



M’ikiara v New Kigoro Traders Company Limited & 2 others (Civil Appeal E069 of 2023) [2025] KEHC 14186 (KLR) (8 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E069 OF 2023
HM NYAGA, J
OCTOBER 8, 2025**

BETWEEN

JOSPHAT MWIRIGI M’IKIARA APPELLANT

AND

NEW KIGORO TRADERS COMPANY LIMITED 1ST RESPONDENT

AGNES WANJIRU NJAU 2ND RESPONDENT

SIDIAN BANK LIMITED 3RD RESPONDENT

(An Appeal from the Judgement and Decree of Hon. M.A Odhiambo (SRM) in Meru CMCC No. 165 of 2018 delivered on 24th June, 2022)

JUDGMENT

1. Before the trial court was a claim commenced by an amended Plaintiff dated 7th February, 2019 in which the Appellant sued the Respondents seeking special damages for loss of property and costs and interests for an accident which occurred along Nanyuki-Isiolo road.
2. The gist of the claim was that on 9th February, 2018 at Maili Nane along the Nanyuki-Isiolo road, the Appellant was at his home which is situated far off the road when the Respondent’s Motor vehicle registration number KBJ 642S ZC842 which was being driven at a high speed, carelessly and negligently, suddenly veered off the road and rammed into the homestead of the Appellant and destroyed his property.
3. It was then pleaded that as a consequence of the accident, the Appellant lost the following properties: -
 - a. Semi-Permanent 3 bed roomed House worth Ksh.424,500/=Kitchen Ksh.120,000/=Life Trees Ksh.15,000/=Chicken Ksh.4000/=Chicks Ksh.3000/=Goats Ksh.14,000/=90 Kgs Ksh.18,000/=Subtotal Ksh.613,500/=



- b. Equipment Solar Panel 50k watts Ksh.15,000/= Water pump Honda Ksh.30,000/= Knapsack Spray Ksh.30,000/= 32-inch Sony Tv Ksh.11,000/= DvD sony Ksh.5,000/= Woofer Sonny Ksh.8,000/= Wooden Coffee table Ksh.20,000/= Wall Clock Ksh.100015 Kgs gas cylinder Ksh. 15,000/= 4 no. burner gas cylinder Philips Ksh.5,000/= Poultry cage Ksh. 1,500/= Goat pen Ksh.3,000/= Tv stand Ksh.6,000/= Kitchen table Ksh.2,500/= Dressing Mirror Ksh.600 Subtotal Ksh. 213,600/=
- c. Tools Mattock Ksh.1,000/= Claw bar Ksh.850/= Wheelbarrow Ksh.3,500/= Hammer Ksh.400 Slashers Ksh.2,000/= Folk Jembes Ksh.2,000/= Jembes Ksh.1,500/= Pangas 368 Ksh.7,500/= Plastic tables Ksh.4,550/= Plastic chairs Ksh.3,000/= Phone infinix touch screen Ksh. 28,500/= Turpuline for lorry 10-wheeler Ksh.3,000/= Small turpuline for dring cereals Ksh.2,000/= Subtotal Ksh. 58,800/=
- d. Household good utensils Cups Ksh.2,400/= Plates Ksh.1,680/= Spoons Ksh.240/= Hot pot dishes Ksh.5,000/= Medium thermos flask Ksh. 2,000/= Giant thermos flask Ksh.4,500/= Giant washing basins Ksh.5,400/= Medium basin Ksh.2,220/= Empty bread crates Ksh.1,800/= Subtotal Ksh.25,240/=
- e. Beddings Duvets Ksh. 6,000/= Blankets Ksh.5,600/= Travelling bags Ksh.2,600/= Bed Sheets Ksh.2,000/= Shoe rack Ksh.1,500/= Decoration nets Ksh.400/= Beds 6 x 4 Ksh. 10,000/= Subtotal Ksh.28,100/=
- f. Water storage facilities 1,000 litres water tank Ksh.12,250/= 200 litres water tanks Ksh.100/= 30 litres water tank Ksh.2,000/= Subtotal Ksh.15,250/=
- g. Store 50 kgs rice Ksh.7,000/= Potatoes Ksh.5,400/= 10 litres Rina cooking oil Ksh.37,440/= 2 Kgs maize meals Ksh.1,680/= 2 Kgs wheat flour Ksh.2,880/= Cash Ksh.20,000/= Subtotal Ksh.74,400/=
- h. Clothes Assorted clothes and shoes for two children Ksh.120,000/= Assorted clothes and shoes for a lady Ksh.200,000/= Assorted clothes and shoes for a man Ksh.150,000/= Subtotal Ksh.470,000/=
- i. Expenses incurred soon after damage House rent @30,000 per month Ksh.60,000/= Food @ 30,000 per month Ksh.60,000/= Upkeep and transport to and from Ksh.100,000/= Subtotal Ksh. 220,000
- j. Burial expenses Ksh.200,000/=
- Total Ksh.1,918,890/=
- k. Add 15% disturbances Ksh.28,783.5
- Grand total Ksh. 2,206,723.50
4. The Appellant also sought special damages amounting to Ksh. 45,000/= as valuer's fee.
5. The 1st and 2nd Respondents vigorously denied the claim by their statement of defence dated 29th April, 2021 in which the ownership of the offending motor vehicle; the occurrence of the accident, particulars of negligence were all denied with an alternative pleading that if any accident ever occurred as pleaded, then the same was wholly caused and/or substantially contributed to by the negligence of the Appellant. Particulars of negligence set out were; building on the road reserves; putting up properties beside the road; putting up an illegal construction; and failing to properly demarcate the illegal structures from the road. A plea was also made for the dismissal of the suit with costs.



