

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E045 OF 2025

WILFRED KIMIRI

DANIEL.....APPELLANT

VERSUS

BENARD MAINA

NJAGI.....RESPONDENT

***(Being an appeal from the decision of Hon. J. Kemei
(Adjudicator) delivered on 23rd April 2025 in Naivasha
SCCC No. E841 of 2024)***

JUDGMENT

- 1.** The Small Claims Court found the Appellant fully liable for an accident involving motor vehicles **KCR 657C** and **KCS 395Z** and awarded special damages to the Respondent thereby giving rise to this appeal in which the Appellant raised the following grounds of appeal: -

a) THAT the Learned Adjudicator erred in law in failing to find that the insurance policy that gave rise to the claim was invalid and unenforceable in the circumstances.

b) THAT the Learned trial Adjudicator erred in law in finding that the Respondent had proved his case on a balance of probabilities.

c) THAT the Learned Adjudicator erred in law in failing to properly analyse the evidence on record thus reaching an improper finding.

d) THAT the Learned Adjudicator erred in law in totally disregarding the binding authorities of Superior courts in support of the Appellant's case thus departing from binding legal principles without any justification.

2. The appeal was canvassed by way of written submissions which I have considered.

The Appellant's Submissions

3. The Appellant submitted on the invalidity of insurance Policy / lack of insurable interest and argued that the Adjudicator erred in failing to find that the insurance policy upon which the Respondent's claim was founded was void for lack of insurable interest.
4. The key points advanced were that the Respondent was not the registered or beneficial owner of Motor Vehicle **KCS 395Z** as he did not produce the logbook, search certificate, police abstract, sale agreement, lease, or proof of ownership. It was the Appellant's case that without an insurable interest, the policy was invalid, thus rendering the claim unenforceable. For this argument, the Appellant relied on several authorities including the case of **Lion of Kenya Insurance Co. Ltd vs. Edwin Kibuba Kihonge (2018) eKLR** where it was held that: -

“...every insurance contract requires an insurable interest... failure to prove the existence of an insurable interest renders the insurance policy invalid.”

5. Reference was also made to ***Britam Insurance Co. Ltd vs. Njoki & Another (2024) KEHC 14197 (KLR)*** where the court observed that: -

“The 1st Respondent did not have any insurable interest... She had no right to insure the same as she had nothing to lose...”

6. The Appellant submitted that the Respondent suffered no loss recognized in law, and that the Adjudicator erred in law by upholding a claim founded on an invalid policy.
7. The Appellant submitted that the Adjudicator erred in law by failing to properly evaluate evidence, shifting the burden of proof, and incorrectly concluding that the Respondent had proved the case on a balance of probabilities.
8. The Appellant asserted that ownership of motor vehicle KCR 657C was disputed and never proved by the Respondent. He added that under the principles established in ***Samuel Mukunya Kamunge vs. John Mwangi Kamuru (2005) KEHC 1077 (KLR)***, once ownership is denied, the evidential burden shifts to the claimant to prove it. He noted that even though the Respondent

undertook to produce a police officer to verify ownership, he did not do so.

9. It was submitted that a police abstract cannot, without supporting documents, serve as conclusive evidence of ownership while relying on ***Joel Muga Opija vs. East African Sea Food Ltd (2013) KECA 181 (KLR)***.
10. It was the Appellant referred to the decision in ***Kamanda vs. Nduda (2025) KEHC 12818 (KLR)*** for the argument that failure by a judicial officer to analyze and make a determination on a specific piece of probative evidence is an error of law. In this regard the Appellant submitted that the Adjudicator failed to consider key evidence, including testimony showing KCS 395Z had faulty rear brakes, absence of any motor vehicle inspection report, absence of an eye-witness account and absence of proof of ownership. It was therefore the Appellant's position that the finding of 100% liability constituted a legal error.
11. The Appellant also faulted the Adjudicator for failing to consider the binding authorities and submissions filed, contrary to the doctrine of stare decisis. Reference was made to the decisions in: -
 - a) ***Consolata Awino Ogutu vs. South Nyanza Sugar Co. Ltd (2019) eKLR*** where it was held that: -

“The doctrine of stare decisis... aids in building public confidence... A court bound by a precedent must follow that precedent.”

b) *Municipal Council of Thika vs. Elizabeth Wambui Kamicha (2013) eKLR* where the court held that: -

“It is the duty of the trial court to consider and evaluate the entire evidence on record and submissions filed by counsel...”

12. The Appellant submitted that the court only mentioned the Appellant’s submissions at one point and incorrectly stated that the Appellant sought 50% liability, which was never raised. He argued that the adjudicator did not consider his written submissions or authorities, amounting to an error of law.

The Respondent’s Submissions

13. The Respondent opposed the appeal and submitted that this Court’s jurisdiction is strictly limited to matters of law under Section 38 of the Small Claims Court Act (the Act).

14. The Respondent argued that the grounds raised by the Appellant, primarily concerning how the accident occurred, whether eyewitness evidence was called, ownership of the subject motor vehicle, and credibility of testimony are pure issues of fact, over which this Court has no jurisdiction. The Respondent cites the leading authority of ***Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR*** to emphasize that jurisdiction is foundational and cannot be inferred.

