



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Mwangi (Civil Appeal E629 of 2024)  
[2025] KEHC 15578 (KLR) (Civ) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15578 (KLR)

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

**CIVIL**

**CIVIL APPEAL E629 OF 2024**

**AN ONGERI, J**

**OCTOBER 24, 2025**

**BETWEEN**

**SUSAN WAMBUI KAMAU ..... APPELLANT**

**AND**

**CHARLES KARINGA MWANGI ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. Kiongo Kagengo (Adjudicator/  
RM) in Nairobi SCCC No. E2564 of 2023 delivered on 30th April 2024)*

**JUDGMENT**

1. The Appellant Susan Wambui Kamau filed Nairobi SCCC No. E2564 of 2023 against the Respondent Charles Karinga Mwangi and Another Respondent who was removed from the proceedings by consent of the parties.
2. The Appellant was claiming a sum of Kshs. 615,860/= from the Respondent made up as follows:-
  - Pre-accident value of motor vehicle registration No. KBS 909A Kshs. 580,000/=
  - Assessment fee Kshs. 6,930/=
  - Towing fees Kshs. 5,130/=
  - Tracing charges Kshs. 23,250/=
  - Motor vehicle search Kshs. 550/=
  - Total Kshs. 615,860/=



3. The cause of action arose on 20<sup>th</sup> September 2020 along Outer Ring Road when the Respondent's motor vehicle registration No. KAW 436P rammed onto the Claimant's motor vehicle at the rear while the later had stopped in a traffic jam.
4. The claim was filed by the Claimant's insurers under the doctrine of subrogation having settled the claim in full.
5. The Claimant endeavored to rely on the police abstract form and the Claimant's witnesses gave evidence only touching on quantum of damages.
6. The Respondent who testified in the case told the court that the accident occurred at 2030hours and further that the Claimant's motor vehicle was stationary on the road without any indication of the presence of the said motor vehicle.
7. The trial court apportioned liability at 20:80% in favour of the Respondent against the Appellant.
8. The trial court found that the amount payable to the Claimant was Kshs. 52,110/= plus interest at 12% p.a from 6<sup>th</sup> May 2024 until payment in full.
9. Each party was to pay their own costs of the suit.
10. The Claimant has appealed against the said Judgment on the following grounds:-
  - i. That the learned trial Magistrate erred in fact and law by applying the wrong principles in finding the Appellant 80% liable when there was no evidence on record to support such a finding.
  - ii. That the learned trial Magistrate erred in law and fact by failing to consider the evidence on record brought forth by the Appellant and holding that the Appellant contributed to the accident.
  - iii. That the learned trial Magistrate erred in law and in fact by granting an award that was inordinately so low and in total disregard of the circumstances of the accident and the evidence before him.
  - iv. That the learned trial Magistrate erred in law and in fact in failing to consider the submissions by the Appellant.
  - v. That the learned trial Magistrate erred in law and fact in over relying on the 2<sup>nd</sup> Respondent's evidence and submissions.
  - vi. That the learned trial Magistrate's decision albeit a discretionary one was plainly wrong.
11. The parties filed written submissions as follows:- the appellant submitted that she sufficiently discharged the burden of proof to the required standards as the evidence that was presented proved that the respondent was negligent causing the accident and that the amounts claimed were incurred by her insurance.
12. That the appellant produced a police abstract dated 21/9/2020 which indicated that the respondent was to blame for the accident and the same was uncontroverted.
13. The appellant argued that the fact that abstract was not produced by the investigating officer did not warrant the trial finding that the appellant was 80% liable for the accident.