6. The 3rd Appellant did not enter appearance despite due service and an interlocutory judgement was entered against it on 23rd June, 2021.
7. After the trial which ensued and in which the Appellant called five witnesses while the 1st and 2nd respondents closed their case without calling any witness, the trial court held that the Appellant had established his case on a balance of probabilities, found the 1st and 2nd Respondents jointly and severally 100% liable, dismissed the claim against the 3rd Respondent, and proceeded to assess damages as follows:
 - a. Special damages for loss of property Ksh. 545,500/=
 - b. Costs and interests at court rates from the date of judgement till payment in full.
8. Aggrieved by the said decision, the appellant filed this Appeal vide Memorandum of Appeal dated 4th May, 2023 listing the following grounds: -
 - i. That the trial court erred in law and in fact by refusing to consider that the defendant called no witnesses and Appellant claim/case remained unchallenged or controverted.
 - ii. The trial court erred in law and in fact by refusing to find that the plaintiff testified and called witnesses and their evidence was proved on a balance of probabilities.
 - iii. The trial court erred in law and in fact by concluding that the Appellant did not produce receipt for damaged properties yet it was appellant's evidence that the said receipts were destroyed in the accident.
 - iv. The trial court erred in law and in fact by finding that there was already a judgement against the 3rd Respondent.
 - v. That the trial court erred in law and in fact by failing to find that out of the said accident other victims were compensated and their claims were similar and the evidence was the same as that of the Appellant.
 - vi. That the entire evidence proved the appellant's case on a balance of probabilities.
9. The Appellant prays that this appeal be allowed, the judgment of the lower court be set aside and substituted with the reliefs sought in the plaint, or in such other manner as this Honourable Court may deem just, and that the costs of both the lower court suit and this appeal be awarded to the Appellant.
10. The Appeal was canvassed through written submissions.

Appellant's Submissions

11. The Appellant faulted the trial magistrate for concluding that no receipts were produced for the damaged properties. He contended that the receipts had been destroyed in the accident and argued that their absence did not prove the items were not damaged.
12. The Appellant argued that the valuer visited the scene, identified the destroyed property and assessed the value of the items and that his testimony regarding the same was unchallenged or unshaken by the Respondents.
13. The Appellant submitted that, arising from the same accident, his mother, Florence Kanyua, filed Meru CMCC No. 163 of 2018, which was heard by a different court and that despite not adducing any receipts, the court found that special damages were proved on a balance of probabilities. He submitted that the Respondents did not contest that suit and settled it. He therefore urged that a similar finding



be made in this case, as both claims arose from the same incident and the damaged properties were in adjacent houses.

