



Great Rift Express Shuttle Service & another v Kiplagat (Civil Appeal E027 of 2021) [2025] KEHC 6687 (KLR) (22 April 2025) (Judgment)

Neutral citation: [2025] KEHC 6687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E027 OF 2021
GL NZIOKA, J
APRIL 22, 2025**

BETWEEN

GREAT RIFT EXPRESS SHUTTLE SERVICE 1ST APPELLANT

JAMES NDERITU 2ND APPELLANT

AND

MAGDALENE JEPKOSGEI KIPLAGAT RESPONDENT

(Being an appeal from the decision of Honourable Martin. N. Mutua; Resident Magistrate delivered on 28th May 2021 vide Naivasha CMCC No. 88 of 2017)

JUDGMENT

1. By a plaint dated 23rd February 2017 the plaintiff (herein “the respondent”) sued the defendants (herein “the appellants”) seeking for judgment against the appellants for: -
 - a. General damages.
 - b. Special damages – Kshs. 160,829.
 - c. Costs of this suit.
2. The respondent’s claim arose from a road traffic accident that occurred on or about 19th August 2016. She avers that on the material date, she was travelling as a passenger on a motor vehicle registration No. KBN 015R driven by the 2nd appellant along Nairobi-Naivasha road.
3. That the 2nd appellant drove the vehicle negligently in that he caused it to lose control and overturn thereby causing the accident. The particulars of negligence attributed to the 2nd appellant are tabulated at paragraph 6 of the plaint.
4. The respondent pleaded that as a result of the accident she sustained the following bodily injuries: -



- a. Fracture 5th and 7th ribs of the right side of the chest;
 - b. Fracture of the clavicle;
 - c. Multiple abrasions on both hands.
5. The 1st appellant is sued under the doctrine of vicarious liability on the ground that, it is the registered owner of the subject vehicle and authorized the 2nd appellant, its driver and/or agent to drive the said vehicle.
 6. However, the claim was opposed vide a statement of defence dated 8th June 2017, wherein the appellants basically deny all the averments in the plaint, including the ownership of the vehicle, the particulars of negligence attributed to the 2nd appellant and/or the alleged injuries sustained by the respondent.
 7. However, the appellants pleaded in the alternative and without prejudice basis that if the accident occurred then it was caused by the respondent solely or substantially contributed to it, as per the particulars at 4 of the defence.
 8. Upon hearing the matter, the trial court by a judgment delivered on 28th May 2021, entered judgment in favour of the respondent as follows: -
 - a. Liability: 100% in favour of the plaintiff.
 - b. General damages-----Kshs. 1,000,000.
 - c. Special damages-----Kshs. 158,829
 - Total-----Kshs. 1,158,829
 9. However, by a memorandum of appeal dated 7th June 2021, the appellant is appealing against that judgment on the following grounds:
 - a. That the learned trial Magistrate erred in law in making a finding of damages against the defendant.
 - b. That the learned trial Magistrate erred in law and fact in holding that the defendant was 100% liable for the excessive damage so awarded or at all in the absence of any concrete evidence to demonstrate the same.
 - c. The learned trial Magistrate erred in law and fact in failing to appreciate the impeccable defence of the defendant and thereby arriving at a wrong and erroneous conclusion condemning the defendant to general damages of Kshs. 1,000,000 without any tangible proof of the same.
 - d. That the learned trial Magistrate erred in law and fact in failing to appreciate the impeccable defence of the defendant and thereby arriving at a wrong and erroneous conclusion condemning the defendant to special damages of KShs.158,829.00 allegedly spent in what the plaintiff turned to be a merry celebration without concrete documentary evidence;
 - e. That the learned trial Magistrate erred in law and fact in failing to appreciate the impeccable defence of the defendant and thereby arriving at a wrong and erroneous conclusion condemning the defendants to excess quantum and special damages without concrete documentary evidence.



