



REPUBLIC OF KENYA



KENYA LAW
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**Daniel v Munywoki (Civil Appeal 24A of 2019)
[2022] KEHC 11180 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 11180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL APPEAL 24A OF 2019**

**RK LIMO, J
JUNE 23, 2022**

BETWEEN

CHRISTINE DANIEL APPELLANT

AND

KEVIN MOVA MUNYWOKI RESPONDENT

*(Being an appeal against the decree and judgement delivered on 20th day of
March 2019 by Hon. J. Munguti (P.M) in Kitui CMCC No. 158 of 2017)*

JUDGMENT

1. This appeal is related to Civil Appeal No. 24B of 2019 and this court could have adopted the whole judgement in that other appeal in this appeal but for the peculiar circumstances which I will briefly point out for the interest of judicial time. I have exhaustively analyzed the evidence tendered in court in Civil Appeal No. 24B of 2019.
2. In this appeal, the respondent filed submissions unlike the former appeal and opposed this appeal.
3. The other peculiarity in this appeal is the fact that the respondent was a pillion passenger unlike the former where the respondent was a rider.
4. In my view, there is no contest on the fact that the respondent herein agreed to be carried as an excess pillion passenger. It is difficult to know given the evidence tendered whether he was the 1st or 2nd pillion passenger. What is clear is that if the rider had carried only one pillion passenger then he could have been made to pay for 2 casualties of the accident which he undoubtedly caused. This court having considered the circumstances obtaining, it is only fair that the respondent be made to contribute to the liability because of allowing himself to be carried in twos. He should have gotten another boda boda to take him to wherever destination. By allowing himself to be an excess passenger and in the process an accident occurred even if he did not cause it, the fact that there were excess passengers added or aggravated the attendant liability attributed to the appellant. This court finds that the trial court erred



when it held that the appellant was 100% to blame. Had the respondent not been an extra passenger, the appellant could not have been made for two casualties but one.

The passenger being an excess passenger ought to have been apportioned 40% liability. In my considered view a party should not be asked to carry the whole burden where it is obvious that the action of the victim or 3rd party aggravated the damages payable. The respondent was also not wearing a helmet and though this issue was not well ventilated it may have contributed to the seriousness of the head injuries.

On quantum, I notice that in the judgement while the trial court rightly observed that the respondent had submitted for Kshs. 650,000 while the appellant submitted for an award in the region of Kshs. 350,000 it however awarded Kshs. 1 million which I find a bit excessive. I also find the award of Kshs. 5,000 for police officer who had testified in a related case to be unjustified. The award should not have been awarded in the first place. Taking everything into consideration, this court set aside the judgement on liability and in its place, liability is apportioned as follows: -

- a. Appellant 60% liability
Respondent 40% liability

On quantum the award of Kshs. 1 million is set aside, the respondent is awarded as follows: -

- i. General damages Kshs. 600,000
- ii. Special damages Kshs. 11,961
Less 40% liability - 61,196.10

550,764.90

The respondent will have costs and interests in the lower court with due apportionment of liability being factored in. The appellant shall have 40% costs in this appeal.

DATED, SIGNED AND DELIVERED AT KITUI THIS 23RD DAY OF JUNE, 2022.

HON. JUSTICE R. K. LIMO

JUDGE

