Njuguna v AN (A Minor Suing through her Next Friend and Uncle David Maina Wangari) & 3 others (Civil Appeal 74 of 2023) [2025] KEHC 8882 (KLR) (Civ) (24 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8882 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYANDARUA

CIVIL

CIVIL APPEAL 74 OF 2023

KW KIARIE, J

JUNE 24, 2025

BETWEEN

JOSEPH NJUGUNA ..... APPELLANT

AND

AN (A MINOR SUING THROUGH HER NEXT FRIEND AND UNCLE DAVID MAINA WANGARI) ..... 1ST RESPONDENT

JOHN MACHARIA WANGARI ..... 2ND RESPONDENT

GLADYS WAHU WANGARI ..... 3RD RESPONDENT

MADISON INSURANCE COMPANY LIMITED ..... 4TH RESPONDENT

(Being an Appeal from the judgment and decree in Nyahururu Chief Magistrate's CMCC No. 116 of 2021 by Hon. V. Kiplagat – Senior Resident Magistrate)

JUDGMENT

1. Joseph Njuguna, the appellant, was the 1st defendant in Nyahururu Chief Magistrate's CMCC Nos. E116 of 2021, E146 of 2021, E147 of 2021, E115 of 2021 and E114 of 2021. He was sued for a general and special damages claim following a road traffic accident involving motor vehicle registration number KCL 3X2X and motor vehicle registration number KBG 5X7M. The appellant, the driver of motor vehicle registration number KBG 5X7M, was blamed for the accident and was held one hundred per cent liable. The first respondents were awarded damages as follows:

    a. In Civil Appeal number 74 of 2023, special damages of Kshs. 5,000 and Kshs. 60,000 general damages.

b. In Civil Appeal number 75 of 2023, special damages of Kshs. 5,000 and Kshs. 60,000 general damages.

c. In Civil Appeal number 76 of 2023, special damages of Kshs. 100,000 and Kshs. 2,303,632.20 general damages.

d. In Civil Appeal number 77 of 2023, special damages of Kshs. 5,000 and Kshs. 200,000 general damages.

e. In Civil Appeal number 83 of 2023, special damages of Kshs. 5,000 and Kshs. 200,000 general damages.

2. The appellant was aggrieved by the judgments and filed the appeals through Waichungo Martin & Company Advocates. He raised similar grounds of appeal as follows:

a. That the learned trial magistrate erred in law and fact in finding that the evidence presented before the Court proved that the appellant drove the motor vehicle Registration No. KBG 5X7M Toyota Premio at a high speed, and he failed to slow down on the bump when it was unsafe, causing the motor vehicle to collide with the motor vehicle registration No. KCL 3X2X, Honda Fit driven by the 3rd respondent.

b. That the learned trial magistrate erred in law and fact in finding the Appellant 100% liable for the accident.

c. That the learned trial magistrate erred in law and fact in failing to exonerate the appellant from any wrongdoing based on the evidence tendered by the parties on the occurrence of the accident.

d. That the learned trial magistrate erred in law and fact in failing to find that the evidence of PW2 and DW2 contradicted the evidence of PW1 and his pleadings filed in court on the occurrence of the accident.

e. That the learned trial magistrate erred in law and fact in holding the appellant 100% liable for the accident, yet the evidence of PW2 and DW2 was not conclusive on who was to blame for the occurrence of the accident.

f. That the learned trial magistrate erred in law and fact in holding the appellant 100% liable for the accident, yet PW1 in cross-examination by Mr. Mathea stated that he did not know who to blame for the accident.

g. That the learned trial magistrate erred in law and fact in failing to find that the police abstract form dated 16/4/2019 produced as DEXNO 5 contradicted the police abstract form dated 6/9/2019 produced as PEXH No: 1 on entry No. 7 results of investigations and the investigating officer was not called as a witness to explain the contradictions.

h. That the learned trial magistrate erred in law and fact in disbelieving the appellant. In contrast, the 2nd - 4th respondents did not testify to controvert the evidence by the appellant on the occurrence of the accident, where he blamed the 3rd respondent for the accident, which evidence corroborated the plaintiff's claim.

i. That the learned trial magistrate erred in law and fact by disregarding the overwhelming evidence on record, blaming the 3rd respondent for the accident, the appellant's submissions, and thereby arriving at a wrong decision.

3. The first and second respondents opposed the appeal through Mutai & Company Advocates. They contended that the appeal lacked merit. Murimi Ndumia Mbago& Muchela Advocates represented the third and fourth respondents.

4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.

5. On 14 April 2019, along the Nyahururu-Ol Kalou road, motor vehicle registration number KCL 3X2X collided with motor vehicle registration number KBG 5X7M. The 1st respondents in these appeals contended that the appellant was responsible for the accident. The learned trial magistrate agreed with them and held him 100% liable. This has been contested.

6. PC George Okeyo testified that the appellant knocked a lamp post and lost control. He veered to the lane of the oncoming motor vehicle and collided with registration number KCL 3X2X. Several passengers were injured. He was not part of the investigations. The source of his information is unclear, for during cross-examination, he conceded that the accident was referred to an inquest, for it was unclear who was to blame.

7. Similarly, the appellant's assertion that the motor vehicle driver with registration number KCL 3X2X is at fault is not substantiated by any evidence. These represent two opposing explanations of the same accident.

8. When parties fail to provide sufficient evidence to assist the court on liability, the mere fact of a collision is sufficient for the court to determine liability. Lord Denning L.J. (as he then was) in Baker vs Market Harborough Industrial Co-Operative Society Ltd [1953] 1 WLR 1472 at 1476, observed inter alia as follows:

> Every day, proof of collision is held to be sufficient to call on the defendant for an answer. Never do they both escape liability. One or the other is held to blame, and sometimes both. If each of the drivers were alive and neither chose to give evidence, the court would unhesitatingly hold that both were to blame. They would not escape liability simply because the court had nothing by which to draw any distinction between them...

9. The Court of Appeal followed this decision in Hussein Omar Farah v Lento Agencies [2006] eKLR. In this case, the learned trial magistrate erred in holding the appellant 100 per cent liable for the accident. I set aside the finding on liability and substitute it with a finding of each driver being 50 per cent liable.

10. The appellant did not raise any issues regarding the quantum of damages. This will remain unchanged, except that the appellant will only bear 50 per cent of the damages awarded against him in each appeal. The appellant will be entitled to half of the costs. To avoid doubt, this appeal's outcome will apply to Civil Appeal Nos. 75, 76, 77 & 83 of 2023.

DELIVERED AND SIGNED AT NYANDARUA ON THIS 24TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE