



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maxwell Auto Techs Limited & 2 others v Charles (Civil Appeal  
E1238 of 2023) [2025] KEHC 4862 (KLR) (Civ) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4862 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1238 OF 2023**

**TW OUYA, J**

**APRIL 24, 2025**

**BETWEEN**

**MAXWELL AUTO TECHS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**COLLINS MUSYONI MUTHANGYA ..... 2<sup>ND</sup> APPELLANT**

**NICHOLAS MWENDWA MUTHANGYA ..... 3<sup>RD</sup> APPELLANT**

**AND**

**NICHOLAS MAKAU CHARLES ..... RESPONDENT**

*(Being an Appeal against on Quantum in the Judgment and decree of Hon.  
C.W. Mulongo delivered on 18.07.2023 in Nairobi CMCC No. E1916 of 2021)*

**RULING**

**Background**

1. At the onset, Nicholas Makau Charles (hereafter the Respondent) filed Nairobi CMCC No. E1916 of 2021 (the suit) against Maxwell Auto Techs Limited, Collins Musyoni Muthangya and Nicholas Mwendwa Muthangya (hereafter the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants) vide the plaint dated 6.04.2022 seeking general and special damages in respect of injuries sustained by the Respondent on or about 29.12.2019 arising from a road traffic accident involving the Respondent as a fare paying passenger aboard the motor vehicle registration number KCC 499Q Isuzu Bus (the subject motor vehicle) allegedly belonging to the 1<sup>st</sup> and 2<sup>nd</sup> Appellants at all material times, and being driven by the 3<sup>rd</sup> Appellant on the material date.
2. The suit was defended by the Appellants.



3. It is purported that upon hearing and close of submissions, the trial court ultimately rendered its judgment in favour of the Respondent and against the Appellants, thereby awarding the former general damages in the sum of Kshs. 200,000/- and special damages in the sum of Kshs. 16,050/- totaling the sum of Kshs. 216,050/-.

### **The Appeal**

4. Being dissatisfied with the award made on general damages, the Appellants moved the court by way of the present appeal (vide the memorandum of appeal dated 11.11.2023) to challenge it, premised on the grounds hereunder:
  - i. That the Learned Magistrate in the matter herein delivered Judgment on 18<sup>th</sup> July, 2023 in favour of the Respondent herein thus contrary to the law and facts availing before the Honourable Court.
  - ii. That the Learned Magistrate erred in fact and law in finding that the Respondent was entitled to future medical expenses of Kshs. 200,000/-, that were too high in view of the fact that compared to the injuries suffered by the Respondent.
  - iii. That the Learned 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.
  - iv. That the Learned Magistrate erred in Law and Fact in failing to appreciate that the Respondent's pleadings, submissions and the evidence tendered in support thereof was incapable of sustaining the award of damages.
  - v. That the Learned Magistrate erred in Law and Fact in entering judgment in favour of the Respondent against the Appellants in spite of the Respondent's miserable failure to establish her case more especially on quantum.(sic)
5. The Appellants therefore sought the following orders on appeal:
  - i. That this Appeal be allowed with costs.
  - ii. That the Judgment in on Milimani CMCC NO. E1916 OF 2021 by the Honourable Magistrate C.W. Mulongo on 18<sup>th</sup> July, 2023 as follows:- liability-100%, General damages-Kshs. 200,000/=, Special damages-Kshs.16,050/= costs and interest, be stayed and/or set aside together with all other consequential orders be set aside.
  - iii. That all proceedings in Milimani CMCC NO. E1916 OF 2021 be stayed, pending determination of this appeal.
  - iv. That costs of this Appeal be borne by the Respondent.
  - v. That such further orders may be made by this Honourable Court may deem fit to grant. (sic)

### **Directions**

6. The appeal was to be canvassed by way of written submissions. It is apparent from the record that the Appellants did not comply with these directions.
7. On his part, counsel for the Respondent by and large supported the award by the trial court on general damages and urged this court to uphold it, with reliance being placed on the case of Wabinya v Lucheveleli [2022] KEHC 13762 (KLR) and the case of Ufrab Motors Bazaar & another v Kibe



[2023] KEHC 1285 (KLR) where the respective courts awarded similar or related sums in respect of comparable injuries. Counsel therefore urged this court to dismiss the appeal, with costs.

8. However, the court upon considering the totality of the material tendered on appeal, noted a pertinent preliminary issue which it deems necessary to address at this juncture; namely the issue touching on competency of the record of appeal. Whereas this particular issue was not raised or addressed by the Respondent, it cannot be overlooked.
9. To be specific, the court observed that the record of appeal as filed is incomplete, the same having omitted to include certain crucial documents; namely the pleadings by the 2<sup>nd</sup> Appellant, copies of the documents/evidence tendered before the trial court, the typed and certified lower court proceedings, the certified lower court judgment and the resulting decree. In the court's view, the aforementioned documents remain crucial to the appeal and therefore ought to have formed part of the compiled record of appeal.
10. It remains unclear how the appeal was admitted for hearing, in the absence of a complete and comprehensive record of appeal. Be that as it may, in the absence of the abovementioned relevant documents which are fundamental to the appeal and necessary for consideration of the merits thereof; coupled with the absence of the lower court file; this court is unable to effectively and accurately adjudicate the issues arising on appeal.
11. The court thus finds that on the basis of incompleteness of the record of appeal, the present appeal is hereby rendered incompetent. There is no basis upon which to consider the merits thereof.
12. In view of the foregoing circumstances, the appeal is hereby rendered incompetent for being incomplete, and is hereby struck out, with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF APRIL, 2025**

**HON. T. W. Ouya**

**JUDGE**

For Appellant.....No Appearance

For Respondent...Mlinge HB Mrs Chirchir

Court Assistant.....Doreen Njue

