

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT THIKA**  
**CIVIL APPEAL E024 OF 2025**

**JOSEPH MURIUKI MARETE.....**  
**.....APPELLANT**

**VERSUS**

**ELIZABETH WANJIKU NGUMA.....**  
**RESPONDENT**

*(Being an appeal from the judgement of Hon. M.W Kamau,  
RM/Adjudicator in Thika SCCC E676 of 2024 delivered on 9<sup>th</sup>  
January, 2025)*

**JUDGEMENT**

- 1.This appeal arises from the judgment of the lower court in Thika SCCC E676 of 2024 delivered on 9<sup>th</sup> January 2025, a suit instituted by the appellant against the respondent seeking special damages amounting to Kshs. 90,400, together with costs of the suit plus interest.
2. As per the statement of claim dated 25th July 2024, the cause of action arose from a road traffic accident that occurred on 23rd January 2023 along Dam Tratanic View Road at the Kiganjo Road Junction, when Motor Vehicle Registration No. KDG 279W, owned by the respondent, was negligently and recklessly driven, controlled, and/or managed, causing it to collide with Motor Vehicle Registration No. KDC 335T belonging to the appellant, thereby extensively damaging it.
- 3.The particulars of the appellant’s alleged negligence were pleaded at paragraph 5 of the statement of claim.
4. In her response to the statement of claim, the respondent admitted ownership of motor vehicle registration no. KDG

279W, but denied the occurrence of the accident as well as any liability for its occurrence. The respondent however averred that should it be found that the accident occurred, then the same was solely caused by the negligence of the appellant.

5. Upon considering the evidence placed before the court, the learned trial magistrate found that liability on the part of the respondent was not proved, as there was no evidence adduced by the appellant to show the manner in which the accident occurred, given that none of the witnesses called were present when the accident occurred. The learned trial magistrate then proceeded to dismiss the suit for failure by the appellant to prove liability and causation.
6. The appellant was aggrieved by the trial court's decision hence they proffered an appeal to this court vide a Memorandum of Appeal dated 7<sup>th</sup> February, 2025. In the Memorandum of Appeal, the appellant faulted the learned trial magistrate for denying him special damages of Kshs. 90, 390, for misdirecting herself and basing her findings of liability on wrong considerations, and for failing to consider his submissions and judicial authorities on liability, thereby arriving at an erroneous conclusion on liability.
7. On the above grounds, the appellant urged this court to allow his appeal and set aside the trial courts judgement. He also urged this court to reassess the liability and special damages payable to the appellant.
8. The appeal was canvassed by way of written submissions. The appellant's submissions dated 16<sup>th</sup> July, 2025, was filed by his learned counsel A.M. Mwangi & Company Advocates. The respondent did not participate in the appeal neither did she file her written submissions.

9. I have carefully considered the grounds of appeal, the appellant's written submissions together with all the authorities cited therein, and I find that the main issue arising for determination in this appeal is whether the appellant proved his case on a balance of probabilities.
10. **Section 107 of the Evidence Act** stipulates that:
- (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.***
11. Based on the above provision of law, it is evident that the onus was on the appellant to prove on a balance of probabilities that the respondent was to blame for the accident that occurred on 23<sup>rd</sup> January, 2023.
12. The Court of Appeal in **Kenya Airports Authority versus Mitu-Bell Welfare Society & 2 others (2016) eKLR** stated as follows regarding burden of proof in civil cases:
- "In civil cases, a court makes its findings and determinations on a balance of probabilities. This means that it must be established that the fact in issue more likely than not to have happened; that is, that it is 'quite likely' or 'not improbably' though less likely than not that it happened. (See Davies v. Taylor [1974] A.C. 207; see also In re A (A Minor) (Care Proceedings) [1993] 1 F.L.R. 824). In Re B (2008) UKHL 35, Lord Hoffman expressed the term balance of probability using a mathematical analogy: "If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened.***

***There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."***

13. In the instant case, the appellant alleged that the respondent was liable for the damage that was caused on his car following the accident that occurred on 23<sup>rd</sup> January, 2023. To prove his case at the trial court, the appellant brought two witnesses. CW-1, *Mr. Jackson Karani* stated that he was a legal officer at Pioneer General Insurance Company Limited. He confirmed that the appellant's motor vehicle registration no. KDC 335T was insured by Pioneer General Insurance Company Limited Kenya. He also confirmed that when the appellant was still insured with the said insurance company, they received a report of an accident involving the appellant's car, and motor vehicle registration KDG 279W.
14. That upon receipt of the accident report, they instructed Xenon Auto Assessors to assess the damage caused to the appellant's vehicle and to prepare a report. That the assessment report cost Kshs. 6,380, and the appellant's vehicle was repaired at a cost of Kshs. 84, 020.
15. The appellant also called as a witness, *CPL Linet Makuti*, a police officer based at Juja Police Station who testified as CW-2. She testified that she was not present at the scene of the accident on the day that the accident occurred and she also confirmed that she was not the investigating officer investigating the accident. She produced a police abstract

dated 24<sup>th</sup> January, 2023, and confirmed that a report regarding the accident was made at their police station.

16. The appellant did not deem it fit to call as a witness his wife, *Susan Muriuki*, whom he claimed was driving his vehicle at the time of the accident, as she would have given an eye witness account of what transpired on the date that the accident occurred. The evidence adduced by the appellant only proves that an accident was reported at Juja Police Station and also that his car was damaged following the accident, and the cost it took to repair the said vehicle.

17. The evidence adduced does not in anyway demonstrate how the accident occurred, neither does it prove that the respondent was liable for the occurrence of the said accident. As such, the learned trial magistrate cannot be faulted for finding that the appellant had failed to prove liability and causation.

***18. From the foregoing, I find that the present appeal lacks in merit and is hereby dismissed. Given that the respondent did not participate in the appeal, there shall be no orders as to costs.***

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. T. W. Ouya  
JUDGE**