# ARN Security & Consultants Ltd v Iko Briq Ltd (Civil Appeal E030 of 2023) [2025] KEHC 13528 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13528 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIVASHA**

**CIVIL APPEAL E030 OF 2023**

**HI ONG'UDI, J**

**SEPTEMBER 19, 2025**

**BETWEEN**

**ARN SECURITY & CONSULTANTS LTD .......................................... APPELLANT**

**AND**

**IKO BRIQ LTD ........................................................................... RESPONDENT**

***(Being an appeal from the Judgment of Hon. E. Cherop Resident Magistrate/ Adjudicator in Naivasha SCCC No. E20 of 2023, delivered on 22nd March, 2023)***

## JUDGMENT

1. This appeal arises from a judgment and decree entered in Naivasha SCCC No. E20 of 2023. In the said suit, the respondent (who was the plaintiff) sued the appellant (who was the defendant) for the sum of kshs. 839,535/= plus costs and 16% VAT and any other appropriate relief.

2. The respondent is the owner of motor vehicle registration number KCL 085J. The said vehicle hit the appellant's motor vehicle registration number KCP 091A which was being lawfully, carefully and properly driven along Nairobi-Naivasha road at Kimende by the appellant's driver. The claim was fully defended and the trial magistrate/adjudicator delivered a Judgment on 22nd October, 2023 in which she apportioned liability in the ratio of 50:50. She awarded the respondents Ksh 825, 397/= less 50% contribution as special damages, plus half costs.

3. The appellant being aggrieved by the whole judgment lodged this appeal dated 19th April, 2023 setting out the following grounds: -

    i. That the learned magistrate erred in law and misdirected herself in the interpretation of section 30 of the Small Claims Act.

ii. That the learned magistrate erred in law by failing to give probative value to the documents produced by the appellant yet parties consented to proceed under section 30 of the Small Claims Act.

iii. That the learned magistrate erred in law by not appreciating the fundamental principles of the rule of evidence.

4. The appeal was canvassed through written submissions.

**Appellant's submissions**

5. These were filed by Wachira Wekhomba AIM7 Associates advocates dated 25th February, 2025. Counsel gave a brief background of the case and submitted that there was no dispute that the appellant's motor vehicle was hit by the respondent's motor vehicle from the rear when he had slowed down to allow a car in front to exit the highway. Further, that the police abstract produced by consent of the parties collaborated the appellant's allegations stating that the respondent was to blame. Thus, the trial court erred in failing to take into account and give probative value to the documents produced by consent as per section 30 of the Small Claims Act being the police abstract and claim form.

6. Reference on this was made to the decision in John Shikuku Keya v Lubao Jaggery Limited [2018] eKLR, where the High court on appeal held as follows:

> "The duty of the magistrate was to assess damages in reliance on the documents that had been placed before him by consent of the parties without questioning their veracity. A fact admitted by consent of the parties required no further proof. I find that the appellant had proved the injuries sustained by production of medical documents. The trial magistrate erred in failing to determine the quantum even after parties had entered consent on liability and produced medical documents by consent. The court will proceed to assess the damages payable."

7. Counsel further submitted that concrete evidence with probative value was adduced by the appellant to prove causation and to prove the particulars of negligence as stated in the statement of claim. He placed reliance on the decision in Samuel Stephen Were vs Sukari Industries Ltd [2018] eKLR, where Majanja D, J, had this to say in circumstances similar to those obtaining in this case;

> "I find and hold that the evidence, taken as a whole, point to the fact that the tractor was being driven behind the motorbike at a high speed when it lost control and hit the motor bike ahead of it. Since the motor bike was hit from behind, it would have been very difficult, if not impossible, for the deceased to avoid the accident."

8. She further referred to the case of Samuel Stephen Were v Sukari Industries Ltd [2018] eklr and David Ogol Alwar v Mary Atieno Adwera & Another [2021] eKLR, and urged the court to consider the evidence on record and find on a balance of probability that the respondent was 100% liable for causing the accident.

**Respondent's submissions**

9. These were filed by Okundi & Company advocates and are dated 14th March, 2025. Counsel gave a brief introduction of the case and identified one issue for determination which is whether the appellant proved his case on a balance of probabilities.

