



REPUBLIC OF KENYA



KENYA LAW
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**Peo Agency Limited v Wekesa (Civil Appeal E130 of 2024)
[2026] KEHC 4968 (KLR) (9 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E130 OF 2024**

WA OKWANY, J

APRIL 9, 2026

BETWEEN

PEO AGENCY LIMITED APPELLANT

AND

JUDITH SITAA WEKESA RESPONDENT

*(An appeal from the judgment of Hon. Emily Cherop Jerotich delivered on
9th October 2024 in Naivasha Small Claims Civil Case No. E382 of 2024)*

JUDGMENT

Background

1. The Respondent herein was the Plaintiff before the trial court where she sued the Appellant for damages arising out of a road traffic accident that occurred on 10th June 2021 along the Naivasha–Nakuru Highway involving motor vehicles KCQ 854M and KAT 452X.
2. The Respondent’s case was that motor vehicle KAT 452X, owned by the Appellant, hit KCQ 854M from the rear, occasioning a total loss. The claim was brought under the doctrine of subrogation, the Respondent having been compensated by her insurer.
3. After hearing evidence from the Respondent’s driver, a motor vehicle assessor, and a police officer, as well as the Appellant’s director, the trial court found the Appellant 100% liable and awarded special damages of Kshs. Kshs. 797,543/= as pleaded and proved.

The Appeal

4. Aggrieved by the verdict of the trial court, the Appellant filed the instant appeal challenging the findings on both liability and quantum contending that the trial court erred in law and fact.



5. The Appellant contended that the trial court failed to appreciate that the Appellant had disproved the Respondent's claim thereby entering a judgment that was not supported by the law and evidence.
6. The appeal was canvassed by way of written submissions, which I have carefully considered alongside the record of appeal.
7. The Respondent opposed the appeal, submitting that under section 38 of the *Small Claims Court Act*, this Court's appellate jurisdiction is confined to matters of law, yet the appeal is largely factual. It was submitted that the trial court properly evaluated the evidence and arrived at a conclusion that no reasonable court could fault.
8. It was the Respondent's case that liability was clearly established as the Appellant's vehicle hit the Respondent's vehicle from the rear. The Respondent noted that special damages were specifically pleaded and strictly proved.

Issues for Determination

9. Having considered the pleadings, submissions, and record, I find that the following issues arise for determination:
 - a) Whether the appeal raises matters of law within the meaning of section 38 of the *Small Claims Court Act*; b) Whether the trial court erred in law in finding the Appellant 100% liable for the accident; c) Whether the trial court erred in law in awarding Kshs. 797,543/= as special damages;
10. On the scope of the appeal, it is trite that appeals from the Small Claims Court lies on matters of law only. This means that the Court cannot re-evaluate the facts of the case unless it is demonstrated that the trial court applied wrong legal principles or arrived at a decision which no reasonable tribunal could reach.
11. On liability, the trial court found that the Appellant's motor vehicle KAT 452X hit the Respondent's vehicle KCQ 854M from the rear. The record shows that the evidence before the trial court included consistent testimony that the impact was from the rear, confirmation by the motor vehicle assessor that the rear sustained the heaviest damage. There was also the evidence from the police evidence indicating that KAT 452X was blamed for the accident.
12. I note that the Appellant did not call the driver of KAT 452X to rebut this evidence and find that the trial court was entitled in law to draw an adverse inference.
13. Courts have taken the position that a collision from the rear raises a rebuttable presumption of negligence. This means that the presumption is not automatic proof of liability but is rebuttable depending on facts such as abrupt stopping, unsafe lane change, reversing or mechanical failure. In *Orioki vs. Kevian Kenya Ltd (Civil Appeal 341 of 2019) [2025] KECA 780 (KLR)*, the Court of Appeal cited the decision in *Njuguna vs. Chogo [1985] KLR 452* and stated that a driver who hits another vehicle from behind is generally presumed to be at fault unless sufficient evidence rebuts the presumption.
14. In the instant case, the Appellant did not displace the presumption and I therefore find no error of law in the trial court's conclusion that the Appellant was 100% liable.
15. On quantum and proved loss, the Respondent pleaded and proved special damages amounting to Kshs. 797,543/=, comprising total loss less salvage, assessment fees, towing charges, storage charges and investigation fees.



16. I find that the trial court correctly applied the principle that special damages must be specifically pleaded and strictly proved, and awarded only what was supported by documentary evidence.
17. The Appellant has not demonstrated that the trial court misdirected itself in law in assessing or awarding the said sums.
18. The burden of proof rested upon the Respondent and was discharged on a balance of probabilities. The Appellant did not tender evidence sufficient to rebut the Respondent's case. I find no legal basis for the complaint that the burden of proof was improperly shifted.
19. This appeal largely invites a re-evaluation of factual findings, which is impermissible in an appeal from the Small Claims Court unless a clear error of law is demonstrated. No such error has been shown and I therefore find that the trial court properly directed itself on the law and evidence.

Disposition

20. In the end, I find that the appeal lacks merit and I therefore dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 9TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

9/04/2026

For Appellant Kimani

For Respondent Kanyi Kiruchi

Court Assistant Karani

30 days stay of execution is granted

Pending an application for revised of this appeal

File closed

