

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL APPEAL NO. E060 OF 2025

UBUNTU LIFE FOUNDATION.....
.....APPELLANT

VERSUS

SIMON MWANGI.....
.....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. Jepkosgei Elizabeth Kemei (Adjudicator) in Naivasha SCCC No. E026 of 2025 delivered on 4th June, 2025)

JUDGMENT

Background of the Appeal

1. By an Amended Statement of Claim dated 10th March 2025, filed before the Small Claims Court, the Respondent instituted the suit against the Appellant seeking general damages, special damages in the sum of Kshs. 90,550/=, together with costs of the suit and interest thereon.
2. The Respondent's case was that on or about 10th June 2024, he was lawfully riding motorcycle registration number KMEP 922A along Mai Mahiu Road when, at the Ngeya area, when the motor vehicle registration number KDL 032J, allegedly registered in the name of the Appellant, lost control while overtaking and collided with him. As

a result of the said accident, the Respondent sustained serious bodily injuries for which he sought to be awarded damages.

3. In the Response to Claim dated 21st March 2025, the Appellant denied ownership of motor vehicle registration number KDL 032J and further denied the occurrence of the accident as pleaded. In the alternative, and without prejudice to the foregoing, the Appellant averred that if the accident did occur, the same was wholly caused or substantially contributed to by the negligence of the Respondent. Particulars of negligence attributed to the Respondent included riding motorcycle registration number KMEP 922A at an excessive speed, riding on the wrong side of the road, and failing to exercise due care and regard for other road users, among other particulars.
4. In a judgment delivered on 4th June 2025, the learned adjudicator found the Appellant 100% liable for the accident. The Court awarded the Respondent Kshs. 450,000/= as general damages and Kshs. 31,675/= as special damages, together with costs of the suit and interest thereon.
5. Aggrieved by the said decision, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 11th June 2025, seeking orders that the judgment of the trial court be set aside, that the Respondent be found wholly or substantially liable for the accident, and that the costs of the appeal be borne by the Respondent. The six grounds of appeal are: -

- a) **THAT the learned magistrate/adjudicator erred in law in finding the appellant 100% liable for the accident.**
- b) **THAT the learned magistrate/adjudicator findings on liability went against the weight of evidence.**
- c) **THAT the learned magistrate/adjudicator was in error of law in failing to dismiss the respondent/claimants claim.**
- d) **THAT the learned magistrate/adjudicator misdirected herself on the issue of liability with resultant injustice.**
- e) **THAT the learned magistrate/adjudicator erred in law in failing to find the claimant/respondent had failed to make out his case and hence dismiss the same.**
- f) **THAT the learned magistrate/adjudicator was in error of law in failing to take into account certain considerations material to an estimate of evidence.**
- g) **THAT the learned magistrate/adjudicator erred in failing to find from an evaluation of the evidence that the respondent/claimant was substantially culpable and apportion liability.**

6. Even when escalated into six grounds, all challenge the decision on the basis that the evidence led did not prove the case to ground the apportionment of liability against the appellant.

7. The appeal has been canvassed by way of written submissions filed by both sides. Both have rehashed the evidence led and the following is a short summary of both evidence and the law from the rival sides.

Appellants' Submissions

8. The Appellant contends that liability cannot arise in the absence of fault and that, where a claim is founded on negligence, the plaintiff bears the burden of proving that the defendant was negligent. In support of this principle, the Appellant relies on **Kiema Mutuku v Kenya Cargo Hauling Services Ltd [1991] eKLR**.
9. The Appellant recounts the Respondent's testimony that he was lawfully riding his motorcycle on the left side of the road when motor vehicle registration number KDL 032J, while attempting to overtake both him and a truck ahead, struck him on the rear side. The Appellant further states that it testified it was proceeding in the same direction as the Respondent.
10. The Appellant highlights that the police officer who testified for the Respondent as CW1 stated that motor vehicle registration number KDL 032J was coming from the opposite direction and, in the process of overtaking, collided with the oncoming motorcycle. The Appellant contends that, on cross-examination, the Respondent confirmed that he was struck on the rear of the vehicle. The Appellant argues that a rear-end collision presupposes that the rider was not keeping proper lookout and, therefore, bears a greater share of responsibility for the accident.
11. The Appellant further notes that the police abstract dated 17th July 2024 initially attributed the accident to an unknown rider.