14. The appellant argued that the trial court failed to give due consideration to the weight of the police abstract. It was the respondent's testimony during cross examination that he hit the appellant's vehicle because it had no brake lights or lifesaver but did not provide any evidence as proof of the same.
15. The appellant argued that from the evidence it was clear that the respondent was driving Motor Vehicle KBS 909A without due care and attention and his allegations still remain unproven.
16. The appellant argued that upon the motor vehicle being written off she signed a discharge voucher dated 16/10/2020 indicating that she was fully settled for the total loss claim after the accident. the appellant thus pleaded for Kshs. 295,860 as Kshs. 580,000 for pre-accident value; Kshs. 6,930 for assessment report. Kshs. 5,130 for towing fees, Kshs. 23,250 tracing report fees and Kshs. 550 for motor vehicle search less Kshs. 320,000 for salvage.
17. The appellant provided receipts as proof of the same and discharged the burden of proof as was required.
18. The respondent alternatively submitted on liability that the police abstract was never produced and the appellant besides herself only called one witness John Ndichu who was the claims officer of the insurance company.
19. Further, that the appellant did not call the driver of her vehicle to present evidence. It was thus the respondents argument that the bulk of the evidence the appellant presented was on quantum and not liability.
20. The respondent submitted that the award granted by the trial magistrate was clearly laid out in the judgement including the calculations of the amount and it was observed that the claimed amounts and what was produced by the appellant in the bundled receipts did not match or reflect with the amount prayed.
21. The respondent agreed with the trial courts finding and added that the appellant did not present a string appeal to warrant a different outcome.
22. This appeal, arising from the judgment of the Small Claims Court, is confined to points of law as stipulated under the governing statute.
23. The core issues for determination are as follows;
  - i. Whether the learned trial Adjudicator erred in law in his apportionment of liability
  - ii. Whether the assessment of the damages payable to the Appellant was proper.
24. On the issue of liability, the trial court's finding that the Appellant was 80% contributorily negligent for the accident is unsustainable in law.
25. The Respondent, as the driver of the vehicle that rammed into the rear of the Appellant's stationary vehicle in a traffic jam, bore a heavy evidential burden to prove how the accident occurred and to exonerate himself from the presumption of negligence that arises in such circumstances.
26. The long-standing principle is that a driver who collides with a stationary vehicle must provide a credible explanation for the collision.
27. The Respondent's testimony that the Appellant's vehicle had no brake lights or warning indicators was a mere assertion, entirely unsupported by any evidence.



28. In the face of the police abstract, which was produced as an exhibit and which attributed blame to the Respondent, his unsubstantiated allegations were insufficient to discharge his legal burden of proof.
29. The trial court therefore fell into error by relying on this bare assertion to make a finding of contributory negligence against the Appellant, thereby applying the wrong legal principles to the evidence before him.
30. Consequently, the apportionment of liability at 80:20 against the Appellant is set aside, and the Respondent is found to be fully liable for the accident.
31. Regarding the quantum of damages, the trial court's award was predicated on the erroneous apportionment of liability and thus cannot stand.
32. Having found the Respondent 100% liable, the Appellant is entitled to be restored to the position she would have been in had the accident not occurred, so far as an award of money can do so.
33. The evidence on record, from the Appellant and her insurer's claims officer, demonstrated that her vehicle was a write-off.
34. The insurance company, having indemnified her, was rightly pursuing this claim under the doctrine of subrogation.
35. The amounts claimed for the pre-accident value, assessment fee, towing, and search fees were supported by receipts and a discharge voucher.
36. The trial court's finding that the receipts did not match the claim was not sufficiently elaborated and appears to be a misapprehension of the evidence.
37. In commercial claims such as this, where an insurer seeks to recover sums paid out, the standard of proof is on a balance of probabilities.
38. A court should not take an overly technical approach to proof of damages where liability is clear.
39. The Appellant provided a sufficient evidential basis for the claim. The salvage value of Kshs. 320,000 was rightly deducted from the pre-accident value, leaving a balance of Kshs. 260,000.
40. When combined with the other pleaded and proved special damages of Kshs. 35,860 (Kshs. 6,930 + Kshs. 5,130 + Kshs. 23,250 + Kshs. 550), the total recoverable sum is Kshs. 295,860.
41. In the final analysis, the appeal succeeds. The judgment of the trial court delivered on 30th April 2024 in Nairobi SCCC No. E2564 of 2023 is set aside entirely and substituted with an order judgment in favour of the Appellant against the Respondent for Kshs. 295,860.
42. The Appellant shall also have interest on this sum at court rates from the date of filing the suit in the subordinate court until payment in full.
43. The Appellant is further awarded the costs of this appeal and the costs of the suit in the court below.
44. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025 VIRTUALLY VIA MICROSOFT TEAMS AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-



Court Assistant: Millicent/Mabishi

.....for Appellant

.....for Respondent

