



**Bosire v Njihia (Civil Appeal E222 of 2025)
[2026] KEHC 2744 (KLR) (Civ) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 2744 (KLR)

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

CIVIL

CIVIL APPEAL E222 OF 2025

WA OKWANY, J

JANUARY 27, 2026

BETWEEN

PROSPER FRITZ NYAMAMBA BOSIRE APPELLANT

AND

LUCY WAMBUI NJIHIA RESPONDENT

*(Being an appeal from the judgment of Hon. C.A. Okumu (RM)
delivered on 7th February 2025 in Milimani SCCC No. E2547 of 2024)*

JUDGMENT

1. The Respondent herein, who was the Claimant before the trial court, filed a Statement of Claim dated 17th May 2024, seeking compensation for damage to her motor vehicle arising from a road traffic accident which occurred on or about 22nd May 2021 along Bunyala Road. The Claimant pleaded that her vehicle was being lawfully and carefully driven when the Appellant's motor vehicle, registration number KCV 281J, was negligently driven, lost control, and collided with the Claimant's motor vehicle KCQ 670L, occasioning extensive damage. The Claimant quantified her loss at Kshs. 198,794, together with costs and interest.
2. The Appellant filed a response dated 11th July 2024, denying the occurrence of the accident as pleaded and putting the Claimant to strict proof. The Appellant further alleged that, if the accident occurred, it was wholly or substantially caused by the negligence of the driver of the Claimant's motor vehicle.

Evidence

3. The Claimant relied on a police abstract, which placed the blame on motor vehicle KCV 281J for the accident, and a motor vehicle search, which confirmed that the said vehicle was owned by the Appellant.



4. The Appellant relied on an Occurrence Book (O.B.) extract.
5. Upon evaluation of the evidence, the trial Court found that the materials on record sufficiently established the occurrence of the accident and the Appellant's responsibility. Consequently, the Court found the Respondent 100% liable for the accident and entered judgment in favour of the Claimant and awarded her Kshs. 198,794/= as special damages, together with costs of Kshs. 20,000/= and interest.
6. Aggrieved by the said judgment, the Appellant lodged this appeal contending, inter alia, that the trial court misapplied the burden of proof, failed to give reasons for its decision, and wrongly imposed liability upon him.
7. The appeal was canvassed by way of written submissions which I have considered.
8. Having considered the record of appeal, the parties' submissions and the applicable law, I find that the following issues arise for determination: -
 - a. What is the scope of this Court's jurisdiction on appeal from the Small Claims Court?
 - b. Whether the trial court misapplied the burden of proof under sections 107–109 of the *Evidence Act*.
 - c. Whether the Respondent benefited from her own alleged wrongdoing.
 - d. Whether the trial magistrate failed to give adequate reasons for the decision.

Analysis and Determination

Scope of the Appellate Court's Jurisdiction

9. Section 38(1) of the *Small Claims Court Act* provides that: -

“A party aggrieved by a decision of the Court may appeal against the decision to the High Court on matters of law.”
10. The High Court has consistently held that appeals from the Small Claims Court are confined to points of law, and that findings of fact are not to be disturbed unless they are unsupported by evidence or based on wrong legal principles.
11. In *Fidelity Insurance Co. Ltd vs. Korir* [2024] KEHC 3365 (KLR), the Court stated that: -

“...the High Court while handling an appeal from the Small Claims Court, is not permitted to substitute that court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them.”
12. Similarly, in *Directline Assurance Co. Ltd vs. Nyawa* [2023] KEHC 20201, the Court held:

“However, appeals from the small claims court are different. This is the first and last appeal. It is an appeal on points of law. This then takes the same turn as an appeal to the Court of Appeal, where the court gives deference to finding of fact. Only when findings of fact are based on no evidence will the same be seen as a point of law.”



13. Guided by the reasoning in the above cited authorities, I find that the Appellant’s complaints regarding who caused the accident, whether the Respondent was reversing, and the probative value of the Occurrence Book extract are primarily factual issues. Be that at it may, this Court will still consider whether any legal error arises from the determination.

