



REPUBLIC OF KENYA



**Mariga v Maosa (Civil Appeal 112 of 2021)  
[2022] KEHC 17139 (KLR) (25 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 17139 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL 112 OF 2021  
REA OUGO, J  
NOVEMBER 25, 2022**

**BETWEEN**

**GEOFFREY MARIGA ..... APPELLANT**

**AND**

**DENNIS NYAATA MAOSA ..... RESPONDENT**

*(Being an appeal from the judgment/decree of the Hon. Nathan Shiundu Lutta (C.M) a delivered on 31st August, 2021 in Kisii CMCC No. 3 of 2019)*

**JUDGMENT**

1. The respondent sued the appellant for general damages and special damages of Kshs 53000/- for injuries sustained in road traffic accident on the July 2, 2018. The plaintiff was a passenger in motor vehicle registration number KAR 947G. the accident happened along Kisii - Oyugis road at Nyakoe area. It was the respondent's allegation that the appellant's driver drove negligently and or carelessly and lost control of the vehicle causing it to veer off its lane and it knocked motor vehicle registration number KAZ 519T and motor vehicle registration number KBW 115H and as result of the collision the respondent sustained injuries.
2. The respondent particularised his injuries as follows; a deep cut wound on the frontal region, 3<sup>rd</sup> left rib fracture, 4<sup>th</sup> left rib fracture, bruises on the right hand, bruises on the left hand, degloving injury on the right leg and deep cut wound on the left ankle region.
3. In a judgment dated the August 31, 2021 the trial court found the appellant 100% liable and awarded the respondent general damages of Kshs 400,000/- and special damages of Kshs 53000/-.
4. In his memorandum of appeal dated the September 25, 2021, the appellant has listed 10 grounds of appeal which can be summed as two issues liability and quantum.



5. This being the first appellate court there is need to look at the evidence adduced before the lower court afresh bearing in mind that did not have the benefit of seeing or hearing the witnesses as they testified. (See the case of *Selle v Associated Motor Boat Company Ltd* [1968] EA 123, 126).
6. Dennis Nyatta Moaosa (PW2) the respondent adopted his written statement. He testified that on the July 2, 2018 he was a lawful passenger in vehicle registration number KAR 947G when the driver who was driving along Kisii-Oyugis road drove negligently and the vehicle lost control veered off its lane and knocked vehicle registration no KAZ 519T and vehicle registration number KBQ 115 on as a result he sustained the following issues
  - a. Deep cut wound on the frontal region
  - b. 3<sup>rd</sup> left rib fracture
  - c. 4<sup>th</sup> left rib fracture
  - d. Bruises on the right hand
  - e. Bruises on the left hand
  - f. Degloving injury on the right leg
  - g. Deep cut wound on the left ankleThe respondent indicated that he still experiences headaches.
7. Doctor Peter Morebu Momanyi ( PW1) testified that the plaintiff sustained a 3<sup>rd</sup> left rib fracture, a 4<sup>th</sup> rib fracture, a deep cut wound on the frontal region of the head and left region of the head, bruises on the left and right hand and degloving injury on the right leg.
8. DWI, Jennipher Kahuthu testified that she examined the treatment notes and x-ray the respondent had and concluded that he had soft tissue injuries. She also produced the report by Doctor Kuoko. Her examination was 8 months after the accident.
9. The appellant has in his submissions attacked the evidence adduced by the respondent
10. On liability I agree with the trial magistrate's finding that the defendant was 100%. It was the respondent's evidence that the driver drove negligently and that it veered off the road causing a collusion with 2 other vehicles. This evidence was not challenged hence I see no need to interfere with the finding of the trial court.
11. I now turn to consider whether the damages awarded were excessive. The limitations under which an appellate court will interfere with an award in general damages was stated by the Court of Appeal in *Bashir Ahmed Butt vs Uwais Ahmed Khan* (1982-88) KAR as follows:

"An appellate court will not disturb an award for general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low..."
12. Appellant suggests a sum between 50000/- and 70000/-. Case cited was of a minor not adult. The respondent maintained that the sum of Kshs 400000/- was reasonable.
13. Considering the trends of the courts awards the awarded of 400,000/- is reduced to 250000/-.



14. Respondent proved specials of Kshs 6,500 for doctor Morebu, 500/ for search plus Kshs 48,000/- paid for physio. He proved the claim of special damages and I sustain it.
15. Judgment accordingly.

**DATED, SIGNED, AND DELIVERED AT KISII THIS 25TH DAY OF NOVEMBER 2022.**

**R.E. OUGO**

**JUDGE**

