Jubaili Agrotec Limited & another v Kapanat & 2 others (Civil Appeal E796 & E825 of 2022 (Consolidated)) [2025] KEHC 11613 (KLR) (Appeals) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11613 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

APPEALS

CIVIL APPEAL E796 & E825 OF 2022 (CONSOLIDATED)

REA OUGO, J

JULY 31, 2025

BETWEEN

JUBAILI AGROTEC LIMITED ..... APPELLANT

AND

MIRIAM KIDOGO KAPANAT ..... 1ST RESPONDENT

BOKU BODHA ..... 2ND RESPONDENT

AS CONSOLIDATED WITH

CIVIL APPEAL E825 OF 2022

BETWEEN

MIRIAM KIDOGO KAPANAT ..... APPELLANT

AND

JUBAILI AGROTEC LIMITED ..... 1ST RESPONDENT

BOKU BODHA ..... 2ND RESPONDENT

(An appeal from the judgment and decree of the Small Claims Court at Milimani (J.P. Omollo, SRM/Adjudicator.) delivered on 26th September 2022 in SCCC No. E945 of 2022)

JUDGMENT

1. According to the record before me, by consent of the parties in HCCA No. E825 of 2022, on 14th February 2023, HCCA No. E796 of 2022 was consolidated with HCCA No. E825 of 2022. HCCA

No. E796 of 2022 was designated as the lead file. The appellant in the present appeal is the 1st respondent in HCCA No. E825 of 2022. The 1st respondent in this appeal is the appellant in HCCA No. E825 of 2022. The 2nd respondent remains unchanged in both appeals. For contextual purposes in this judgment, the appellant is Jubaili Agrotec Limited, while the 1st respondent is Miriam Kidogo Kipanat. The 2nd respondent is Boku Bodha.

2. Vide her statement of claim dated 24th April 2022, the 1st respondent averred that she was at all material times to this suit, the owner of motor vehicle registration number KBY 606E. The appellant was sued as the owner of motor vehicle registration number KCX 037Z while the 2nd respondent was joined in the proceedings as an interested party. On 4th March 2021, the two vehicles were involved in an accident. According to the 1st respondent, it was the appellant who hit her vehicle for failing to keep a safe braking distance. Preliminary findings blamed the appellant as the one who caused the accident.

3. Following the accident, the 1st respondent towed her vehicle from the scene and was charged Kshs. 25,000.00. She stated that she incurred Kshs. 5,000.00 for assessing her vehicle. The assessment revealed that the vehicle was so extensively damaged it was written off. Additionally, the 1st respondent claimed she had incurred Kshs. 105,000,00 for 21 days of car hire. She also spent Kshs. 550.00 establishing that the appellant was the owner of motor vehicle registration number KCX 037Z. For these reasons, the 1st respondent sought special damages amounting to Kshs. 886,050.00, plus costs and interest of the suit.

4. In its judgment dated 26th September 2022, the trial court found the appellant 100% liable for the accident. The court awarded the 1st respondent a sum of Kshs. 775,550.00. The 1st respondent was also awarded costs of the suit, together with interest from the date of filing the suit. Lastly, the suit against the 2nd respondent was dismissed, with the 1st respondent ordered to bear his costs.

5. The findings aggrieved the appellant. It submitted its memorandum of appeal dated 6th October 2022, which raised six grounds challenging the findings of the learned adjudicator. The appellant was unhappy that the learned magistrate found it 100% liable on the basis that its vehicle was driven at a high speed without considering the driver's evidence and its written submissions. In its view, the trial court should have apportioned liability. For these reasons, the appellant requested that the appeal be allowed by setting aside the trial court's judgment dated 26th September 2022. Instead, the appellant urged this court to find that the 2nd respondent was liable for causing the accident. The appellant further requested costs of this appeal and the suit at trial.

6. On her part, the 1st respondent filed her memorandum of appeal dated 14th October 2022. She raised three grounds disputing the findings of the learned magistrate, which are summarised as follows: the trial court disregarded her evidence and, as a result, erroneously disallowed the sum of Kshs. 110,000.00 that was pleaded and proved. For those reasons, the 1st respondent prays that her appeal be allowed by awarding Kshs. 110,000.00 being car hire expenses and assessment charges and costs.

