



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**CIVIL APPEAL NO. E022 OF 2024**

**BETWEEN**

**JOSEPH MAINA KAMAU..... APPELLANT**

**AND**

**DANIEL WANYOIKE GATHIRWA..... RESPONDENT**

*(Being an appeal from the judgment in the Engineer Senior Principal Magistrate's SPMCC No. E051 of 2023 by Hon. H.O. Barasa – Chief Magistrate.)*

**JUDGMENT**

1. Joseph Maina Kamau, the appellant, was the plaintiff in Engineer Senior Principal Magistrate's SPMCC No. E051 of 2023. He had brought a claim for general and special damages following a road traffic accident involving motor vehicle KCM 450A, which collided with the motorcycle KMFY 241S he was riding. He sustained injuries and subsequently filed the suit. The claim was dismissed.
2. The appellant was dissatisfied with the judgment and filed this appeal through Wanjohi Wawuda & Company Advocates. He presented the following grounds of appeal:
  - a) The learned trial magistrate erred in law and in fact in finding that the appellant did not prove his case on a balance of probability and in dismissing the appellant's suit with costs.
  - b) The learned trial magistrate erred in law and in fact in the manner he analysed the evidence before him and in finding that the appellant had failed to prove that the subject accident occurred as a result of negligence on the part of the respondent, despite the appellant's evidence being uncontroverted.

- c) The learned trial magistrate erred in law and in fact by not properly analyzing the evidence adduced for the appellant, who blamed the respondent for causing the accident.
  - d) The learned trial magistrate erred in fact and in law in failing to find liability against the respondent, which decision was unjust, against the weight of evidence and was based on points of fact and wrong principles of law and has occasioned a miscarriage of justice.
  - e) The learned trial magistrate erred in fact and in law in finding that had the appellants' claim succeeded, the court would have proceeded to assess general damages at Kshs. 500,000/=. This award would have been inordinately low under the circumstances in light of the injuries the appellant sustained.
  - f) The learned trial magistrate erred in failing to adequately consider all the evidence and submissions both on liability and quantum of damages, with the resultant miscarriage of justice to the appellant.
3. The respondent was represented by Ngaywa & Kibet Partners LLP, Advocates. He urged the court to dismiss the appeal for want of merit.
  4. As the first appellate court, I recognise my responsibility to thoroughly examine all the available evidence, given that I did not have the opportunity to observe the witnesses during their testimony. The **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123** case sets the precedent that the first appellate court must review and assess the evidence presented in the trial court and draw its conclusions accordingly.
  5. Joseph Maina Kamau (PW1), the appellant, testified that the respondent's vehicle hit his motorcycle while he was in his lane. This, however, was contradicted by the evidence of CPL. George Odhiambo (PW2). This officer blamed the accident on the appellant, whom he stated had left his lane and hit the respondent's lorry on the right front wheel. At the time of the accident, he stated that the lorry was laden and was going uphill. The appellant did not prove that the respondent was liable for the accident.
  6. No evidence attributed any fault to the respondent. In the case of **Kiema Mutuku vs Kenya Cargo Hauling Services Ltd [1991]2 KAR 258**, it was held that:

***There is yet no liability without fault in the legal system in Kenya, and the plaintiff must prove some negligence against the defendant where the claim is based on negligence.***

7. The finding by the learned magistrate on liability cannot be faulted.
8. Had the appellant succeeded in proving that the respondent was liable, I would not have interfered with the proposed award of Kshs. 500,000/= in general damages.
9. The conclusion of the above analysis of the evidence on record is that the appeal has no merit. merit. The same is dismissed with costs.

**Delivered and signed at Nyandarua, this 20<sup>th</sup> day of November 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**