



**Milgo Alias Henry Kiprono Milgo v Chemutai (Civil Appeal
E042 of 2022) [2025] KEHC 45 (KLR) (13 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 45 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E042 OF 2022
RL KORIR, J
JANUARY 13, 2025**

BETWEEN

HENRY MILGO ALIAS HENRY KIPRONO MILGO APPELLANT

AND

FRIDAH CHEMUTAI RESPONDENT

*(Being an Appeal from the Judgment of the Senior Resident Magistrate,
Omwange J. at the Magistrate's Court at Sotik in Civil Suit Number 64 of 2020)*

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages arising out of a road traffic accident on 16th June 2020. That she was a pillion passenger on motor cycle registration number KMFC 764V which was hit by motor vehicle registration number KCT 341D that allegedly belonged to the Appellant.
2. The trial court conducted a hearing where the Respondent called four witnesses and the Appellant called one witness.
3. In its Judgment dated 14th January 2022, the trial court apportioned liability in the ratio of 90:10 in favour of the Plaintiff/Respondent. The trial court further awarded net damages of Kshs 229,500/= to the Plaintiff/Respondent.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 21st October 2022 appealing against the whole Judgment and relied on the following grounds:-
 - I. That the learned Magistrate erred in law and fact in finding the Appellant 90% liable in negligence to the Respondent in view of the evidence adduced and the statement of defence filed.



- II. That the learned Magistrate erred in law in finding that the Plaintiff was only 10 % liable to blame for the accident.
 - III. That the learned Magistrate erred in law and fact and completely misapprehended the principles governing an award of general damages and thus arrived at a figure that was inordinately high.
 - IV. That the learned Magistrate erred in law and fact by failing to take into account the Defendant's submissions and the binding authorities cited in regard to principles and law governing both liability and quantum and thus arrived at an erroneous conclusion.
 - V. That the learned Magistrate erred in law and fact by giving a contradictory Judgement.
 - VI. That the learned Magistrate erred in law and fact in failing to consider the weight of evidence adduced by the Defendant.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of 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. See *Chezlut Freight Limited v Misi & another* (Suing as the Administrators of the Estate of Patrick Mutie Misi (Deceased)) [2024] KEHC 14270 (KLR)

The Plaintiff's/Respondent's case.

6. Through her Complaint dated 19th August 2020, the Respondent stated that she was a pillion passenger on motorcycle registration number KMFC 764V when they were hit by motor vehicle registration number KCT 341D along Mogosiek-Litein road.
7. The Respondent stated that the Appellant being the owner of motor vehicle registration number KCT 341D, was sued vicariously and was thus negligent in causing the accident. The particulars of the negligence were particularized in paragraph 5 of the Complaint.
8. That as a result of the accident, she suffered soft tissue injuries of the right elbow, soft tissue injuries of both knee joints and blunt injury to the anterior chest wall leading to soft tissue injuries.
9. The Respondent's claim against the Appellant was for special and general damages.

The Appellant's/Defendant's case

10. Through his statement of defence dated 4th September 2020, the Appellant denied that he was the registered owner of motor vehicle registration number KCT 341D and further denied that the said motor vehicle was under its management and control.
11. The Appellant denied the particulars of negligence levelled against him. That if any accident happened, it was caused solely by the negligence of the Respondent. He particularized the negligence in paragraph 7 of his Defence.
12. On this Appeal, parties were directed to file submissions to canvass the Appeal.

The Appellant's submissions.

13. In submissions dated 1st November 2023, the Appellant submitted that the trial court erred when it apportioned liability in the ratio of 90:10 in favour of the Respondent. He submitted that the trial court failed to consider that the Respondent was in an overloaded motor cycle which had carried two pillion passengers. That the motorcycle became unbalanced and hard to control. He further submitted



that the Respondent did not wear any protective gear. He relied on Joyce Mumbi Mugi vs The Co-operative Bank of Kenya Limited & 2 others Civil Appeal No. 214 of 2004 and Chao vs Dhanjal Brothers Ltd & 4 others (1990) KLR 482.