7. The appeal was canvassed through written submissions. However, only the appellant and the 1st respondent filed their respective submissions. The appellant's submissions are dated 15th November 2023. The appellant also filed a digest and a bundle of authorities, similarly dated. Based on the burden of proof principle, the appellant argued that the 1st respondent failed to meet the required standard of proof, asserting that the appellant caused the accident. In its view, the 1st respondent did not discharge her evidentiary burden to prove negligence on the part of its driver.

8. The appellant submitted that the 1st respondent confirmed her vehicle was hit by the 2nd respondent's vehicle, namely motor vehicle registration number KCW 473U; a clear deviation from her witness statement, it added. It thus concluded that, based on the foregoing, the 2nd respondent failed to keep a safe distance and should therefore be held responsible for causing the accident.

9. The appellant pointed out that although the police officer who testified was not the investigation officer, he confirmed that the vehicles were moving slowly due to a traffic jam. Therefore, it was, in his view, incomprehensible for the same witness to testify that the appellant's driver was to blame for driving at a high speed. Based on the evidence of all witnesses, the appellant submitted that the only logical conclusion was that the 2nd respondent was responsible for causing the accident.

10. Turning to the award on quantum, the appellant submitted that the award by the trial court was reasonable and fair. Accordingly, the 1st respondent's appeal must fail because the suit vehicle was declared a total loss by the assessor. There was therefore no basis to award car hire expenses for a period of 21 days. In its view, awarding the same would amount to double compensation since she was awarded the pre-accident value of her motor vehicle less salvage. Relying on the case of *Raymond Muindi Simon vs. Takaful Insurance of Africa* [2019] eKLR, it urged this court not to interfere with those findings. Finally, by virtue of section 27 of the *Civil Procedure Act*, the appellant prayed that its appeal be allowed with costs.

11. The 1st respondent opposed the appellant's appeal and supported hers. Arguing both appeals, the 1st respondent relied on her written submissions and authorities annexed, dated 31st January 2024. She submitted that, based on the evidence of the respondents, all vehicles were heading in the same direction. Upon reaching the accident scene, the respondents' vehicles slowed down. However, the appellant's vehicle, being the last vehicle behind the respondents' vehicles, was driven at such a high speed that it crashed into the 2nd respondent's vehicle. The impact pushed the 2nd respondent's vehicle forward, causing it to hit the 1st respondent's vehicle.

12. The 1st respondent pointed out that the respondents' evidence was straightforward, while that of the appellant was shifty. On one hand, the appellant stated that an initial collision involving two third-party vehicles caused an impact on the 2nd respondent and the 1st respondent. However, later in their evidence, the appellant denied that position. In her view, although the appellant maintained that it did not cause the accident, she argued that the appellant caused a chain reaction due to negligent driving of its vehicle. Therefore, it was clear that the appellant was responsible for causing the accident as the proximate cause. She urged this court to also consider the impact of the collision, blaming the appellant for driving at an excessive speed.

13. Turning to her appeal, the 1st respondent submitted that she produced a receipt for Kshs. 5,000.00 as assessment costs and Kshs. 105,000,00 as car hire costs. She therefore pleaded and proved her case. Citing the case of *Samuel Kariuki Nyangoti v. Johaan Distelberger* [2017] eKLR, the 1st respondent urged this court to allow her appeal on the grounds that the Court of Appeal has awarded car hire charges even where the motor vehicle was written off. She prayed that the appellant's appeal be dismissed with costs, while her own appeal be allowed with costs.

Analysis and Determination

14. I have considered the memorandum of appeal as well as the written submissions, examined the record of appeal and analysed the law. A first appellate court, my primary role is to re-evaluate, re-assess and reanalyze the evidence on the record and draw my own conclusions bearing in mind that I did not have the advantage of seeing or hearing the witnesses. [See *Gitobu Imanyara & 2 Others vs. Attorney General* [2016] eKLR].

15. From the record before me, the 1st respondent called four witnesses. CW1, Corporal Abdulaziz Beoko, a Police Officer attached to Lari Police Station, testified based on the recordings in the occurrence book and the police abstract. CW1's evidence was that there were five cars at the accident scene. The accident occurred in a traffic jam along the road. Motor vehicle registration number KCX 037Z, an Isuzu NKR

Canter, was blamed for causing the accident. This is because, although the vehicles in front of it were moving at a slow speed, the Canter was driven at a high speed.

