

repairing the damage. He therefore sought to recover the said sum from the Respondent under the doctrine of subrogation.

3. The Respondent in its Response to the Statement of Claim dated 12th June, 2023 denied the allegations thereto, jurisdiction and stated on a without prejudice basis that the accident was as result of the negligence of the Appellant's driver and that despite the measures that the Respondent's driver took to avoid the accident, the same was inevitable and ought not to be blamed for what was inevitable .
4. **CW2 PC Yusuf Sigei** Produced Police Abstract (**C. Exhibit 37**), stated the vehicle were going on opposite directions. the driver of KBN 225 B on reaching the scene of accident noted the vehicle was not picking and crossed on the other lane where he his motor vehicle KAX 888C. The driver of KBN 225 was blamed for the accident.
5. In cross-examination the witness confirmed that, he was not the investigating officer, did not visit the scene, did not have the sketch plan nor the inspection reports. No traffic offence charges were preferred.
6. **CW2 Joy Muthaka** Legal Officer, Old Mutual Insurance Previously UAP Insurance adopted her statement and list of documents dated 30th November, 2022 (**C. Exhibit 1-36**) and a further list of documents dated 6th March, 2023.

7. **CW3 Geoffrey Kimani** owner of motor vehicle registration number KAX 88C adopted his statement dated 30th November, 2022.
8. **CW4 John Macharia Kihara** the driver, he adopted his witness statement dated 30th November, 2022 and produce his driving licence **C. Exhibit 32**. He added that he tried to swerve to avoid the accident but it was inevitable.
9. In cross-examination the witness added that, he was headed towards Nairobi from Mai-Mahiu direction at an average speed of 20-30km/hr. the vehicle was loaded and heavy. The impact was on the right side of the lorry on the front driver's side. That, he had attempted to swerve to the left but the other vehicle was at a high speed, driver was overtaking.
10. **RW1 Huma Omar**, driver of KBN 225BB/ZD adopted his witness statement and stated that he was headed towards Mai-Mahiu and was driving down the slope. His vehicle was hit on the left side, he tried to hoot but the driver on the other vehicle was on phone, he was on the left lane.
11. The Trial Court on 6th September, 2023, entered judgment on the following terms:
 - a) Liability 50:50.
 - b) Special damages Kshs. 804, 761.
Total upon contribution 402,380.
 - c) Costs of the claim.

- d) Interests of the above at Court rates from the date of judgement until settlement in full.

12. Aggrieved by the decision, the Appellant preferred the instant appeal on the following grounds.

- i) That the Learned Honourable Magistrate erred in law and fact in finding the Appellant 50% liable for causing the accident completely disregarding the circumstances under which the accident occurred especially the fact that the Respondent's driver was clearly to blame for causing the accident.**
- ii) That the Learned Honourable Magistrate erred in law and fact in awarding the Claimant KES 402,380.50 in general damages.**
- iii) That the Learned Honourable Magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on liability cited in the written submissions presented and filed by the Appellant.**
- iv) That the Learned Honourable Magistrate erred in awarding a sum in respect of damages which was inordinately low in the circumstances occasioning miscarriage of justice.**
- v) That the Honourable Learned Magistrate erred in law and fact in failing to consider conventional awards in cases of similar nature.**

13. The Appellant thus prays that, the appeal be allowed, the judgment and decree thereto of the Trial Court be quashed and set-aside and that the Court grants any other relief that it may deem fit or just to grant.
14. The Appeal was heard by way of filled written submissions. The Respondent's submissions were not on record by the time the Court retired to write the judgment.

Appellant's Submissions

15. In the submissions dated, 18th November, 2025 the Appellant submits that, through the witnesses availed, he proved that the Respondent was wholly to blame for the accident. In placing reliance ***Harrison Baya Yaa v Mash East Africa Limited [2020] KEHC 8657 (KLR)*** and ***Techard Steam & Power Limited v Mutio Muli & Mutua Ngao [2019] eKLR*** to submit that, the Police Abstract prepared by the Investigating Officer showed that the Respondent was blamed for the accident.
16. The point of impact on the vehicles is crucial as it proved the occurrence of an accident in the manner as described by the Appellant and proves that the Respondent's driver was fully liable for the accident.

Analysis and Determination

17. Having considered the Record of Appeal as well as the Appellant's submissions, this is a first Appeal and Appeals from the Small Claims

Court are governed by **Section 38** of the **Small Claims Court Act** which limit appeals to the High Court on matters of law.

18. Interference with factual findings is permissible only where the Trial Court misapprehended the evidence or acted outside its remit.
19. The role of this Court is therefore not to re-try the case but since the issue of liability is largely factual, the central question is whether the Trial Court correctly applied the law of evidence in apportioning liability.
20. It is common-ground that the vehicles were travelling in opposite directions. The Appellant's driver testified that, the Respondent's vehicle encroached onto his lane and struck him on the right side. The Respondent's driver, on the other hand, alleged that his vehicle was struck on the left, that he hooted to warn the Appellant's driver and that the latter was distracted by his phone.
21. Facing with these conflicting facts, the Trial Court in apportioning liability relied on authorities such as ***Anne Wambui Ndiritu v Joseph Kiproni Ropkoi & Another [2004] eKLR*** and ***Valley Bakery Limited & Another v Musyoka eKLR*** where the Courts in both cases had adopted equal apportionment in the face of contradictory versions.
22. It bears emphasis that each case must be determined on its own facts. Persuasive authorities cannot be applied mechanically. The duty of the Court is to interrogate the record, weigh the evidence and apply the law faithfully.

23. The legal burden of proof is codified under **Section 107 of the Evidence Act**, which places the obligation on the party who asserts a fact to prove it. The evidential burden, on the other hand, is addressed under **Sections 109 and 112 of the Evidence Act** and shifts depending on the circumstances of the case and the nature of the evidence adduced.
24. In this matter, the Appellant bore the legal burden of establishing negligence on the part of the Respondent's driver.
25. The Court of Appeal in *Michael Hubert Kloss & another v David Seroney & 5 others* [2009] KECA 146 (KLR) in determining who bears liability in a road traffic case stated that: -

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley vs Gypsum Mines Ltd (2)* (1953) AC 663 at p 681 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 facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one 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 caused the accident. I doubt whether any test can be applied generally.”

26. The police abstract produced by CW2 attributed blame to the Respondent's driver. While CW2 was not the investigating officer and did not produce a sketch plan, the abstract nonetheless constituted admissible evidence.
27. The accident photographs at pages 95–99 of the Record of Appeal depict the Respondent's trailer encroaching onto the other lane, ultimately coming to rest against a wall outside its proper lane. This visual evidence corroborates the Appellant's driver's testimony and undermines the Respondent's account.
28. At this point the Appellant had discharged the burden of proof and it then shifted to the Respondent to dislodge it.
29. The Respondent's driver asserted that there may have been a third party involved in the accident who could have contributed to its occurrence. No independent evidence was tendered to substantiate the claim of a third party's involvement. Mere speculation cannot discharge the evidential burden.

30. On the balance of probabilities, the Trial Court's apportionment of liability at 50:50 was therefore not borne out by the evidence and amounted to a misdirection.
31. In the premises, the Appeal succeeds and I find the Respondent 100% liable for the accident.
32. The award of Kshs. **402,380.50** is substituted with the award of **Kshs. 804, 761** as pleaded and proved.
33. Costs of this Appeal shall be borne by the Respondent.

It is so ordered.

Signed, Delivered Virtually on Teams platform

On this 28th day of April, 2026

Mohochi S.M

JUDGE