



**Kiratu v Okajo (Civil Appeal E1059 of 2024)  
[2025] KEHC 13912 (KLR) (Civ) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13912 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1059 OF 2024**

**TW CHERERE, J**

**OCTOBER 2, 2025**

**BETWEEN**

**EVERLYNE OWANO KIRATU ..... APPELLANT**

**AND**

**CHARLES MOGESI OKAJO ..... RESPONDENT**

*(Being an appeal from the judgment and decree in SCC E 1131 of 2023  
by Hon. C.A.Okumu (RM/Adjudicator) on 06th September 2024)*

**JUDGMENT**

**Introduction**

1. This appeal arises from a road traffic accident that occurred on 26<sup>th</sup> January 2023, in which the Appellant, a pedestrian, was knocked down and injured by motor vehicle registration number KCZ 367N, owned by the Respondent.
2. The Appellant subsequently instituted proceedings in the Small Claims Court against the Respondent and two others, seeking damages for the injuries sustained.
3. Upon hearing the parties, the trial court, in its judgment delivered on 06<sup>th</sup> September 2024, found both the Appellant and the Respondent liable for the accident and apportioned liability equally at 50:50.
4. Dissatisfied with that finding, the Appellant lodged a Memorandum of Appeal dated 11<sup>th</sup> September 2024, challenging the trial court's apportionment of liability.
5. I have considered the appeal in light of the grounds of appeal and submissions filed on behalf of the Appellant, the Respondent not having filed any.



## **Appellate Court's General Duty**

6. It is a well-established principle that a first appellate court is ordinarily required to re-examine the evidence presented before the trial court and to arrive at its own independent conclusion. An appellate court is empowered to subject the entirety of the evidence to a fresh and exhaustive scrutiny and make its own findings, while acknowledging that it did not have the advantage of seeing and hearing the witnesses firsthand. This principle was emphasized in *Selle & another v Associated Motor Boat Co. Ltd. & others* [1968] EA 123, *Peters v Sunday Post Ltd.* [1958] EA 424, and applied in *Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa)* (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR).

## **Statutory Limitation under Section 38 of the Small Claims Court Act**

7. Whereas a first appellate court ordinarily has broad powers to review the evidence, this duty is expressly limited by statute. Section 38 of the Small Claims Court Act, 2016 restricts appeals from the Small Claims Court to points of law only. As such, this Court's jurisdiction extends only to questions of legal error, misdirection, or misapplication of principles. Challenges based solely on factual findings, such as the apportionment of liability, lie outside the ambit of appeal and are incompetent.

## **Liability**

8. The determination of liability in a road traffic accident is essentially a factual inquiry. Save for instances of misapplication of legal principles, apportionment of blame falls squarely within the factual domain of the trial court. In *Tonui v Kuber Agency* (Civil Appeal E015 of 2023) [2024] KEHC 11084 (KLR), the High Court in a persuasive decision emphasized that even where reliance is placed on the doctrine of res ipsa loquitur, liability arises from the facts proved and not as a matter of law.
9. This position is reinforced by the Court of Appeal in *Mwangi v Wambugu* [1984] KLR 453, *Kiruga v Kiruga & Another* [1988] KLR 348, and *Mwanasokoni v Kenya Bus Services Ltd* [1982-88] 1 KAR 278 which hold that appellate courts will not disturb findings of fact unless plainly erroneous, unsupported by evidence, or based on a misapprehension of evidence.

## **Analysis and Determination**

10. The grounds of appeal filed by the Appellant invite this Court to re-weigh the evidence and substitute its own view on the apportionment of liability. Such an exercise would require the Court to intrude into the factual domain, which, by statute and settled authority, lies beyond the scope of appeal under Section 38 of the Small Claims Court Act.
11. Accordingly, the appeal, being predicated solely on a factual contestation of liability, is incompetent.

## **Disposition**

12. From the foregoing analysis, I have concluded that the appeal dated 11<sup>th</sup> September 2024 is without merit and it is dismissed. The Respondent did not file any response or defend the appeal. In the circumstances, the Appellant shall bear her own costs of the appeal.

**DELIVERED AT NAIROBI THIS 02<sup>nd</sup> DAY OF October 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances



Court Assistant - Ubah

For Appellant - Mr. Munyoki for TMJ Advocates LLP

For Respondent - N/A for Kimondo Gachoka & Co. Advocates