16. Explaining the circumstances and order of vehicles, CW1 depicted the appellant's vehicle as the last in line. It collided with the rear of a motor vehicle registration number KCW 473W, a Honda Fit. That vehicle then collided with the rear of the 1st appellant's Harrier, registration number KBY 606E, which in turn collided with KCU 141M, a Toyota Hilux, hitting the rear of an Isuzu lorry. All the vehicles were travelling parallel in the same direction. He produced the police abstract as evidence. He further stated that he was paid Kshs. 5,000,00 to attend court. He clarified that he was not the Investigating Officer.

17. CW2 Josphat Kamau, a motor vehicle assessor employed by Primedots Assessors, testified that he assessed the motor vehicle with registration number KBY 606E belonging to the 1st respondent, on her instructions. His findings revealed that the vehicle had extensive damage to the front and rear sides, causing it to be written off. This is because the repair costs were assessed at Kshs. 561,000.00, while the pre-accident value was assessed at Kshs. 1,100,000.00. The salvage value was assessed at Kshs. 350,000.00. His findings were documented in the report dated 3rd March 2022, which was produced as evidence. CW2 also submitted the receipt for Kshs. 17,500.00 for services rendered.

18. CW3 Maryanne Wambui Thairu testified that she was driving the first respondent's vehicle on the relevant date. According to CW3, she was with other passengers in the vehicle along the Nairobi-Nakuru Highway. When they reached Makina, the vehicles slowed down due to traffic congestion. Looking behind, CW3 suddenly saw a Canter speeding and crashing into a Honda Fit vehicle. The Honda Fit then rammed into their vehicle. After the accident occurred, CW3 saw liquid pouring out of the engine; an indication that it was broken. She then managed to establish the registration number of the Canter as KCX 037Z, while that of the Honda Fit was motor vehicle registration number KCW 473W. Police officers thereafter visited the accident scene.

19. CW4, the first respondent herein, testified that on the fateful day, she was seated in the back seat of her private motor vehicle along the Nairobi-Naivasha road. There was a pickup ahead of them and a Honda Fit behind them. Suddenly, she heard the driver screaming. That was when she realised that an accident had occurred. She had been hit by the Honda Fit. She, however, stated in her statement that it was the appellant who hit her. CW4 observed that her vehicle was extensively damaged when they struggled to exit it. When she finally alighted from the vehicle, CW4 noticed that five vehicles had been involved in the accident. She blamed the appellant's vehicle for causing the accident as he was driving at an excessive speed. The appellant's vehicle was driven so negligently, hitting the Honda Fit and consequently hitting her vehicle.

20. Following the accident, CW4's vehicle was towed away. She presented the towing receipt. CW4 testified that she was forced to use alternative means of transportation. She submitted the car hire receipt for a 21-day period. The receipt did not have a stamp for taxi services. She also confirmed through a search at the motor vehicle registry that the vehicle involved in the accident belonged to the appellant. She produced the search certificate and the receipt as evidence.

21. The appellant called RW1 Paul Onyango Oude, a driver of the appellant's motor vehicle with registration number KCX 037z. He confirmed that an accident took place on the relevant date involving five vehicles along the Nairobi-Nakuru highway. All vehicles were headed to Nairobi. He denied hitting the first respondent's vehicle but stated that it was hit by KCW 473w. He was driving at a speed of 40 kph. He explained that he hit KCW 473W because its driver did not maintain a safe distance. He accused the 1st respondent's vehicle of hitting the vehicle in front of it, which forced him to apply emergency brakes as a mitigating measure. Furthermore, he stated that if the 2nd respondent

had kept a safe distance from the 1st respondent's vehicle, the accident would not have occurred. Lastly, he confirmed that the police blamed him for causing the accident. He relied on the sketch map annexed to the claim form explaining the circumstances leading up to the accident.

22. The appellant also called RW2 Shadrack Kariuki Ndung'u to testify. His evidence was that on the relevant day, he was a passenger in the appellant's motor vehicle. The driver, RW1, was travelling at a speed of 40 – 50 kph. He confirmed that RW1 applied emergency brakes but still collided with KCW 473W. Five vehicles were involved in the accident. He also confirmed that RW1 was held responsible for the accident by the police. He clarified that it was the 1st respondent's driver who caused the accident, not RW1.