Burden of Proof

14. Sections 107–109 of the *Evidence Act* provide that he who alleges must prove.
15. The Respondent’s evidence before the trial court was that she was lawfully driving and signalling her intention to turn when the Appellant, who was driving behind her, failed to keep a safe distance and rammed into her vehicle. This evidence was corroborated by a police abstract attributing blame to the Appellant and an assessment report showing rear-end damage consistent with a collision from behind.
16. The Appellant alleged that the Respondent was reversing or making an illegal U-turn but produced no admissible corroboration, relying instead on an Occurrence Book (O.B.) extract.
17. The law on O.B. extracts was settled in *Munyamai & Another vs. Representatives of Joseph Okoth Aloo (Deceased)* [2024] KEHC 2638, where the Court held that Occurrence Book entries are inadmissible hearsay evidence to prove the truth of the contents. The court added that OB is only evidence that the accident involving the vehicles, and the persons named, took place.
18. In this case, a perusal of the record reveals that the O.B. extract that the Appellant relied upon bore no police stamp, no identified author, and appeared to contain self-serving statements. It was therefore inadmissible. I find that the trial court correctly disregarded it and applied the burden of proof as required by law.
19. On whether the Respondent benefited from her own wrongdoing, the Appellant invoked the Latin maxim *nullus commodum capere potest de injuria sua propria* (No one can gain an advantage from their own wrongdoing) which in plain terms means, the law won’t let someone profit from a wrong they themselves committed. In other words if you caused the harm, you don’t get to turn around and benefit from it financially, legally, or otherwise.
20. The Appellant argued that the Respondent attempted an illegal U- turn that led to the accident.
21. I however find that liability in road traffic accidents is a question of fact, dependent on evidence. This is the position that was taken in *Nderitu & Another vs. Chesire* [2025] KEHC 7169 (KLR) where it was held that: -

“Liability is a factual issue and its determination solely depends on how the evidence unfolds.”
22. In the present case, I note that there was no credible evidence to show tthat the Respondent was reversing or making an illegal U-turn. Conversely, Regulation 50 of the Highway Code imposes a duty on drivers to keep a safe distance.
23. In *Fal Azad & Another vs. Peter Mubua Karanja* [2016] KEHC 6956, the Court observed that: -

“...had the vehicle Registration Number KAS 975K been driven at a safe speed and kept a safe distance from the vehicle ahead Registration Number KAU 285F, it would have been able to brake and avoid ramming into the vehicle ahead.”



24. Courts have taken the position that rear-end collisions generally point to failure to maintain safe distance unless special circumstances are proved, which was not the case here. I find that the maxim relied upon by the Appellant therefore does not apply.

Whether the Trial Magistrate Failed to Give Reasons

25. The Appellant faulted the trial court for allegedly failing to give reasons.

26. Section 32 of the *Small Claims Court Act* provides that the Court:

“shall not be bound wholly by the rules of evidence or the *Civil Procedure Act*.”

27. Further, section 34 of the Act requires expeditious disposal of claims.

28. In *South Nyanza Sugar Co. Ltd vs. Omwando* [2011] eKLR, the Court held a judgment need not be lengthy but must simply address the issues raised and state the reasons for the court’s conclusions.

29. A perusal of the impugned judgment shows that the trial court identified the accident motor vehicles, considered documentary evidence from both parties, found liability on the Appellant, evaluated and allowed only strictly proved special damages.

30. I find that within the statutory framework of the Small Claims Court, the reasons given by the trial court were adequate and disclosed no legal error.

Disposition

31. Having considered the entire record, the submissions of counsel, and the applicable law, this Court finds that the instant appeal lacks merit and I therefore dismiss it in its entirety with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2026.

HON. W. A. OKWANY

JUDGE

27/01/2026

For Appellant

For The Respondent

Court Assistant Uber