- f. That the learned trial Magistrate erred in law and fact in failing to appreciate the long established principle of stare decisis, precedent law thus bringing law into confusion and thereby deriving an erroneous finding/conclusion, in particular relating to damages;
 - g. That the learned trial Magistrate erred in law and fact in failing to appreciate that the plaintiff's pleadings and the evidence tendered in support thereof was incapable of sustaining the award of damages;
 - h. That the learned Magistrate erred in law and fact in entering judgment in favour of the plaintiffs against the defendant in spite of the plaintiff's miserable failure to establish her case more especially on quantum;
 - i. That the learned trial Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice;
 - j. That the learned trial magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented filed by the appellant;
 - k. That the learned trial magistrate proceeded on wrong principles when assessing damages to be awarded to the respondent if any and failed to apply precedents and tenets of the law applicable;
10. The appeal was disposed of by way of written submissions. The appellants in submissions dated 1st March 2023, argued that the sum of Kshs. 1,000,000 awarded in general damages is inordinately high considering the fact that the respondent suffered soft tissue injuries. The court was referred to the case of Power lighting Company limited & another vs Zakayo Saitoti Naingola & another (2008) eKLR cited in Jennifer Mathenge vs Patrick Muriuki Maina [2020] eKLR where the Court of Appeal outlined the principles that guide an appellate court in considering whether to interfere with an award of damages awarded by the trial court.
 11. That the principles are that; the award should not be inordinately too high or too low, damages are meant to compensate a party for the loss suffered and should be commensurate with the injuries suffered, past decision are mere guides, with each case depending on its own facts and the element of inflation be considered.
 12. The appellants proposed an award of Kshs. 500,000 and urged the court to be guided by the case of; George Kinyanjui t/a Climax Coaches & another vs Hassan Musa Agoi [2016] eKLR where the respondent suffered two loose teeth, blunt trauma to the neck and fracture of the left clavicle, fractures of the 4th and 5th ribs, blunt trauma to the spinal column and right scapula area, and dislocation of the left shoulder and the High Court assessed general damages at Kshs. 452,100.
 13. The appellants further referred to the case of; Gabriel Kariuki Kigathi & Another vs Monica Wangui Wangechi [2016] eKLR, where the claimant sustained a fracture of the neck, bilateral rib fractures, bilateral lung contusion, injuries on both hands and both legs and the High Court set aside the trial court award of Kshs. 800,000 and substituted it with an award of Kshs. 400,000 as general damages.
 14. Further reference was made to the case of; Jane Waruguru Mian vs Jotham Nguvi Magondu & another [2018] eKLR where the appellant sustained huge haematoma, neck pain, left scapula fracture with tenderness, dislocation of the right shoulder joint, fracture of the 8th rib with tenderness, lumbar spine, pain and bruises of the lower limbs and the High Court upheld the trial court award of Kshs. 250,000 as general damages.



15. The appellants urged the court to allow the appeal and award them the costs on the ground that costs follow the event as provided for under section 27 of the *Civil Procedure Act*.
16. However, the respondent in submissions dated 25th June 2023 argued that the trial Magistrate, analysed the evidence before him and applied the relevant principles in arriving at the award of Kshs. 1,000,000 as general damages.
17. The respondent cited the case of; *Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini vs A. M. Lubia and Olive Lubia* [1982-88] KAR 727 wherein the Court of Appeal set out the principles referred to herein to be considered before interfering with an award of damages
18. The respondent argued that the injuries the plaintiff suffered in the cases of; *George Kinyanjui t/ a Climax Coaches & another vs Hassan Musa Agoi* [2016] eKLR and *Gabriel Kariuki Kigathi & Another vs Monica Wangui Wangechi* [2016] eKLR relied on by the appellants are less severe than the injuries she sustained.
19. The respondent submitted that in her submissions before the trial court she relied on the case of; *Hellen Atieno Odour vs S. S Metha & Sons Ltd and Muthitu Nanua HCCC No. 188 of 2019* where the court awarded general damages of Kshs. 1,500,000.
20. The respondent urged the court to be guided by the case of; *Joseph Kimathi Nzau vs Johnson Macharia* (2019) eKLR where the plaintiff suffered almost similar injuries as herein being; a head injury, fracture of the 1st and 2nd ribs, and fracture of the clavicle and the High Court set aside the trial court's award of Kshs 450,000 and substituting it with an award of Kshs. 800,000.
21. It was the appellant's submissions that the High Court in *Lawrence Wairimu Wanyoike & another vs Joseph letting* (2021) eKLR upheld the trial court award of Kshs. 800,000 where the claimant sustained a deep cut wound on the forehead, fracture of the left clavicle, blunt injury to the chest and blunt injury to the shoulder.
22. The respondent submitted that the court considers inflation factor and urged the court to uphold the trial court's award and dismiss the appeal with costs.
23. At the conclusion of hearing the appeal, I note that, the role of the 1st appellate court is to re-evaluate the evidence adduced in the trial court afresh and arrive at its own conclusion, as held by the Court of Appeal in the case of; *Selle & Another vs Associated Motor Boat Co. Ltd. & Others* (1968) EA 123.
24. The Court of Appeal thus observed: -