23. The 2nd respondent testified on his own behalf. He stated that on that day, he was driving his motor vehicle registration number KCW 470C along the Nairobi-Naivasha road towards Nairobi at around 4:00 p.m. He was travelling at an average speed of 20-30 km/h. Upon reaching Magina, the appellant's vehicle suddenly hit him, causing him to collide with the 1st respondent's vehicle. He could not determine the appellant's speed but recalled that the vehicle was coming downhill. In his view, the impact of the collision demonstrated that the appellant's vehicle was being driven at a high speed. He testified that the impact caused his windscreen to shatter and his vehicle was pushed forward. As a result, he collided with the 1st respondent's vehicle. In fact, the 2nd respondent and the occupants in his vehicle suffered serious injuries and were escorted to hospital in an ambulance. He was also injured. He sought compensation by filing a personal injury claim in Limuru CMCC No. 181 of 2022. The accident involved five cars. He was never charged with any traffic offence. Finally, he testified that although one is supposed to keep a distance of 70 meters by law between one's car and the vehicle ahead, he had maintained a distance of 10 – 20 meters because it was not practical to keep a 70m distance. He also relied on his sketch map describing the circumstances leading up to the accident. Additionally, he produced photographs of his vehicle after the accident occurred.

24. It is undisputed that on 24th April 2022, an accident occurred along the Nairobi-Naivasha Highway at Magina area. The accident took place at 4:00 p.m. involving the parties herein and two other vehicles. It is also accepted that all the vehicles were travelling towards Nairobi. The appellant's motor vehicle with registration number KCX 037Z, an Isuzu NKR Canter, was last in line. Ahead of it was the 2nd respondent's vehicle, a Honda Fit with registration number KCW 473W. The 1st respondent's vehicle, a Harrier with registration number KBY 606E, was ahead of the 2nd respondent's vehicle. The 1st respondent's vehicle rammed into KCU 141M, a Toyota Hilux, striking the rear of an Isuzu lorry. RW1 was driving the appellant's vehicle; CW3 was driving the 1st respondent's vehicle, while the 2nd respondent was the driver of his vehicle. RW2 and the 1st respondent were passenger witnesses.

25. It is also acknowledged that following the accident, the respondents' motor vehicles were damaged. The main issue is who is responsible for the accident. It is clear that the respondents agree on the circumstances leading up to the accident, whereas the appellant appears to blame the 1st respondent for applying emergency brakes. Conversely, the appellant holds the 2nd respondent responsible for causing the accident due to his failure to maintain a safe distance.

26. Considering all the evidence in its entirety, it is my finding that the appellant indeed hit the 2nd respondent. During the testimonies of the parties, it was not denied that the appellant's lorry was emerging from a downhill. It is highly probable that, based on this, it was travelling at high speed. Both witnesses did not deny this. I am therefore of the view that, on a balance of probabilities, the appellant's driver should bear the entire burden of blame.

27. Further parties involved confirmed that traffic congestion had built up. The accident occurred at around 4:00 p.m. None of the drivers indicated that they had visibility problems or that any other issues

caused the accident. In fact, all drivers boasted of years of experience with no accidents on their records. Therefore, the appellant ought to have been careful, as the last driver, to observe the traffic congestion and slow down without causing an accident. Since none of the vehicles were tested as having any pre-accident defects, the duty to be cautious fell on the drivers to notice the car ahead. In this case, I do not believe the appellant was careful enough.

28. Additionally, the impact of the collision indicated that the appellant was indeed speeding. This is because the 2nd respondent not only had a damaged rear and broken windscreen, as shown in the photographs of his vehicle after the accident, an unrefuted fact, but has also filed a personal injury claim against the appellant due to injuries he sustained. If it had been the 1st respondent who caused the accident, I do not believe the impact would have resulted in the damage observed here.

29. The appellant also tried to distance itself from liability because it did not directly hit the 1st respondent. It blamed the 2nd respondent for not keeping a safe distance. However, that argument is rejected. If the appellant's driver had been careful, this accident would not have happened. Furthermore, it is obvious that the appellant's vehicle pushed the 2nd respondent's vehicle into hitting the 1st respondent's vehicle; this fact, according to legal and evidentiary standards, proves on a balance of probabilities that the appellant caused the accident.