However, on cross-examination, the police officer conceded that the matter was still under investigation and produced a subsequent police abstract dated 26th November 2023. This later abstract indicated that the motorcycle involved in the accident had been stolen from the scene, thereby precluding any definitive conclusion.

12. In light of these contradictions, the Appellant submits that the Respondent's case is fraught with inconsistencies. On a balance of probabilities, the Appellant contends that the Respondent has failed to establish that the Appellant was liable for the alleged accident and resultant injuries.

Respondent's Submissions

13. The Respondent supports the findings of the trial court, submitting that his evidence was neither challenged nor controverted. He states that both vehicles were travelling in the same direction when the Appellant's vehicle struck his motorcycle from the rear. The Respondent further emphasizes that he called three witnesses, including PW3, an eyewitness who recounted the events of the accident in detail. In contrast, the Appellant failed to call any independent witnesses to refute the Respondent's case.

Issues, Analysis and Determination

14. The central issue in this appeal is whether the Appellant has established, as a matter of law, that the trial court erred in finding it liable for the accident that occurred on 10th June 2024 involving

motor vehicle registration number KDL 032J and the Respondent's motorcycle registration number KMEP 922A. Although the Appellant has raised seven grounds of appeal, all relate primarily to the question of liability- whose fault caused the accident?

15. This appeal emanates from the Small Claims Court and is circumscribed by section 38 of the Small Claims Court Act, which provides that an appeal shall lie to the High Court on matters of law only, and that such appeal shall be final.
16. The question of what constitutes a matter of law was addressed in **Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others, (2014) eKLR**, where the Court held that a decision is erroneous in law if it is one to which no reasonable tribunal, properly directing itself, could have arrived. It is against this legal framework that the present appeal must be examined.
17. Liability in road traffic accidents is not a scientific exercise but must be determined by applying common sense to the facts of each case. As noted in **Michael Hubert Kloss & Another v David Seroney & 5 Others [2009] eKLR**, the Court must assess which faults are sufficiently proximate to have caused the accident, and whether multiple parties contributed to the incident.
18. In civil cases, the court must assess which party's version of events is more probable. As stated in **James Muniu Mucheru v**

National Bank of Kenya Ltd C.A Civil Appeal No 365 of 2017

[2019] eKLR, the court will make a finding based on whose version of events is more believable.

19. The balance of probabilities standard requires that the court be satisfied that an event is more likely than not to have occurred. **See Re H and Others (Minors) [1996] AC 563, 586.**
20. In the present case, the adjudicator, as the trier of facts, found the Appellant 100% liable for the accident, noting that the Respondent's witnesses attributed blame to the Appellant and that no independent evidence was adduced by the Appellant to contest liability.
21. Both the Appellant and Respondent testified that they were travelling in the same direction at the time of the accident. CW2 testified on cross-examination that as the Appellant's vehicle attempted to overtake both the Respondent and a truck ahead, it struck the motorcycle on the right rear side. CW3 corroborated this testimony.
22. Applying everyday logic to the evidence, if both vehicles were travelling in the same direction and the Appellant's vehicle attempted to overtake both the motorcycle and the truck, then a collision from the rear only suggests that the motorcycle after overtaking, crossed too closely, misjudged the available space and gave to the rider no space to manoeuvre.

- 23.** The adjudicator having considered the totality of the evidence, as the trier of facts, found the respondent's version of events more credible. On appeal, there is no basis to disturb that factual finding.
24. In light of the foregoing, the Court finds that the appellant has not discharged the burden of proving that the trial court committed an error of principle in the evaluation of the evidence and arrived at a wholly erroneous conclusion. The evidence supports the finding that the appellant actions wholly caused the collision.
25. Accordingly, the appeal fails in that the judgment of the trial court is hereby upheld. The appeal is dismissed with costs.

Dated, signed and delivered at Lodwar this 27th day of February 2026

Patrick J O Otieno
Judge