



**SMC (Minor Suing Through the Father and Next Friend JCM) v Chau (Civil Appeal E295 of 2024) [2026] KEHC 59 (KLR) (16 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 59 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E295 OF 2024  
BM MUSYOKI, J  
JANUARY 16, 2026**

**BETWEEN**

**SMC (MINOR SUING THROUGH THE FATHER AND NEXT FRIEND  
JCM) ..... APPELLANT**

**AND**

**MICHAEL NJOROGE CHAU ..... RESPONDENT**

*(Being an appeal from the judgment and decree in the Small Claims Court at Thika (Hon. M.W. Kamau Adjudicator/RM) claim number E1596 of 2023 dated 3rd October 2024)*

**JUDGMENT**

1. The genesis of this matter is an accident which occurred on 20-08-2023 involving motor vehicle registration number KBQ XXXX (hereinafter referred to as ‘the vehicle’) and the appellant herein who brought the suit through his next friend and father. The judgment being appealed dismissed the appellant’s claim on grounds that he had not proved his case as there was no evidence led to prove liability against the respondent.

The appellant has raised the following three grounds;

- a. The learned trial Magistrate erred in law and fact by subjecting the appellant’s case to a standard of proof beyond reasonable doubt and dismissing the appellant’s suit on the basis he had not proved liability against the respondent on a balance of probabilities.
- b. The learned trial Magistrate misapprehended and/or misconceived the tenor, effect and consequences of the evidence tendered in court on behalf of the appellant as regards liability of the respondent and thereby arrived at an erroneous decision.



- c. The learned trial Magistrate erred in law and in fact by exercising her discretion capriciously and not judiciously.
2. This being an appeal from Small Claims Court, my jurisdiction is limited by Section 38(1) of the [Small Claims Court Act](#) to matters of law only. The Section provides as follows;

‘A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.’
3. Having gone through the memorandum of appeal and the submissions of the parties, it is my view that the only matter of law raised by the appellant is that the trial court applied a standard of proof that was higher than balance of probabilities. To dispose of this issue, this court has a duty to go through the evidence of the parties and ascertain whether the weight of evidence produced before the trial court was enough to establish a case in favour of the appellant on a balance of probabilities. The burden of proof lied with the appellant pursuant to Section 107 of the [Evidence Act](#) and as held in *Kimani (Suing as the Legal Administrator of the Estate of the Late Kennedy Kimani Gachoki) v Nyaga & another* (2023) KEHC 24220 (KLR) thus;

‘It is trite law that he who alleges must prove. Section 107 (1) of the [Evidence Act](#), Cap 80 Laws of Kenya, provides that: -

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.’
4. Only the appellant and a police officer testified in the trial court. The respondent did not call any witness or produce any documents. The appellant’s next friend told the court that he did not witness the accident. All that he said when he took the witness stand was that he was the father of the appellant and that the appellant was involved in an accident along Kenyatta road. He went on to produce his written statement dated 1-12-2023 as an exhibit.
5. A look at his statement shows no narration of how the accident occurred save that on 20-08-2023, the minor was lawfully cycling when at the railway crossing, the respondent’s driver drove the vehicle so negligently that he caused the accident then went on to plead particulars of negligence. Itemising particulars of negligence especially when he was not an eye witness did not in my opinion amount to testimony on how the accident occurred. His testimony as rightly observed by the trial Adjudicator was hearsay as he admitted in cross-examination that he did not witness how the accident occurred.
6. The other witness for the appellant was a police officer known as Corporal Francis Kisani who was attached at Juja police station performing traffic duties. He told the court that he was before the court to produce a police abstract in respect of the accident in question. He added that the accident involved the appellant aged 14 and the vehicle. He stated that the vehicle was being driven from the superhighway to join Murera Kenyatta road and on arrival at the location of the accident, the driver failed to give way and collided with the cyclist. He added that the vehicle was blamed for the accident.
7. In cross-examination, the witness stated that he did not visit the scene of the accident and that he was not the investigating officer and that he was not able to tell whether the driver of the vehicle was charged for a traffic offence.