30. This court recognises that when traffic congestion occurs, vehicles maintain a safe distance to benefit other road users. It is therefore unreasonable to find the 2nd respondent responsible for the accident. I echo the words of Emeritus Chief Justice Maraga, J., who, while sitting in this court, reflected in the case of *Edward Mzamili Katana vs. CMC Motors Group Ltd & Another* [2006] KEHC 2264 (KLR):

> "It has been said that in a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events. But any attempt to impose liability on such a basis would not only be absurd but would also result in infinite liability for all wrongful acts and inundate courts with endless litigation. As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy. The act of the defendant must be the proximate cause of the injury or must be closely connected with it for the defendant to be held liable. What is "proximate cause" of an accident or occurrence?
>
> "Proximate Cause," also termed direct cause, procuring cause, producing cause or primary cause has been defined by Blacks Law Dictionary, 7th Edition as:
>
> "A cause that is legally sufficient to result in liability. A cause that directly produces an event without which the event would not have occurred."

31. The proximate cause was clearly attributable to the appellant. I therefore find that the trial magistrate correctly determined that the 1st respondent was not liable for the accident. The appellant's appeal, therefore, lacks merit and is hereby dismissed.

32. On the matter of quantum, the 1st respondent argued that the trial magistrate erred in failing to award her the sum of Kshs. 110,000.00 for car hire expenses and assessment charges, which were pleaded and proved. It is well established law that this court should not interfere with an award of damages unless it has been shown that the award was excessively high or low to constitute an entirely unreasonable estimate. It must be demonstrated that the judge relied on incorrect principles, or misunderstood the evidence in a significant way, leading to a figure that was either unreasonably high or low. [See *Bashir Ahmed Butt vs. Uwais Ahmed Khan* [1982-88] KAR 5].

33. The trial court awarded Kshs. 750,000.00 since the vehicle was declared a total loss. This amount was calculated by subtracting the salvage value from the pre-accident value of the vehicle. In its view, since that claim succeeded, the 1st appellant was not entitled to car hire expenses for 21 days. The court also awarded Kshs. 25,000.00 for towing fees and Kshs. 550.00 for the motor vehicle search.

34. Regarding the award for towing charges, the value of the motor vehicle, and the motor vehicle search, this court agrees with the findings of the trial magistrate to the extent that they were awarded properly. However, it is noteworthy that the trial magistrate failed to award the sum of Kshs. 5,000.00 for the receipt dated 23rd March 2022. In my view, the amount was pleaded and proved, and therefore, should have been awarded.

35. What about the award for loss of user? It is well established law that loss of user must be specifically pleaded and proved. In this case, the 1st appellant pleaded that she spent Kshs. 105,000.00 on car hire. When assessing these damages, especially where a vehicle has been completely written off, I am guided by the authority of *Permuga Auto Spares & another vs Margaret Korir Tagi* [2015] eKLR, where the court stated thus: -

> " It is the Court's view that once a vehicle has been written off, the only compensation is the per-accident value, less salvage value as assessed and other reasonable consequential expenses that are subject to prove. There would ordinarily be assessment charges, towing charges, excess but not loss of user. The payment of the pre-accident value is made to bring the owner to as near as possible to the state he would have been if not for the accident and loss. In the Court's view, to award damages for loss of user as well as the pre-accident value and other consequential losses would be to award double compensation. The claim for loss of user is disallowed."

36. This is the reasoning that informed the trial magistrate to disallow the claim sought. I have also considered the decision cited by the 1st respondent in *Samuel Kariuki Nyangoti vs. Johaan Distelberger* (*supra*). I find that the facts presented in that decision of the Court of Appeal were distinguishable from the present case. Firstly, in this case, the 1st appellant failed to demonstrate that the suit vehicle was for commercial purposes; a fact that was proved in the Court of Appeal. Additionally, the sum sought in the Court of Appeal was for loss of use of profits, a fact that was not pleaded in the present case. The facts in that decision are therefore not comparable to the facts in this dispute as to apply that decision here. I therefore reinforce my position that the learned magistrate did not err in her findings dismissing the claim for loss of use.

37. In view of my foregoing analysis, the following are my final orders in respect to both appeals:

    1. Civil appeal No. E796 of 2022 lacks merit and is hereby dismissed with costs to the 1st respondent.

    2. Civil appeal No. E825 of 2022 is merited to the extent that the award of Kshs. 5,000.00, expenses incurred for assessment of the suit vehicle, are hereby included in the judgment sum granted by the trial court in its decision dated 26th September 2022;

    3. Since Civil Appeal No. E825 of 2022 partially succeeds; the 1st respondent is awarded half the costs of the appeal.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JULY 2025.

R.E.OUGO

JUDGE

In the presence of:

Mr. Ojong'a - for the Appellant

Miss Kamau - for the 1st Respondent

Miss Kagori - for the 2nd Respondent

Wilkister - C/A