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. 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.”
25. Pursuant to the afore said I have considered the evidence adduced in the trial court alongside the argument and submissions by both parties and on liability. I note from the pleadings that, the



respondent was a passenger on motor vehicle No. KBN 015R and therefore was not in control of the vehicle in any way.

26. The respondent has indicated in the plaint the particulars of negligence attributed to the 2nd appellant. In her evidence in chief she describes how the accident occurred and although appellants blamed her for causing the accident he did not testify to controvert the respondent's evidence as to how the accident occurred or substantiate the particulars of evidence attributed to the respondent.
27. Consequently, the finding of the trial court that, appellants are liable at 100% is not misguided, erroneous or improper and I uphold the same.
28. As regards quantum, I note that, the law is settled that, while assessing damages at the appeal stage, the appellate court will not interfere with the trial court's decision on quantum unless in exercising that discretion the court misdirected itself in some matters and arrived at an erroneous decision, or was clearly wrong in the exercise of that judicial discretion which resulted into injustice as held in the cases of; Mbogo & another Vs Shah (1968) EA and Mkube -vs - Nyamuro 1983 KLR 403.
29. Further the Court of Appeal in Loice Wanjiku Kagunda vs. Julius Gachau Mwangi [CA 142/2003](#) (unreported) stated that: -

“We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles (see Manga vs Musila [1984] KLR 257).”
30. In the instant matter I note that the respondent pleaded to the injuries suffered at paragraph 8 of the plaint. In support thereof she produced a discharge summary from Moi Teaching and Referral Hospital which indicates, the injuries she suffered as: -
 - a. Multiple abrasions on the right and left upper limb
 - b. Fracture ribs 5th and 7th ribs
 - c. Fracture (R) clavicle
31. However, the P3 form filed in the record of appeal is incomplete and does not indicate injuries the respondent sustained. But from the general history it is indicated that she suffered degloving injuries to the right forearm, torn tendons on the right forearm, and fracture of ribs 5th and 7th rib and at the clavicle.
32. The medical report by Dr. Obed Omuyoma dated 4th February 2017 produced by the respondent indicates that she suffered fractures on the 5th and 7th ribs and clavicle and multiple abrasions on both hands. The report indicates that the respondent suffered 30% permanent disability.
33. Similarly, additional evidence reveals that she was treated at Naivasha County Hospital at the first instance and referred to Moi Teaching and Referral Hospital where she was admitted for ten (10) days.
34. The appellants on the other part availed a medical report dated 11th January 2018, which concurs on the injuries the respondent suffered but departs on the degree of permanent disability wherein Dr. Jennipher Kahuthu indicates there is none as the respondent has normal movements of the right shoulder joint, normal movements of the right shoulder joint, normal inhalation and exhalation and no tenderness noted on the chest and check X-ray show adequately united fractures.



