

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E1098 OF 2024

FRED NYACHAE MESHACK.....
.....APPELLANT

VERSUS

JENIFFER WANJIRU NJUGUNA.....
RESPONDENT

JUDGMENT

1. This This is an appeal arising out of a road traffic accident in which the lower Court determined the matter in favor of the Respondent. The history of this matter is that the Appellant’s motor vehicle was involved in an accident together with the respondent’s motor vehicle. The respondent filed a suit for compensation arising out of the repair of its motor vehicle and succeeded at the lower Court prompting this appeal. I have gone through the proceedings and the submissions on record together with authorities and wish to highlight key issues as hereunder

Liability

2. There are two eyewitnesses in this Appeal, one is supported by the police abstract. It is agreed that the accident occurred at the highway and the Respondent was driving on the highway while the Appellant’s driver who was in front, joined the highway from a feeder road. The Appellant said that the

Respondent indicated that he was turning left and so he felt that the high way was clear for him to join it but as he joined the highway, the Respondent who appeared to have “changed his mind” drove ahead without turning to the direction of his indicator. The picture that the Appellant created at the scene is that he saw an indicator showing that the Respondent was going to turn to the left and from his position, it is true that such an indicator is capable of being seen because the Respondent’s vehicle was on his right side but however there is little possibility that he would know if the Respondent’s motor vehicle had hazard lights blinking (both indicators). This is because the Respondent’s indicator (right) would be out of reach from his eyes given his position. This therefore brings the question as to whether motorists joining a highway should only rely on the indicator they see or they must be satisfied that the other one which is out of reach from their eyes is also blinking? The two scenarios significantly affect how a motorist joining the main road should act because if there is only one indicator they can see, then he can assume that the other driver is intending to join the road indicated by its indicator but if both indicators are blinking, the other driver firmly has the right of way. This is because the driver putting on two indicators has a right to do so especially where there are other vehicles behind him or if there is a problem with his vehicle. By assuming that the other driver’s indicator was blinking only on the left side, the Appellant made a huge assumption yet he was under duty of

care before joining the highway. This, may not have been the case here but this Court has the duty to determine similar instances that may apply in future. The lighting performances of drivers on the road cannot defray key rules on the right of drivers on the highways. Drivers are known to give different signals on the road through lighting and a good example is a driver who doesn't put on dim light at night when there is a vehicle ahead but instead, he puts on full light on a politely obedient driver ahead whose lights are dim. This is important to ensure that those joining the highway don't find defence in indicators which are a lesser reason to defeat the right of a highway driver- and without video evidence of indicators blinking one side or both sides, the Court cannot certainly determine what happened. The best way forward is to side with the right of a highway driver so as to evade accidents.

Damages

- 3.** There is sufficient prove of special damages. All documents have been provided.
- 4.** The conclusion of the above is that the appeal lacks merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF FEBRUARY 2026.

**HON L P KASSAN
JUDGE**

**In the presence of;
Karoki for Appellant**

**Ms Nduta for Respondent
Carol - Court Assistant**

30 DAYS STAY OF EXECUTION GRANTED