

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. E019 OF 2024

(CORAM: HON. CHARLES M. KARIUKI – J)

(Being an Appeal from the judgment on liability of Hon. Mutuku Esther Mwikali, Resident Magistrate/ Adjudicator at Narok SCCC E022 of 2024 delivered on the 19th of July 2024)

CHELANGAT BII CLARA.....APPELLANT

~VERSUS~

BILHA AYUMA NANDWA..... 1ST RESPONDENT

OBED MOKAYA.....2ND RESPONDENT

JUDGMENT

19/02/2026

Introduction

1. This is the first appeal arising from the judgment of the Small Claims Court at Narok (Hon. Mutuku Esther Mwikali, RM/Adjudicator) delivered on 19th July 2024 in SCCC No. E022 of 2024. The trial court entered judgment in favour of the Claimant (now the Appellant) but apportioned liability at 70% against the Respondents and 30% against the Appellant.
2. The Appellant, being dissatisfied with the apportionment of liability, filed this appeal, contending that the Respondents ought to have been found 100% liable for the accident.
3. As a first appellate court, this Court is duty-bound to re-evaluate the evidence on record and arrive at its own independent conclusion, while bearing in mind that it did not see or hear the witnesses testify. This duty was clearly set out in **Selle & Another v Associated**

Motorboat Co. Ltd & Others [1968] EA 123, where the Court of Appeal held that a first appellate court must reconsider the evidence, evaluate it and draw its own conclusions, though giving due allowance to the trial court's advantage of seeing and hearing witnesses. The same principle was affirmed in *Peters v Sunday Post Limited (1958 EA 424)*.

Background

4. The dispute arises from a road traffic accident that occurred on 12th January 2024 along the Narok–Bomet Road near Ololulunga area. The Appellant was driving motor vehicle registration number KDL 618G while the 2nd Respondent was driving motor vehicle registration number KCU 027Y.
5. The Appellant's case before the trial court was that she slowed down and indicated her intention to turn right into a feeder road when the Respondents' driver negligently overtook at a continuous yellow line and hit her vehicle. She attributed the accident entirely to the negligence of the Respondents' driver.
6. The Respondents denied liability and contended that the Appellant turned without properly ascertaining that it was safe to do so and without adequate indication, thereby causing or substantially contributing to the accident.
7. After hearing the parties, the trial court found both drivers negligent but apportioned greater blame to the Respondents at 70%.

Appellant's Submissions

8. The Appellant submits that the trial magistrate erred in law and fact in attributing 30% contributory negligence to her despite overwhelming evidence showing that the Respondents' driver was solely to blame.

9. It is argued that the investigating officer (CW1) confirmed that the Respondents' driver did the overtaking in a section marked with a continuous yellow line and on a bend. The Appellant testified that she had slowed down and indicated her intention to join a feeder road and that a vehicle behind her had also slowed down.
10. Counsel submits that overtaking at a continuous yellow line is a clear violation of traffic rules and that the trial court failed to give due weight to this illegality. It is further argued that there was no evidence to support a finding that the Appellant was negligent or failed to exercise due care.
11. The Appellant urges this Court to set aside the apportionment of liability and substitute it with a finding holding the Respondents 100% liable.

Respondents' Submissions

12. The Respondents oppose the appeal and submit that the trial court properly evaluated the evidence and correctly apportioned liability.
13. They argue that RW1 testified that the Appellant turned without indicating and that she failed to ensure that it was safe to exit the road. It is submitted that under Section 23(2) of the Traffic Act (Cap 403), a driver leaving a carriageway must ensure that the manoeuvre can be accomplished without endangering other road users.
14. The Respondents rely on *Hussein Omar Farah v Lento Agencies [2016] eKLR*, where the Court of Appeal held that where there is no concrete evidence as to who between two drivers is to blame, both may be held liable.
15. They maintain that the trial court had the advantage of observing the witnesses and that its findings should not be disturbed.

Issue for Determination

16. The sole issue for determination in this appeal is **whether the trial court erred in apportioning liability at 70% against the Respondents and 30% against the Appellant.**

ANALYSIS AND DETERMINATION

17. It is undisputed that both vehicles were travelling in the same direction and that the Appellant's vehicle was ahead of the Respondents' vehicle. It is also admitted by RW1 that he was overtaking at a section marked with a continuous yellow line.

18. A continuous yellow line signifies that overtaking is prohibited. Overtaking at such a section constitutes a breach of traffic regulations and is prima facie evidence of negligence.

19. However, the matter must be considered in its entirety.

20. Section 23(2) of the Traffic Act provides that a driver leaving a road marked with a continuous yellow line must ensure that the manoeuvre can be accomplished without endangering or inconveniencing any other vehicle. Thus, while RW1 had a duty not to overtake at a prohibited section, the Appellant equally had a duty to ensure that it was safe to execute her right turn.

21. The evidence established that there was a vehicle between the Appellant and RW1. The trial court inferred that RW1 had already commenced overtaking when the Appellant turned to exit the road. This inference was based on the undisputed positioning of the vehicles.

22. Apportionment of liability is a question of fact and degree. In *Stapley v Gypsum Mines Ltd [1953] AC 663*, it was held that the court must consider both the causative potency and blameworthiness of each party.
23. Similarly, in *Hussein Omar Farah v Lento Agencies*, the Court of Appeal recognized that where precise blame cannot be determined, apportionment is appropriate.
24. The trial magistrate acknowledged that RW1 was more culpable for overtaking at a prohibited section but found that the Appellant also bore some responsibility for failing to ensure that the overtaking manoeuvre had been completed before turning.
25. This Court finds that the trial court properly appreciated the evidence and applied the correct legal principles. The apportionment of 70% against the Respondents and 30% against the Appellant cannot be said to be arbitrary, unreasonable, or based on a misdirection of law.
26. An appellate court will only interfere with apportionment where it is shown that the trial court acted on wrong principles or that the apportionment is wholly erroneous. No such misdirection has been demonstrated.

CONCLUSION

27. Upon re-evaluating the evidence on record and considering the submissions and authorities cited, this Court finds that the trial court did not err in its apportionment of liability.
28. The finding that the Respondents bear 70% liability and the Appellant 30% liability was justified in the evidence.

DISPOSITION

- i) The appeal is hereby dismissed.**
- ii) The judgment of the Small Claims Court delivered on 19th July 2024 is upheld.**
- iii) The parties bear their costs of this appeal.**

29. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS
APPLICATION, THIS 19TH DAY OF FEBRUARY, 2026**

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**CHARLES KARIUKI
JUDGE**