14. The Appellant urged the court to find that despite the absence of receipts his claim was proved on a balance of probabilities.

Respondent's Submissions

15. Citing the case of David Bagine v Martin Bundi [1997] eKLR, the Respondents submitted that special damages must be specifically claimed and specifically proved.
16. The Respondents contended that, pursuant to Sections 107 to 109 of the *Evidence Act*, the Appellant failed to discharge the burden of proof, as the valuation report he relied on to prove his claim was largely based on hearsay.
17. They argued that the valuer failed to demonstrate to court how he arrived at the figures claimed. They therefore submitted that the trial court correctly observed that the expert opinion was not binding upon the court and rightly proceeded to reject it. In support of this position, the Respondent placed reliance on the case of Elizabeth Kamene Ndolo v. George Matata Ndolo, Civil Appeal No. 128 of 1995.
18. The respondents contended that the alleged destroyed items in the house were not awarded for lack of receipts but because it was not proven that such items were destroyed. To buttress their submissions, the respondents relied on the cases of James Ndichu Wainaina v Roy Spares & Hauliers LTD & Another [2006] eKLR; Ngoje & 7 others v National Irrigation Authority & Another (Civil Appeal e090 & E097 of 2024, & Arimi & 2 others v Kiambu Dandora Farmers Co. Ltd & 15 others, Mwangi (Interested Party) (Civil suit E277 of 2021) [2025] KEELC 321(KLR) (21st January,2025) (Judgement)
19. In response to the Appellant's assertion that a similar claim in a different court resulted in a different outcome, the Respondents argued that each case must be determined on its own unique circumstances. They further submitted that magistrates and judges exercise decisional independence and thus the Appellant cannot fault the trial court merely on the basis of a differing verdict. In light of the above, the respondents urged the court to uphold the trial court's judgement.
20. On the issue of costs, the Respondents, relying on Section 27 of the *Civil Procedure Act*, submitted that costs generally follow the event. They therefore urged the court to award them costs together with interest from the date of filing the suit until payment in full.

Issues for determination

21. I have read the pleadings that were filed by the parties in this case. I have also carefully considered and evaluated the evidence that was adduced by the Appellant and the impugned judgement. I have also considered the written submissions filed by the parties in this Appeal.
22. In my view the sole issue for determination is Whether the trial court erred by failing to award the other claims pleaded by the appellant.

Analysis

23. The duty of this court as a first appellate court is to re-evaluate the evidence and arrive at its own conclusions. In so doing the court must take into account that it had no opportunity to hear and see



witnesses, and therefore must make an allowance for that. (See: *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968 (E.A. 123).

24. The Court of Appeal in the case of *David Njuguna Wairimu versus Republic* (2010) while citing the case of *Okeno versus Republic* (1972) E.A. 32 stated as follows: -

“The duty of the first appellate court is to analyze, re-evaluate the evidence which was before the trial court and itself come up with its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and the circumstances of the case, come to the same conclusion as those of the lower court it may reverse those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the bases of the law and evidence to satisfy itself on the correctness of the decision.”