10. Counsel submitted that the respondent's evidence that the appellant's driver was not careful enough to put the red triangle sign and to indicate the hazards lights to give other drivers advance warning after having hit another car from the rear was not controverted. Further, that it was not proven that the respondent was to blame for the accident as a result of its purported negligence which was just stated and left unsubstantiated.

11. He placed reliance on sections 107, 108 and 109 of the *Evidence Act* and several decisions including William Kabogo Gitau v George Thuo & 2 Others [2010] eKLR. which held:

> "In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on balance of probabilities. He has established that it is probable than not that the allegations that he made occurred."

12. Counsel further submitted that the appellant failed to prove negligence on the part of the respondent at all. If the accident occurred as alleged then it was due to the appellant's negligence and that holds him 100% liable. He placed reliance on the decision in Henderson vs. Hen E Jenkins and Sons 1970 AC 232 at 301 where it was held that:

> "In an action for negligence the plaintiff must allege, and has the burden of proving, that the accident was caused by the negligence on the part of the defendant. That is the issue throughout the trial, and in giving judgement at the end of the trial, the Judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by the negligence on the part of the defendant, and if he is not satisfied the plaintiff's action fails. The formal burden of proof does not shift. But if in the course of the trial there is proved a set of facts which raises a prima facie inference that the accident was caused by the negligence on the part of the defendants, the issue will be decided in the plaintiff's favour unless the defendants by their evidence provide some answer which is adequate to displace the prima facie inference. In this situation there is said to be an evidential burden of proof resting on the defendants."

13. Lastly, counsel submitted that the trial Magistrate exercised her discretion in arriving at that conclusion based on the evidence produced before her. He urged the court to dismiss the appeal with costs. Reference on this was made on the decisions in Mbogo & Another v Shah [1968] EA, 15 and United India Insurance Co. Ltd v East African Underwriters (Kenya) Ltd [1985] E.A

**Analysis and determination**

14. Having considered the record of appeal, grounds of appeal, the submissions and the authorities relied on by the respective parties, I find the issue for determination to be; whether the appeal herein is merited.

15. This being an Appeal from the Small Claims Court, the duty of the court is circumscribed under 38 of the *Small Claims Court Act* which provides as follows:

> (1)A person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.

16. An appeal on points of law is akin to a second appeal to the Court of Appeal. The duty of a second appellate court was set out in the case of M/s Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:

> " This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR)."

17. The appellant's claim proceeded by way of section 30 of the Small Claims Act. The said section provides as follows:

> " Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers it fair and just on the basis of documents and written submissions, statements or other submissions presented to the Court."

18. It is not disputed that the said claim arose from a road accident in which the appellant's and respondent's motor vehicles were involved. The adjudicator/trial magistrate was faulted for failing to take into account and give probative value to the documents produced by consent as per section 30 of the Small Claims Act being the police abstract and claim form.

19. Having carefully perused the lower court record, I note that the adjudicator/resident magistrate apportioned liability between the appellant and the respondent for reasons that no evidence was adduced to corroborate the police abstract which blamed the respondent for causing the accident. She placed reliance on the decision in Kennedy Nyangoya v Bash Hauliers [2016] eKLR.

20. From the court record, only the appellant's and the respondent's witnesses testified. No police officer testified and neither was any police report, sketch maps from the accident scene produced as evidence. Further, none of the witnesses told the court much on how the accident occurred. In such circumstances the law requires that the court apportions liability which is what the small claims court did. The court cannot be said to have entered judgment on the basis of no evidence. Reference on this is placed on the Court of Appeal decision in Farah V Lento Agencies [2006] 1 KLR 124, 125 (also relied on by the adjudicator/resident magistrate) where it was held as follows:

> " Where there is no concrete evidence to determine who is to blame between the two drivers, both should be held equally to blame. As no side could establish the fault of the opposite party, liability for the accident could be equally on both the drivers. Therefore, each driver was to blame".

21. Following the above analysis, I see no justification for this court to interfere with the decision of the Adjudicator/Resident Magistrate. The Appeal is accordingly dismissed.

22. Each party to bear its own costs.

23. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 19 TH DAY OF SEPTEMBER, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**