



**Waguchu v Rono & another (Civil Appeal E985 of 2024)  
[2026] KEHC 442 (KLR) (Civ) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 442 (KLR)

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

**CIVIL**

**CIVIL APPEAL E985 OF 2024**

**LP KASSAN, J**

**JANUARY 26, 2026**

**BETWEEN**

**SIMON WAGUCHU ..... APPELLANT**

**AND**

**BRAMIN RONO ..... 1<sup>ST</sup> RESPONDENT**

**DIRECT LINE ASSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This This is an appeal that arises out of a road traffic accident in which the Lower Court awarded damages to a Claimant prompting this appeal. The Claimant's motor vehicle was damaged as a results of the accident thus the award of damages. I have read the proceedings and the submissions on record and in determining this appeal, I shall make the following notes;
2. Jurisdiction. This matter was decided outside the 60 days by a small claims Court. The issue of extension of 60 days is now settled. No statute can stop a quest for Justice nor is any law cast on a stone. A decision of a Court is as a results of a human process and not a machine to be certain on dates or meeting of timelines. The implementation of the 60-day rule is not strictly sanctioned like in electoral disputes (Presidential, MPs, MCAs) which is monitored strictly by committees that provide for flexibility and continuous supervision by the administration. This perhaps, is because of the volatile nature of elections which rarely comes to Courts or which are met after five years. For example, in handling electoral disputes, Courts are expected not to handle other matters unlike the Small Claims Courts which continue with other matters. The objection raised is therefore null and void.
3. The evidence adduced on record is basically the abstract which blame the 1st Respondent for the accident. The Claimant did not testify. An objection was raised to the effect that the failure by the Claimant to testify was fatal to their case. There are several reasons as to why a claimant may not testify



in a case. I disagree that if a claimant fails to testify, the Court will disregard the evidence on record and proceed to dismiss the case. Any litigant has a right to choose how to conduct its own trial and the Court cannot dictate the person to be called as a witness as its mandate is to basically analyze the evidence on record. There could be some instances when Courts may require certain witnesses to come and testify but that did not happen in this case. The abstract blaming the Appellant was produced by a police officer. The Appellant did not object to its production and in fact the Appellant admitted that there was an accident as alleged by the Claimant save that it attempted to pass liability to the Third party, its insurance. The failure by the driver of the Appellant to testify could not ameliorate the effect of the Claimant's testimony albeit lack of the Claimant's testimony and if indeed the Appellant's driver had testified and offered a different version of how the accident occurred, the Court could have arrived at a different decision since the evidence of an eye witness carries some more weight. The trial magistrate was correct in finding that the evidence on record tilted in favour of the Claimant.

4. The third party did not participate in the proceedings. Judgement was entered against it in default. The prove of negligence was against the Defendant. The Claimant was not privy to the contract between the Defendant and the third party and to this extent, I enter judgement as against the Defendant and the Third party jointly and severally. If the Defendant is forced to satisfy this Judgement, he is at liberty to pursue its insurance (third party) for compensation.
5. The award by the trial magistrate is supported by documents which faces no challenge and so I shall not disturb the amount awarded.
6. The upshot of the above is that the appeal is dismissed. The Third party shall pay costs

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 26<sup>TH</sup> DAY OF JANUARY 2026.**

**HON L P KASSAN**

**JUDGE**

In the presence of;

Mahugo for Appellant

Too holding brief Mbigi for 1<sup>st</sup> for Respondent

Carol – Court Assistant