14. It was the Appellant's submission that there was no evidence adduced to indicate that he was to solely blame for causing the accident. That had the Respondent worn protective gear, she would have sustained minimal injury. It was his further submission that this was a clear indication of contributory negligence and he relied on MacDrugall App vs Central Railroad Co. Rbr 63 Cal 431.
15. On the issue of general damages, the Appellant submitted that the award of Kshs 250,000/= was excessive and erroneous. That in reaching an appropriate award, the court should be consider the value of the shilling and the state of the economy. He relied on Kigaraari vs Aya (1982-88) 1 KAR 786 and Jabane vs Olenja (1986) KLR 661.
16. It was the Appellant's submission that the Respondent's injuries were soft tissue injuries which amounted to harm. That an amount of Kshs 100,000/= would be sufficient compensation. He relied on Ephraim Wagura Muthui & 2 others vs Toyota Kenya Limited & 2 others (2019) eKLR.

The Respondent's submissions.

17. Through his submissions dated 22nd July 2024, the Respondent submitted that the trial court apportioned her 10% liability because she was one of the two pillion passengers that were on board motorcycle registration number KMFC 764V.
18. It was the Respondent's submission that the Appellant failed to show the steps that he (Appellant) took in trying to avoid the accident. It was her further submission that that PC Wangila (PW4) indicated that the driver of the motor vehicle was turning right towards the petrol station without due care and that the driver was blamed for causing the accident as per the Police Abstract.
19. The Respondent submitted that the trial court upon considering all the facts and evidence did not err when it apportioned liability in the ratio of 90:10 in her favour. That this court should uphold the same.
20. It was the Respondent's submission that the trial court did not err when it awarded her Kshs 250,000/= as general damages. That she suffered soft tissue injuries to her right elbow joint, blunt injury to her anterior chest and soft tissue injuries on both knee joints. It was his further submission that the clinical officer (PW2) and Dr. Omuyoma (PW3) examined him and classified the injuries he suffered as harm.
21. The Respondent submitted that the award on general damages should not be disturbed. He relied on Equity Bank of Kenya Limited vs David Githuu Kuria (2020) eKLR where the court reduced an ward of Kshs 400,000/= to Kshs 250,000/= for blunt injury (tender) anterior chest wall, cut wounds left knee and swollen tender left knee.
22. I have gone through and carefully considered the Record of Appeal dated 21st October 2022, the Appellant's written submissions dated 1st November 2023 and the Respondent's written submissions dated 22n July 2024. The two issues for my determination are:-
 - i. Liability
 - ii. Quantum



i. Liability

23. This is a sister file to Bomet High Court Civil Appeal Number 41 of 2022, Henry Milgo vs Victor Kiplangat Kigen. The Respondent (Victor Kiplangat Kigen) was the rider of motor cycle registration number KMFC 764V and the Respondent herein (Fridah Chemutai) was one of the pillion passengers. I have already found that it was not in dispute that the motor cycle registration number KMFC 764V was overloaded and the rider and his two passengers had to bear some liability in the accident. Similarly, in the present case, even though the Respondent was a pillion passenger, she had to bear some liability as she exposed herself to risk when she boarded an overloaded motor cycle contrary to National Transport and Safety Authority (Operation of motorcycles) regulations 2015 and section 68(3) of the [Traffic Act Cap 403](#) Laws of Kenya. The same have been aptly described in this court's Judgement in Bomet High Court Civil Appeal Number 41 of 2022, Henry Milgo vs Victor Kiplangat Kigen.
24. It is my finding therefore that the trial court's apportionment of 10% liability for the Respondent was sufficient and I uphold the same.

