



**Gikara v Ndaya (Civil Appeal E797 of 2024)
[2025] KEHC 3098 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3098 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E797 OF 2024

AC MRIMA, J

MARCH 6, 2025

BETWEEN

ANTHONY MACHARIA GIKARA APPELLANT

AND

JOSEPH MUIRURI NDAYA RESPONDENT

*(Being an appeal from the judgment and decree of the Nairobi
[Milimani] Chief Magistrate's Commercial Court Civil Case No.
E3899 of 2022 (Hon. Mayamba, C.A., HSC) delivered on 21/06/2024)*

JUDGMENT

1. Anthony Macharia Gikara, the Appellant herein, was sued in Nairobi [Milimani] Chief Magistrates Commercial Courts Case No. E3899 of 2022 [hereinafter referred to as 'the civil suit'] by Joseph Muiruri Ndaya, the Respondent in respect of injuries sustained by the Respondent on 12th October 2021. It was the Respondent's case that the Appellant who was the registered owner of the subject Motor Vehicle registration number KCZ 047N [hereinafter referred to as 'the vehicle'] caused the vehicle to injure him.
2. It was the Respondent's case that as a mechanic, he was repairing the vehicle when the Appellant and/or his driver or servant drove it off without notice or any warning, a result of which the vehicle ran over the Respondent.
3. The Appellant denied liability and the civil suit was heard. The Respondent testified as PW2 and called three witnesses being Dr. Cyprian Okoth as PW1, Alfred Gachanja who was an eye-witness as PW3 and No. 78192 PC Weldon Kujaa attached at Kamukunji Police Station as PW4. The Appellant testified as DW1 and called one Michael Chege Njogu who was the owner of the garage in which the Respondent was allegedly injured. He was DW2.



4. Judgment was rendered on 21st June 2024 in which the contributory negligence was apportioned between the Respondent and the Appellant at 20% and 80% respectively. The Respondent was then awarded Kshs. 800,000/= on General damages, Kshs. 248,982/= on special damages together with costs and interest. It was that decision which aggrieved the Appellant thereby filing the instant appeal.
5. Directions were taken and the appeal was to be heard by way of written submissions. Both parties complied. Relying on various decisions, the parties argued in favour of their rival positions and each urged this Court to find in its favour. Whereas the Appellant prayed for the appeal to be allowed and he be found not to be liable, but the third party or alternatively the award on general damages be revised downwards to Kshs. 600,000/=, the Respondent prayed for the dismissal of the appeal with costs.
6. This is a first appeal against the impugned judgment. The role of the first appellate Court was discussed by the Court of Appeal in *Abdul Hammed Saif vs. Ali Mohamed Sholan* (1955) 22 E.A.C.A. 270. Even though the case was an appeal from the High Court to the Court of Appeal still the applicable legal principles are similar to appeals from the lower Courts to the High Court, hence, its relevance.
7. The Court of Appeal stated as follows: -

.... An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally....
8. See also *Selle & Another vs. Associated Motor Boat Co. Ltd. & Others* (1968) EA 123.
9. In this appeal, the Appellant contested both the aspect of liability and quantum of damages. As such, this Court will deal with each of them in turn.
10. On the liability between the parties, there were two divergent positions on how the accident occurred. The Respondent averred that the Appellant's driver drove off the vehicle as he was underneath working thereby being run over. That evidence was corroborated by PW3 who was at the scene and witnessed the events. In fact, PW3 affirmed that he saw the Appellant's driver on the driver's seat immediately after the vehicle ran over the Respondent. He did not agree with the version that the vehicle reversed on its own motion. On the other side, the Appellant's assertion was uncorroborated. No one who was at the scene witnessed the vehicle reversing on its own motion.
11. The trial Court analyzed the evidence quite well. It agreed with the Respondent and found the Appellant largely to blame for the accident. The Court was even quite generous to apportion 20% contributory negligence to the Respondent. On a re-assessment of the facts, the contention that the vehicle reversed on its own cannot hold more so since the driver did not even testify. The assertion was by someone who did not witness the accident. Such amounts to hearsay and do not lie in law as admissible evidence.
12. In the end, this Court finds and hold that the trial Court handled the aspect of liability properly and no basis has been laid to interfere with such finding.
13. Next is the issue of damages. The Appellant's gravamen is that the award ought to have been Kshs. 600,000/= instead of Kshs. 800,000/=.



14. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -

The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

[Also see *Arrow Car Limited -vs- Bimomo & 2 others* (2004) 2 KLR 101 and *Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd* (2013) eKLR].

15. Applying the above in this case and having considered the medical evidence on record and the various decisions referred to before the trial Court and before this Court, this Court is equally satisfied that the award is reasonable in the circumstances.
16. Having found as much, the upshot is that the appeal is unsuccessful. It is hereby dismissed with costs. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Mwangi, Learned Counsel for the Appellant.

Mr. Ongato, Learned Counsel for the Respondent.

Michael – Court Assistant.

