving at the conclusion that he did that the Appellant's driver was solely to blame for the accident.

12. The failure to keep a safe distance between vehicles is a clear manifestation that the appellant's driver was negligent and like the Adjudicator I have no difficulty in holding him liable 100% for the accident.

13. Kenyan drivers must be reminded of road courtesy to avoid accidents that could easily be avoided. To hit one's vehicle from the rear is the most reckless act of driver. the responsible driver must be held to account for the damage suffered.

14. I note from the appellant's submissions there is no challenge to the sum awarded by the adjudicator as damages. The same is thus upheld.

In the end I find that the appeal has no merit and is hereby dismissed. The appellant alluded to the court flouting the principles of Equity but he did not elaborate what principle of Equity was breached. The submission is thus of no assistance to this court in determining this appeal.

The appeal therefore stands dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY, 2024.**

**HON. A.M MUTETI**

**JUDGE**

In the presence of:

Kiptoo: Court Assistant

A.B. K. Advocates Absent for the Respondent

Ms Njagi for the Appellant

Absent for the Appellant

