

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CIVIL APPEAL NO. E026 OF 2024

COLLINS KIPNGENO KIGEN APPELLANT

VERSUS

THOMAS NYANKWABARIA 1ST

RESPONDENT

EMILY CHESANG TESOT 2ND RESPONDENT

*(Being an Appeal from the Judgment of Resident Magistrate,
Michuki M. at the Magistrate's Court at Bomet, Civil Suit Number
E194 of 2022)*

JUDGMENT

1. The Appellant (then Plaintiff) sued the Respondents (then Defendants) for general and special damages that arose

from a road traffic accident which occurred on 6th August 2022. In its Judgement delivered on 6th November 2024, the trial court dismissed the suit.

2. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 7th November 2024 appealing against the whole Judgement.

3. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.

4. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiff's/Appellant's case.

5. Through his Complaint dated 6th August 2022, the Appellant stated that he was hit by motor vehicle registration number KCU 005R that was being driven by the 1st Respondent and owned by the 2nd Respondent.

6. It was the Appellant's case that the 1st Respondent was negligent in causing the accident. The particulars of the negligence were stated in paragraph 6 of the Complaint. That as a result of the accident, the Appellant suffered the following injuries: -

- i. Multiple bruises on the left side of the face.
- ii. Pelvic ring fracture.
- iii. Fracture left distal phalanx of the left thumb with near complete amputation.
- iv. Glenoid neck fracture.

v. Blunt injuries to the back and abdomen.

7. The Appellant prayed for special and general Damages against the Respondent.

8. Through his written submissions dated 28th August 2025, the Appellant submitted that the Respondents failed to call any witnesses to court and that his evidence therefore remained uncontroverted. The Appellant further submitted that the Police Abstract indicated that the 1st Respondent as the owner of the subject motor vehicle. He relied on **Maina Mary v Ulbanus Nzuve Nduve & another (suing as the administrators to the estate of the late Peter Nduva (Deceased) & another (2020) eKLR.**

9. It was the Appellant's submission that his Appeal did not touch on quantum and he prayed the same not to be disturbed.

The Defendants'/Respondents' case.

10. Through their statement of defence dated 16th March 2023, the Respondents denied the occurrence of the accident on 6th August 2022 and further denied being the driver and registered owner of motor vehicle registration number KCU 005R.

11. It was the Respondents' case that if the accident occurred then it was caused by the negligence of the Appellant. The particulars of negligence were contained in paragraph 7 of the Defence.

12. At the time of writing this Judgement, the Respondents had not filed their written submissions despite being directed to do so on 9th March 2026.

13. I have gone through and carefully considered the Record of Appeal and the Appellant's written submissions dated 28th August 2025. The only issue that I have sieved for my determination was whether the trial court erred in its findings on liability.

14. The Appellant (PW1) testified that on the material day he was hit by motor vehicle registration number KCU 005R along Bomet-Kaplong road as he was paying his fare to a motorcycle rider. When PW1 was cross examined, he reiterated his testimony.

15. The Appellant (PW1) produced a copy of the motor vehicle search as **P. Exh 5**. I have looked at the exhibit and it confirmed that the 2nd Respondent was the registered owner of the subject motor vehicle being motor vehicle registration number KCU 005R. The Appellant (PW1) also produced a Police Abstract as **P. Exh 4**. The Police Abstract confirmed the occurrence of the accident and further indicated the 1st Respondent being in control of the subject motor vehicle at

the time of the occurrence of the accident. The Court of Appeal in **Wellington Nganga Muthiora vs Akamba Public Road Services Ltd & Another (2010) eKLR** the Court of Appeal held as follows: -

“Where a police abstract was produced and there was no evidence adduced by a defendant to rebut it and not even cross-examination challenged it, the police abstract being a prima facie evidence (sic!) not rebutted could be relied on as proof of ownership in the absence of anything else as proof in civil cases was within the standards of probability and not beyond reasonable doubt as is in criminal cases. However, where it was challenged by evidence or in cross-examination, the plaintiff would need to produce certificate from the Registrar or any other proof such as an agreement for sale of the motor vehicle which would only be conclusive evidence in the absence of proof to the contrary”

16. I have gone through the record and I have noted that the Respondents did not call any witnesses to the trial court. They only produced a Medical Report **(D. Exh 1)** which confirmed the injuries suffered by the Appellant. This meant that the Appellant's testimony and evidence were uncontroverted. That said, the Appellant still bore the burden of proving his claim against the Respondents.

17. From the analysis above, I am satisfied that the Appellant proved his case against the Respondents. He proved that he was hit and injured by motor vehicle registration number KCU 005R and that the said motor vehicle was being driven by the 1st Respondent and was owned by the 2nd Respondent. With respect to the trial court, I disagree with its findings on apportioning liability.

18. In the end, the Appeal dated 7th November 2024 is merited and is allowed. For clarity, the Respondents are held jointly liable and the award of Kshs 800,000/= as general damages

and Kshs 141,637/= as special damages is upheld as per the proposed awards by the trial Court.

19. There are no orders as to costs.

**Judgment delivered, dated and signed at Bomet
this 4th Day of May, 2026.**

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**HON. JULIUS K. NG'ARNG'AR
JUDGE**

**Ruling Delivered in the presence of;
Susan/Siele Court Assistant
Kigure for Respondent**