25. With the foregoing in mind, I now proceed to summarize the evidence presented by the Appellant before the trial court.
26. The Appellant adopted his statement dated 14th June, 2021 as his evidence in chief. The appellant claimed that on 9th February 2018, a lorry registration number KBJ 642S/ZC 842 rammed into his house, flattening it and destroying all the property therein. He stated that the properties destroyed included: the kitchen, live trees, chicken, chicks, goats, beans, solar panels, water pumps, a knapsack sprayer, a 32-inch television, a Sony DvD player, a Sony woofer, a wooden coffee table, a wall clock, a 15kg gas cylinder, a burner gas cylinder, a poultry cage, a goat pen, a Tv stand, a kitchen table, a dressing mirror, a mattock, a crowbar, a wheelbarrow, a hammer, a slasher, fork jembes, jembes, pangas, plastic tables, plastic chairs, an Infinix phone, a lorry tarpaulin (surpuline), a welding machine, a small turbine for drying cereals, cups, plates, spoons, hot pots, dishes, a medium thermos flask, a giant thermos flask, giant and medium basins, empty bread crates, duvets, blankets, travelling bags, bed sheets, a shoe rack, decorations, beds, water tanks, rice, potatoes, cooking oil, maize flour, wheat flour, cash and clothes.
27. He added that the receipts for the items he had purchased were destroyed in the accident. He said he lived with neighbors, parents and friends. He engaged Roma valuers Ltd to assess the damaged property and a report was prepared. He added that he had suffered greatly and that replacing the items had been difficult.
28. PW2 was Gibson Murungi Marete testified as PW2. He said that he was an eye witness and equally adopted his statement dated 29th October, 2021 wherein he had stated that as a result of the material accident the Appellant's house was smashed and all the properties therein completely destroyed.
29. In cross examination, he said that he visited the appellant one week prior the accident and he did not know whether some of the items were in the house.
30. PW3 was Daniel Mwenda. He also adopted his statement dated 29.10.2021 as his evidence in chief. He stated that the Appellant was his neighbor and corroborated PW2's testimony that the Appellant's house together with all the property therein were completely damaged.
31. PW4 was the police officer, James Ndirangu. He confirmed that the Appellant was one of the victims and he reported that his house was damaged by the subject motor vehicle.
32. PW5, Cyprian Riungu, a valuer, testified that he was engaged by the Appellant in 2018 to assess the value of property allegedly damaged in an accident. He stated that he visited the scene twice after the incident and prepared a valuation report. According to him, the total value of the damaged items



was Ksh. 2,206,723/=. He said he observed the damaged house and various items, including cereals scattered on the ground, and relied on the Appellant's representations, some receipts, and physical observations to tabulate the loss.

33. He described the Appellant's house as a three-bedroom semi-permanent structure made of timber and a mabati roof, measuring 36 square meters, with a kitchen of 10 square meters. He noted that the house had no electricity and solar power was used for lighting. He testified that he saw damaged items including the poultry house, goat pen, pieces of household goods, clothes (including women's clothing), and plastic water tanks, the capacity of which he estimated based on their diameter. He confirmed that he relied on the Appellant's word for the quantity of livestock and foodstuffs, as well as for items such as cash, which he could not independently verify. He explained that his assessment followed the International valuation Standards and the UN Convention.
34. He further said that Ksh. 200,000/= was for burial expenses for the Appellant's wife and that he was given a list of items used by the burial committee, though he did not receive or rely on receipts. Additionally, he included relocation and accommodation costs, asserting that the Appellant was rendered homeless after the incident and had to seek alternative shelter. He stated that the Appellant's residence also housed a shop at the front and that nothing was salvaged from the premises.
35. During cross-examination, he admitted that he did not see the goats or chickens and relied entirely on the Appellant's word for their existence and quantities. He confirmed that although he saw maize and beans scattered, the quantities were also provided by the Appellant. He saw fragments of solar panels and a water pump but took no photographs of them. He could not verify the presence of the Ksh. 20,000 cash. He said that burial costs were included as per international valuation guidelines.
36. In re-examination, he stated that he had attached three photographs to his report. One showing food and clothes and another showing the roof structure. He maintained that everything listed in his report was based on what he saw. He also stated that he was the one who determined the value of the items after checking the market prices.
37. The trial court was satisfied that the Appellant's house and kitchen were damaged and accordingly awarded him Ksh. 425,000/= and Ksh. 120,000/= respectively. However, in relation to the other items, the court found that the expert's opinion was misguided. Relying on the decisions in *Stephen Kinini Wang'ondu v The Ark Limited* [2016] eKLR and *Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko* [2006] eKLR, the court held that expert opinion is not binding on the court. The court stated as follows: -