Quantum

25. As per the Complaint, the Respondent soft tissue injuries of the right elbow, soft tissue injuries of both knee joints and blunt injury to the anterior chest wall leading to soft tissue injuries.
26. Kipkorir Duncan Bii (PW2) who was a clinical officer stated that he examined the Respondent and found that she had soft tissue injuries on her thorax and abdomen. That she also had chest pains. PW2 classified the injuries as harm. Dr. Obed Omuyoma (PW3) testified that the Respondent had suffered soft tissue injuries on her right elbow, chest and both knee joints.
27. The Appellant submitted that the Respondent's injuries were soft tissue injuries which amounted to harm. That an amount of Kshs 100,000/= would be sufficient compensation and he relied on Ephraim Wagura Muthui & 2 others vs Toyota Kenya Limited & 2 others (2019) eKLR.
28. On the other hand, the Respondent submitted that the award on general damages should not be disturbed. She relied on Equity Bank of Kenya Limited vs David Githuu Kuria (2020) eKLR where the court reduced an award of Kshs 400,000/= to Kshs 250,000/= for blunt injury (tender) anterior chest wall, cut wounds left knee and swollen tender left knee.
29. From the above, it was evident that there was no dispute as to the type and nature of the injuries suffered by the Respondent. The injuries as described by the Respondent, PW2 and PW4 were soft tissue injuries.
30. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice.
31. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in Stanley Maore vs Geoffrey Mwenda (2004) eKLR, held:-

“...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be



that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

32. The Respondent suffered similar injuries to the rider (Victor Kiplangat Kigen). I shall use the same cases I used in Bomet High Court Civil Appeal Number 41 of 2022, Henry Milgo vs Victor Kiplangat Kigen for comparative analysis:-
- I. In Equity Bank of Kenya Limited vs David Githuu Kuria (2020) eKLR, the court reduced an award of Kshs 400,000/= to Kshs 250,000/= for blunt injury (tender) anterior chest wall, cut wounds left knee and swollen tender left knee.
 - II. In Kiruma vs Chege [2024] KEHC 5998 (KLR), the court upheld an award of Kshs 250,000/= for bruises on the right hand, left knee, right side of the chest and on the right ear.
 - III. In Michael Okello vs Prisca Atieno (2021) eKLR the court awarded Kshs. 250,000/= for blunt injury to the head, blunt injury to the forehead, blunt injury to the neck, blunt injury to the chest with fracture of the 1st anterior rib, bruises and blunt injury to the left shoulder, bruises to the left shoulder, bruises and blunt injury to the left upper limb, bruises and blunt injury to the right upper limb, cut wound and blunt injury to the right lower limb.
 - IV. In ENA Investment Limited vs Onduso (Civil Appeal E092 of 2021) [2023] KEHC 23549 (KLR) (5 October 2023) (Judgment), the Respondent suffered right sub-conjunctival haemorrhage, deep cut wound to the face, deep cut wound to the right leg, deep cut wound to the left leg, chest contusion, bruises on the neck, bruises on the right elbow, blunt trauma on the lower back, blunt trauma on the right elbow, blunt trauma on the right knee and loss of one tooth. The appellate court upheld the award of Kshs 250,000/=.
33. I have considered the authorities above and the nature of the injuries suffered by the Respondent. I have also considered the current inflation rates and I find that the award of Kshs 250,000/= was reasonable and just in the circumstances. I uphold the same.
34. With regards to the special damages, the Respondent particularized the same as follows:-
- I. Medical Report Kshs 5,000/=
 - II. Motor Vehicle Search Kshs 550/=
35. The Respondent produced a receipt for the Medical Report for Dr. Obed Omuyoma as P.Exh 3b. There was no receipt for the Motor Vehicle Search. The total amount of special damages was Kshs 5,000/= which I uphold.
36. In the final analysis, I find no reason to interfere with the award of the trial court as the award on general and special damages was just and fair.
37. In the end, the Memorandum of Appeal dated 21st October 2022 has no merit and is dismissed with costs to the Respondent. The costs in the main suit shall remain as awarded by the trial court.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 13TH DAY OF JANUARY, 2025.

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R. LAGAT-KORIR

JUDGE



Judgement delivered in the absence of the parties.

Siele (Court Assistant).