8. While making her decision on liability, the trial Adjudicator relied on case of Wangondu v Kithinji & 2 others (2024) KEHC 6272 (KLR) in which the court held as follows;

‘It therefore follows that the appellant ought to prove negligence as against the 1<sup>st</sup> respondent independently of what the police abstract may have indicated for the reason that proof of negligence and the police abstract are not dependent on each other. In the absence of the appellant proving negligence as against the 1<sup>st</sup> respondent, the police abstract could not be said to determine that the 1<sup>st</sup> respondent was to blame for the causation of the accident just because it indicated so. As such, it is my considered view that the appellant failed to discharge the required burden of proof.’

9. I have read the above authority and made comparison with this matter. In the authority, the appellant who was the victim of the accident had not called any witness on how the accident occurred other than production of the police abstract. The respondents on the other hand produced detailed evidence of how the accident occurred. In arriving at the above decision, the Honourable Judge in the said matter had the following to say regarding the evidence of the parties;

‘From the evidence on record, it is not disputed that an accident occurred on 17/12/2017 between motor vehicle registration numbers KBR XXXX and KCE XXXX. The appellant, blamed the 1<sup>st</sup> respondent for the accident saying that he rammed into his motor vehicle. In support of the appellant’s case, he called a police officer who was neither the investigating officer nor visited the scene of the accident. As far as it goes, the said police officer could not tell who was to blame for the accident but produced a police abstract which faulted the 1<sup>st</sup> respondent for causing the accident but did not produce the sketch map, the police file or the OB to show the alleged accident occurred. Notably, the appellant did not adduce any evidence on how the accident occurred. And neither did he explain on what lane he was driving along Waiyaki way, a highway consisting of several lanes. Neither did the appellant testify on the alleged negligence leading to the accident. The appellant failed to show the damaged part of his vehicle. The evidence of the 1<sup>st</sup> respondent on the other hand gave a more detailed account of how the accident occurred. The 1<sup>st</sup> respondent who was the driver of motor vehicle registration number KCE XXXX testified that he was on the outer lane and the appellant was in the inner before the accident occurred. On reaching Kangemi the respondent testified that the appellant hit his motor vehicle on the passenger side. The 1<sup>st</sup> respondent faulted the appellant for driving at a high speed and failing to keep a proper look out for other motor vehicles. In my considered view, the appellant failed to prove negligence on the part of the 1<sup>st</sup> respondent and therefore there is no material before me to apportion liability to the respondents.’

10. It is clear to me that the nature of evidence produced in this case and in the cited authority are different and carry different probative value. In the matter before me, the appellant called a police officer from the station where the accident was reported and investigated who testified that the driver of the vehicle was to blame by joining Murera Kenyatta road from the highway without giving way. Unlike in this matter, the respondents in the cited authority testified and produced evidence which swayed the scales of probabilities against the appellant.
11. I note in her judgment, the Adjudicator disregarded the testimony of the police officer because he was not the investigating officer. Although the witness was not the investigating officer, his evidence was given on the basis of his official capacity and in my view pointed to the probability that he had the information concerning the circumstances of the accident. The respondent did not call any witness to



rebut the probability and in the circumstances, I agree with the appellant that the trial court applied higher standard than balance of probabilities. If there was evidence contrary to what the police officer said, the court would have been justified to hold as she did.

12. Based on the above, it is my finding that the appellant proved his case on liability on a balance of probabilities and I hereby overturn the Adjudicator's decision on the same and substitute it for liability against the respondent at 100 per cent.
13. After making her finding on liability, the Adjudicator proceeded to assess the quantum of damages as she was by law required to do. She held that, had the appellant proved liability, she would have awarded a sum of Kshs 400,000.00 in general damages for pain and suffering and Kshs 8,050.00 in special damages. There is no appeal on the quantum and I therefore uphold the same.
14. In conclusion, the lower court's judgement and decree dated 3-10-2024 dismissing the appellant's case is hereby set aside and in place thereof, this court enters judgement in favour of the appellant against the respondent as follows;
  - a. Liability at 100 per cent.
  - b. General damages for pain and suffering Kshs 400,000.00
  - c. Special damages Kshs 8,050.00
  - d. Costs of the suit in the trial court.
  - e. The appellant shall also have the cost of this appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JANUARY 2026.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Ombati holding brief for Mr. Njagi for the appellant and Mr. Ochieng for the respondent.