“ 24. In this particular case all witnesses admitted that PW1 had a house that was flattened. PW5 gave the estimated costs of the damaged house at Ksh.424,500/=. In respect to the other property allegedly damaged, PW5 could not give the court a satisfactory account of how he arrived at the figures. The accuracy of his report was in question and this court cannot rely on. As already stated above the courts are not bound by expert opinion if in the eyes of the court, they appear misguided. This is therefore to mean that I will only award the plaintiff costs of Ksh.425,500/= for the damaged house and Ksh.120,000/= for the damaged kitchen. I decline to grant all the other items contained in the report.

25. The plaintiff has also prayed for Ksh.45,000/= being the cost paid for valuation. No receipts were availed. I therefore decline to grant this amount”



38. The standard of proof in civil cases is on a balance of probability. The burden of proof is on the party alleging the existence of a fact which he wants the Court to believe.
39. Section 107 (1) and (2) of the *Evidence Act* provides as follows: -
107(1) “whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”
(2) “When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”
40. In *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that: -
“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.
41. In *Miller v Minister Of Pensions* 1947 ALL E.R 372, Lord Denning puts this standard in the following terms: -
“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: We think it more probable than not; the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”
42. In *James Muniu Mucheru v National Bank Of Kenya Ltd* C.A CIVIL APPEAL NO 365 OF 2017 [2019 eKLR], the Court stated as follows: -
“Indeed, it is settled law that in civil cases the standard of proof is on a balance of probability. This is in effect to say that the Courts will make a finding based on which party’s version of the story is more believable.”
43. I will now determine this Appeal in light of the above legal principles.
44. The crucial witness to the Appellant’s case was PW5 and the trial court concluded that he appeared misguided in his evidence.
45. The Appellant has argued that his evidence was unchallenged by the Respondents as no counter valuation report was tendered in court.
46. It is indeed trite law that it is only another expert who can counter the evidence of another expert in the same field (see *Ali Mohammed Sunkar v Diamond Trust Bank* (2011) eKLR).



47. The Court of Appeal in the case of Criticos versus National Bank of Kenya Limited (as the successor in Business to Kenya National Capital Corporation Limited “KENYAC”) & another (Civil Appeal 80 of 2017) [2022] KECA 541 (KLR) (28 April 2022) (Judgment), held:

“As properly held in Stephen Kinini Wang’ondu (supra), expert evidence can only be challenged by another expert. We also associate ourselves with the criteria for assessing an expert’s evidence as outlined in the same decision, rehashed herein below for emphasis. “A further criterion for assessing an expert’s evidence focuses on the quality of the expert’s reasoning. A court should examine each expert’s testimony in terms of its rationality and internal consistency in relation to all the evidence presented. In Routestone Ltd. v. Minorities Finance Ltd. and Another [Same v. Bird and others [1997] B.C.C. 180] Jacob J. observed that what really mattered in most cases was the reasons given for an expert’s opinion, noting that a well-constructed expert report containing opinion evidence sets out both the opinion and the reasons for it. The judge pithily commented “[i]f the reasons stand up the opinion does, if not, not.”

48. The Supreme Court in Attorney General v Zinj Ltd (2021) eKLR, held that: “

“Having determined that the respondent’s right to property had been violated by the Government, the trial court, and later the appellate court, made orders for compensation in favour of the respondent. Both courts granted special and general damages. As we have arrived at a similar conclusion, we see no reason to interfere with the findings of the two superior courts in this regard. We take note of the appellant’s submission to the effect that in arriving at the quantum of special damages, the trial court placed reliance upon a valuation Report by a private valuer. Such Report, in the view of the appellant, was not only unreliable, but could very likely have been tailored to support the respondent’s claim. However, in answer to this court’s question as to whether, the appellant had tabled in court, a Government valuation Report to counter the contents of the impugned one, counsel for the appellant stated that no such Report was ever tabled at the trial court. The main basis upon which special damages can be granted for the deprivation of property, is the market value of the said property. In case of general damages, a court of law exercises discretion guided by the circumstances of each case. In granting special damages, the trial judge was guided by the valuation Report tabled by the respondent. In the absence of a contrary report on record, we have no basis upon which to interfere with the award. Even if there had been one such other report, our jurisdiction to interfere would still have been largely circumscribed, unless the award had clearly ignored the fundamental principles of valuation as demonstrated by the counter-report.”