35. Similarly, notably, the report by Dr. Imaligat states that the X-ray taken as evidenced by X-ray No. X-062/2017 on 19th August 2016, indicates that the fractures at the mid third of the right clavicle has adequately united and so are the 5th and 6th ribs.
36. In my considered opinion the report by Dr. Imalangat supports the report of Dr. Jennipher that the respondent has made significantly progress in healing.
37. However, I note that the trial court seems to have had a challenge in reconciling the variance in the medical reports on the issue of degree of disability and stated that it would be resolved in the judgment, although I don't seem to see how it was resolved.
38. Be that, as it were, the trial court indicated that, the submissions of the parties on were considered and that the court noted the proposal made on general damages.
39. However, although the trial court states that those submissions were considered there is no analysis thereof in the decision and therefore difficult for this court to appreciate how the general damages were assessed as comparisons of injuries in each case is not indicated.
40. In the same vein the trial court stated that the injuries in the case Brookside Dairy Ltd vs Peter Butata Wanjohi (2018) eKLR were more or less similar to the injuries herein, however, the court did not indicate the injuries in that case and/or compared the same with the injuries herein.
41. That said, I have had the benefit of reading appellants' submissions in the trial court notably the respondent's submissions are not in the record of appeal. Having done so, the appellants referred to three decisions as follows:
 - a. Morris Miriti vs Nahashon Muriuki & another [2018] eKLR where the appellant sustained tenderness on chest posterior and anterior, multiple bruises on the posterior chest, post traumatic fracture of the 3rd and 4th ribs with bilateral haemophreino of thorax, left lung contusion, and fracture of the right scapula and the High Court upheld the trial court award of Kshs. 300,000 as general damages.
 - b. Robert Kithinji Kithaka v Attorney General [2018] eKLR . Notably the appellants did not tabulate the injuries the plaintiff suffered but I note that the plaintiff suffered several injuries on hand, painful ankle joints which were quite stiff due to prolonged immobilization and a painful shoulder joint due to fracture clavicle. The High Court upheld the trial court award of Kshs. 250,000.
 - c. Odinga Jackton Ouma vs Moureen Achieng Odera [2016] eKLR where the respondent sustained a fracture of the 1st and 2nd ribs, shoulder dislocation on the left and a fracture of the left metatarsal and the High Court awarded Kshs 200,000
42. Notably again from the afore decisions it is clear that, the decisions by were rendered in the years 2016 and 2018. That's five (5) years and over as at the time of delivery of judgment herein in the year 2021. Further, the amount awarded was range between Kshs 180,000 to Kshs 300,000. The appellants proposed a sum of Kshs 200,000 which, with due respect, is not tenable taking into account the factors of inflation, and the similarity of injuries is not supported.
43. On the other part, the injuries in the case of; Brookside Dairy Limited vs Peter Butata Wanjohi (2018) eKLR relied on by the court showed the plaintiff suffered: -
 - a. Compound segmental fracture of the right tibia and fibula
 - b. Fracture of the right medial malleolus



- c. Fracture of left lateral malleolus
 - d. Blood loss physical and psychological pain
44. Further the plaintiff was hospitalized on three (3) different occasions for several weeks and underwent open reduction and internal fixation with plates and screws done to the right tibia, wound cleaning and dressing was done, analgesics, antibiotics and tetanus toxoid injection administered, a plaster cast, he was ambulated using wheelchair and later with crutches, a surgical toilet was done, and finally removal of the plate, surgical toilet, daily wound cleaning and dressing.
45. The plaintiff suffered permanent incapacity and inability to exert the right leg or work as a driver with permanent disability assessed between 30% - 40%. The High Court upheld the award of Kshs. 1,000,000. Again, notably the injuries in this case are more severe than those of the respondent herein.
46. However, taking into account that decision was given in the year 2018, the award will not be the same now and that justifies why the award of Kshs 1,000,000 for the injuries is reasonable taking into account, the fact that the accident herein occurred in the year, 2016 that is over 8 years ago, and with depreciation of the Kenyan Shilling, the amount given of Kshs 1,000,000 is not relatively too high and therefore I decline to interfere with the awards.

DATED, DELIVERED AND SIGNED THIS 22ND DAY OF APRIL 2025.

GRACE L. NZIOKA

JUDGE

In the presence

Mr. Njuguna for the appellant

Mr. Owour for the respondent

Mr. Kuria: court assistant

