



REPUBLIC OF KENYA



KENYA LAW
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**Daniel v Kimani & 2 others (Civil Appeal E033 of 2023)
[2025] KEHC 7756 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E033 OF 2023
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

LESIKOYO LKITISN DANIEL APPELLANT

AND

MBIU KIMANI ALIAS KIMANI MBIU 1ST RESPONDENT

JAMES MBIU 2ND RESPONDENT

FRED GITAARI MBIU 3RD RESPONDENT

JUDGMENT

1. The appellant being dissatisfied with the decision of the lower Court at Baricho by Hon. D.M Ireri, Senior Resident Magistrate delivered on 28TH April, 2024 filed a memorandum of appeal dated 2nd May, 2023. The Appellant was involved in a road traffic accident (RTA) on 11th February, 2020 along Sagana – Karatina Road when the Respondent's motor vehicle registration no. KAW 048K collided with motor cycle registration no. KMEU 763N where the Appellant was riding as a pillion passenger causing the Appellant serious injuries.
2. The Appellant filed Baricho PMCC No. 70 of 2020 seeking special damages, general damages and costs and interest for injuries he sustained as a result of the road traffic accident.
3. After hearing the evidence, the trial court found that the appellant did not testify during the trial meted equal liability The trial court held that the Respondent was 50% liable.
4. The trial court assessed and awarded damages of Kshs. 151,840/= The appellant has appealed to this court on the following grounds;
 - i. That the learned magistrate erred in fact and in law by apportioning liability against a party who was not a party to the suit.



- ii. That the learned magistrate erred in fact and in law by misapprehending evidence adduced, thereby reaching an erroneous finding.
 - iii. That the learned magistrate erred in fact and in law by failing to consider that the Respondent blamed another party for the accident, and failed to join the party.
 - iv. That the learned magistrate erred in fact and in law in awarding general damages of Kshs. 300,000/= which is manifestly law bearing in mind the injuries sustained.
 - v. That the learned magistrate erred in fact and in law by failing to consider the Appellant's authorities on awards made in relation to similar injuries.
5. The parties filed written submissions and the appellant submitted that the award of 100% liability on the part of the respondent was reasonable in the circumstance. And this court to overturn the decision of the lower court and award the same.
 6. The appeal is principally against the finding on the issue of liability which the appellant contends that it was an erroneous finding and seeks to have the same overturned.
 7. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses. In *Selle v Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally. 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. The first issue to determine is whether the apportionment of liability on a party not in the suit was rightful. This court appreciates that the Appellant herein was a pillion passenger aboard motorcycle registration number KMEU 763N which collided with motor vehicle registration number KAW 048K. This court further notes that prior to the institution of this case together with the appeal herein there was a similar suit which is which is Baricho MCC civil suit number 71 of 2020 which was heard and determined by the same trial court.
9. It is submitted that in Baricho MCC civil suit number 71 of 2020 the same trial court apportioned liability in the ration of 50:50 and that the matters arise from the same cause of action. I note that if the matters are similar in nature the apportionment should also be concurrent. If similar circumstances occurred happening without any sudden changes, interruption, or difficulty, then the result ought to be the same. In this matter I find that the trial court was right in reaching its decision as the cases were homogeneous.



10. The other issue for determination in this appeal is whether the general damages awarded by the trial court were reasonable.
11. The respondent sustained right up joint dislocation, multiple fractures and ulna together with soft tissue injuries. It was also found that the injuries healed fully.
12. The trial court declined to award damages on future earnings since the Appellant is fully healed. I have considered the authorities relied on by the trial court. I have also considered the following comparable cases where injuries were more severe than the present case:
 - a. In *Roba Doti Guyo v Jiang Zhongemei Engineering Company* [2015] eKLR, the plaintiff, therein suffered a crushed hand which was amputated leaving him with an ugly stump. In 2015 the plaintiff was awarded Kshs. 2,500,000/= as general damages for his pain, suffering and loss of amenities.
 - b. In *Umoja Rubber Products Limited v Bobson Rimba Lewa* [2015] eKLR, the Respondent therein suffered an amputation of the left hand below the elbow. In 2015, he was awarded Kshs 2,200,000/= as general damages for his pain and suffering which sum was upheld on appeal.
13. I find that in our present case the injuries were less severe and fully healed and no loss of future income the Ksh. 303,680 awarded was reasonable in the circumstances of this case and I have no persuasive reason to uphold the appeal.
14. The appellate court can only interfere with an award of the trial court if the same is inordinately high or low as to warrant interference of where the trial court applied the wrong principles. In *Butt v Khan* [1982] 1 KAR. 5 the court correctly said;

“An appellate court will not disturb an award of 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”
15. I find that this appeal lacks in merit and is dismissed. Each party to bear their own costs.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

Mutua for the Appellant

Masudi for the Respondent

Siele/Mark (Court Assistants)

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J.K. NG'ARNG'AR

JUDGE