49. It is also trite that the opinion of the expert is not binding on the court.

50. In Shah and Another v. Shah and Others [2003] 1 EA 290:

“The opinion of the expert witness is not binding on the court, but is considered together with other relevant facts in reaching a final decision in the case and the court is not bound to accept the evidence of an expert if it finds good reasons for not doing so.”



51. The Court of Appeal, on its part in *Kimatu Mbuvi T/A Kimatu Mbuvi & Bros v. Augustine Munyao Kioko* Civil Appeal No. 203 of 2001 [2007] 1 EA 139 held that:
- “... such opinions are not binding on the Court although they will be given proper respect, particularly where there is no contrary opinion and the expert is properly qualified although a Court is perfectly entitled to reject the opinion if upon consideration alongside all other available evidence there is proper and cogent basis for doing so.”
52. The trial court rejected the opinion of PW5 on grounds discussed above.
53. I partly concur with the trial court because after reevaluating the evidence on record, I note PW5 was not very clear, especially on the ascertainment of the value of the items. As to what was in the house, there was no way he could have been expected to find the items in situ two weeks after the accident. It is common knowledge that after such an incident, there is always a likelihood of loss of items. The information as to what was in the house could only come from the affected party.
54. Flowing from the above, there was cogent basis for rejecting PW5’s evidence on the exact value of the destroyed property inside the house. The expert’s evidence which was meant to aid the Appellant’s case, but it ended up creating a scenario of uncertainty.
55. That said, I think that what the trial court ought to have done is to consider the fact that the appellant could not have been living in an empty house. There are items that exist in ordinary households. Asking for proof of purchase of these items will be to raise the bar for proof to an undesirable level. It is unreasonable to expect one to keep receipts for every item in the house. Some items may be years, or even decades old. While rejecting a claim that appeared superfluous, the trial court ought to have allowed for genuine items such as furniture, clothes, utensils, household equipment like the solar panel, water tank, and so on. These are normal items to be found in almost every household in the area. In rejecting all these items, the trial court was wrong.
56. Looking at the report in question, I am of the opinion that the list of equipment that was destroyed is reasonable and ought to be allowed. I therefore allow that claim of Ksh. 213,600/-.
57. The claim for household goods is also reasonable and I allow the same at Ksh 25,240/-.
58. The claim for beddings and water storage facilities appear reasonable and are allowed in the sum of Ksh. 28,100/- and Ksh. 15,250/ respectively.
59. The claim for clothing is obviously grossly exaggerated. I award a round figure of Ksh. 100,000/- for that head.
60. The claim for tools is also inflated. I award a round figure of Ksh 20,000/- . The same applies for foodstuff in the store. I award a round figure of Ksh 10,000/-.
61. The claim for expenses incurred after the accident was rightly rejected by the court as the appellant did not provide proof of the same. It was not the work of the valuer to do so.
62. The claim for fees for the valuer is supported by the invoice attached to the report. I allow the same at ksh. 45,000/=.
63. The total of the allowed items above amounts to Ksh. 1,002,690/-.
64. Save for the items allowed hereinabove, all the other items rejected by the trial court are also rejected.



65. Consequently, I allow the appeal. The judgment of the lower court is set aside and judgment is entered for the appellant for a total of Ksh. 1,002,690/-.
66. The appellant shall have the costs of the Appeal and in the lower court.
67. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2025.

H. M. NYAGA

JUDGE

In the presence of;