- 15.** It was thus the Respondent's case that the appeal is incompetent, as it seeks to re-litigate factual findings, yet the Small Claims Court is not bound by strict rules of evidence and had the mandate to make factual determinations.
- 16.** It was submitted that the trial court correctly found liability based on cogent evidence.
- 17.** On proof of insurance policy and insurable interest, the Respondent argued that he testified that he was the registered owner of motor vehicle KCS 395Z, which was duly insured by Geminia Insurance Company Ltd. He added that he produced a claim form (**CEX1**) lodged with the insurer which is a document that could only be issued to a verified insured. He noted that no contrary evidence was produced by the Appellant.
- 18.** It was the Respondent's case that recoveries officer from the insurance company, one **Lydia Kemboi**, confirmed in evidence that the Respondent was indeed the insured and that the insurer sought to recover repair costs paid under the doctrine of subrogation.
- 19.** On the issue of the Appellant's denial of ownership of motor vehicle **KCR 657C**, the Respondent argued that he produced a copy of records showing the Appellant as the registered owner and that the Appellant's own witness admitted being the driver employed by the Sacco to which the vehicle belonged. The Respondent submitted that this satisfied the legal threshold for proof of ownership.

20. On standard of proof, the Respondent relied on ***Selle & Another vs. Associated Motor Boat Co. Ltd [1968] EA 123*** and ***Peters vs. Sunday Post Ltd [1958] EA 424*** to emphasize that an appellate court may only interfere where the trial court misapprehended evidence or applied wrong principles.
21. The Respondent submitted that the trial court properly re-evaluated the evidence and that the Appellant failed to provide any credible or probative evidence to rebut liability.

Issues for Determination

22. From the pleadings and submissions I find that the following issues arise for my determination: -
- a) Whether this Court has jurisdiction to consider issues of fact raised in the appeal.***
 - b) Whether the trial court erred in law in finding that the Respondent proved his case on a balance of probabilities.***
 - c) Whether the Adjudicator erred in law in the interpretation of the doctrine of insurable interest and subrogation.***

Analysis and Determination

Jurisdiction

23. It is trite that this court' jurisdiction under Section 38 of the Small Claims Court Act is limited to only questions of law. The said Section 38 provides that: -

A person aggrieved by the decision of the Court may appeal to the High Court on matters of law.

- 24.** In the present appeal, I note that the Appellant's grounds largely relate to issues of who owned which motor vehicle, how the accident occurred, whether an eyewitness testified, whether brakes failed and credibility of testimony.
- 25.** My respectful view is that the issues raised by the Appellant relate to pure issues of fact, not law. I find that the Respondent correctly argued that the appeal, in its core, invites this Court to re-evaluate factual findings already made by the trial court. It is my finding that this Court therefore lacks jurisdiction to reopen factual issues unless there is an identifiable error of law arising from misdirection or failure to apply correct legal principles. Accordingly, this Court proceeds only to determine whether such errors have been demonstrated.
- 26.** My findings on the subject of jurisdiction notwithstanding, I am still minded to consider the issue of whether the trial Court erred in law in its evaluation of evidence concerning proof of ownership of the motor vehicles, burden of proof and the doctrine of insurable interest.

Ownership of the Motor Vehicles

- 27.** The Appellant argued that the Respondent failed to prove ownership of motor vehicle **KCS 395Z**, hence lacked insurable interest.

- 28.** I however note that the Respondent produced a claim form issued by Geminia Insurance, testimony from a recoveries officer confirming the Respondent was an insured party and a copy of records showing the Appellant as the registered owner of KCR 657C. I further note that no contrary evidence was tendered.
- 29.** Under Section 8 of the Traffic Act, a certificate of registration is prima facie proof of ownership. I find that the trial court applied this principle correctly and that no legal error is apparent.

Burden of Proof

- 30.** The Appellant contended that the burden was shifted to him. I however note that the trial court found that the Respondent's evidence on insurance, ownership and the accident sequence was uncontroverted. The Appellant did not call substantive evidence to rebut the same. I am mindful of the decision in ***Selle vs. Associated Motor Boat Co. Ltd [1968] EA 123*** where it was held that an appellate court will not interfere unless the trial court misapprehended evidence or applied wrong principles.
- 31.** In the present appeal, the record shows the trial court considered and weighed all relevant evidence. I therefore find no misdirection in law.

Doctrine of Insurable Interest

- 32.** The Appellant cited the decision in ***Phoenix of EA Assurance vs. Tuscany Holdings Ltd (2024)*** and ***Lion***

of Kenya Insurance vs. Kihonge (2018) eKLR for the argument that the Respondent lacked insurable interest. The Respondent, on his part, produced a valid insurance claim form. In addition to the Respondent's documents, the insurer's recoveries officer confirmed a valid policy and confirmed the Respondent was the insured.

33. My finding is that the issue of insurable interest is a mixed question of both law and fact. In the circumstances of this case, I find that since the trial court accepted the insurer's representative's evidence and given the absence of contrary evidence, there was no legal misdirection in the trial court's conclusion.

34. A critical analysis of the Appellant's submissions reveals that he is asking this Court to delve into re-evaluating factual findings on ownership and policy validity, which this Court cannot do under Section 38 of the Act.

Conclusion

35. Having noted that the appeal raises matters of fact, thinly framed as matters of law and having addressed the genuine questions of law, I find no legal error in the trial court's evaluation of evidence, application of the burden of proof, or interpretation of insurable interest and subrogation.

36. Accordingly I find that the instant appeal is without merit and I therefore make the following final orders: -

a) *The Appeal is hereby dismissed in its entirety.*

- b) ***The judgment of the Small Claims Court in Naivasha SCCC No. E841 of 2024 is upheld.***
- c) ***Costs of the appeal shall be borne by the Appellant.***

37. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF FEBRUARY, 2026.

**HON. W. A. OKWANY
JUDGE
05/02/2026**

FOR APPELLANT Chaungu
FOR RESPONDENT Kairu
COURT ASSISTANT Karani