

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E323 OF 2024

DANCAN MWANGI NGAMBI.....
APPELLANT

VERSUS

LIVINGSTONE MWAURA NGANGA.....
RESPONDENT

(Being an appeal against the judgment and decree of the Hon C.K Kisiangani P.M at Ruiru delivered on 18th November, 2024 in Ruiru CMCC E481 of 2022)

JUDGEMENT

1. The appeal herein emanates from a claim for compensation following a road traffic accident where the appellant had brought a claim arising out of a road traffic accident involving motor vehicle registration number KCV 269M and motor vehicle registration number KCV 269M. The Appellant was the registered owner and beneficial owner of motor vehicle registration number KCV 269M while the Respondent was the beneficial and insured owner of motor vehicle registration number KBK 949D.
2. The Appellant had deposed that on or around 8th March 2021, the appellant's motor vehicle registration number KCV 269M was being lawfully driven along Thika superhighway near KU when the Respondent's driver so negligently, recklessly and carelessly drove, controlled and or managed motor vehicle registration number KBK 949D that he caused it to violently collide/ ram onto the Appellant's motor vehicle registration number KCV 269M thereby extensively damaging it. It was also averred that the Respondent's agent failed to brake, swerve or otherwise manage motor vehicle KBK 949D to avoid colliding/ ramming onto motor vehicle registration KCV

269M. The appellant therefore claimed special damages totalling Kshs. 605,550.00 against the Respondent.

3. The Respondent denied the claim and instead pleaded contributory negligence in that the appellant stopped suddenly without due care and attention to other road users especially motor vehicle registration number KBK 949D.
4. The matter proceeded to trial where a police officer was called to testify on behalf of PC Nzioka, who had since been transferred. It was his testimony that the accident occurred on 8th May 2021 at around 1745 hours near KU Kahawa Sukari exit. The said PC Nzioka visited the scene of accident and formed an opinion that the driver of Toyota D Hilux KBK 949D was held liable for the accident. He produced the police abstract as exhibit. He clarified that he was neither the investigating officer nor did he visit the scene.
5. PW2 Benson Ichaura Wambugu testified that the driver of KCV 269M was to blame for the accident as he failed to keep distance and thus rammed his vehicle from the rear when he slowed down.
6. DW1, the Respondent testified that the vehicle was being driven by his driver on the material day. His driver informed him that he was on the highway when a vehicle ahead of him slammed on emergency brakes and he rammed into it. He clarified that he neither visited the scene nor witness the accident.
7. DW2 testified that he was the driver of KBK 949D Toyota Hilux. It was his testimony that he rammed KCV 269M. He denied being charged with the offence of careless

driving. He also denied that the police found him liable for the accident.

8. The trial court observed that both the appellant and the Respondent blamed each other for the accident. Therefore, while the Respondent was responsible for the damages in the rear of KCV 269M, the damage at the front could not be attributable to him. Therefore, the appellant was also liable for causing the accident. Ultimately, the trial court apportioned liability at 50%:50%.
9. Special damages were assessed as prayed being 50% of Ks. 605,550.00
10. Aggrieved and dissatisfied with the decision of the trial court, the appellant lodged the instant appeal on grounds that:
 - i. ***The learned trial magistrate erred in law and in fact in apportioning liability equally between the appellant and the Respondent.***
 - ii. ***The learned trial magistrate erred in law and in fact in finding that the appellant was negligent despite the overwhelming weight of evidence to the contrary.***
 - iii. ***The learned magistrate erred in law and in fact in failing to find that the Respondent was 100% liable for the accident.***
11. Reasons wherefore the appellant prayed that the trial court's judgment on liability be set aside and or substituted with a finding holding the Respondent 100% liable for the accident.
12. The court directed that the matter be canvassed through written submissions.

13. The appellant submitted that the trial court erred in its finding on liability as the appellant's vehicle was rammed from the rear. It was admitted by the Respondent's driver that there was a vehicle ahead of the appellant, therefore the appellant slowed down only to be rammed from the rear by the Respondent. There was no factual basis in support of the trial court's finding of liability at 50:50. Reliance was placed on **PAS v George Onyango Orod** **[2020] eKLR** to urge the position that a person driving a motor vehicle on the road is not bound to go faster based on the possibility of animals, people or any other road user who might abruptly appear. Reasonable steps ought to be taken to avert any such eventualities.
14. The Respondent testified that the trial court's finding was accurate and reasonable as the appellant had material inconsistency on the damage to the motor vehicle. While it was clear that the Respondent had hit the appellant's vehicle from the rear, the extensive damage to the front part of the appellant's vehicle was incompatible with the appellant's testimony regarding the manner in which the accident occurred.
15. The appellant therefore failed to demonstrate that the trial court had acted on wrong principles to warrant the intervention of the honourable court.
16. The court has considered the grounds of appeal, the proceedings of the lower court and the submissions by both the appellant and the Respondent and discerns the issues for determination are whether the finding on liability was in consonance with the evidence on record.
17. Because court disputes must be determined on the pleadings filed and the evidence offered, it is the duty of the trial court to give to every piece of evidence adduce all the due regard. In the appeal, the evidence led by

both sides on causation was that of PW1 and 2 and that by DW1 and DW2. Both admit the occurrence of the accident. The point of disagreement is how the accident occurred. It is critical to point out that both PW1, the police officer and DW1 never visited the scene nor witnessed the accident. Therefore, the only available accounts on the accident were the conflicting accounts by PW2 and DW2.

18. The court found that it was not clear how the accident occurred and determined that the liability be shared equally among the two drivers.

19. Faced with such a scenario, a court is entitled to take the approach by the English court in **Stapley v Gypsum Mines Limited (2) (1953) A.C 663 at P. 681** where Lord Reid reasoned as follows:

“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law, this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the fact of each particular case. One may find that a matter of history, several people have been at fault and that if anyone of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes, it is proper to discard all but one and to regard that one as the sole cause, but in

other cases it is proper to regard two or more as having jointly cause the accident. I doubt whether any test can apply generally.”

20. Based on the above reasoning, this court finds no error in the approach taken by the trial court and upholds same as the accurate exposition of the law. The court hesitates to reverse the trial court as the trier of facts because the findings resonate with the evidence on record.

21. **This court therefore the upholds the decision on liability and the appeal on that limb is hereby dismissed. I also find that the special damages were pleaded and proved to the required standard.**

22. ***Final orders: Appeal dismissed. The decision of the Trial court on liability is upheld. Each party to bear their costs.***

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2026.

**HON. T. W. Ouya
JUDGE**

**For Appellant.....Kiptanui H/B for Ms Waiganjo
For Respondent.....Ngechi
COURT ASSISTANT.....Brian**