



REPUBLIC OF KENYA



KENYA LAW
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**Gachie v Kariuki (Civil Appeal E097 of 2023)
[2025] KEHC 9343 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E097 OF 2023**

GL NZIOKA, J

JUNE 5, 2025

BETWEEN

HARUN MWANGI GACHIE APPELLANT

AND

STEPHEN KARIUKI RESPONDENT

*(Being an appeal against the decision of Honourable E.
Cherop delivered on 9th October, 2023 vide SCC No. E062/23)*

JUDGMENT

1. The matter herein commenced before the Small claim court vide SCC No. E062 of 2023 initiated by a statement of claim dated 16th February 2023.
2. The claimant averred that the claim is based on personal injuries sustained in an accident that occurred on 1st March 2021 involving motor vehicle registration KCM 227B and KAY 316S. That he was a lawful passenger in motor vehicle registration number KCM 227 B travelling along Narok – Maai Mahiu road and at Dello hills area, the respondents’ authorized driver and/or agent carelessly drove the said motor vehicle registration number KCM 227 B making it lose control and hit motor vehicle KAY 316S from behind consequent of which he got injured.
3. That as a result of the accident, he sustained the following injuries:
 - a. Moderate head injury with diffuse axonol injury.
 - b. Blunt injury to the anterior chest wall leading to soft tissue injuries.
 - c. Blunt injury to the anterior abdominal wall leading to soft tissue injuries.
4. The claimant sought for judgment against the respondent as here below tabulated.



- a. Medical Report Kshs 15,000/=
 - b. P3 Form Kshs 1,000/=
 - c. Search Kshs 550/=
 - d. Medical expenses Kshs 61,495/=
- Total - Kshs. 78,045/=
5. The respondent responded to the claim vide a statement of response dated 4th September 2023, and averred that;
- “The Respondent denied the occurrence of the accident on the date and place mentioned in the statement of claim and that it involved motor vehicles registration number KCM 227B and KAY 316S.
- However, the Respondent averred that if the alleged accident occurred, which is denied, then the same did not occur in the manner alleged by the claimant.”
6. The respondent further averred that if the alleged accident did occur, the same was caused solely or substantially contributed to by the negligence of the claimant. He tabulated the particulars of negligence of the claimant;
- a. Exposing himself to a risk of injury he knew or ought to have known to exist
 - b. Exercising insufficient care in the circumstances
 - c. Failing to keep safety measures to avoid the accident
 - d. Failing to abide by the Traffic rules and regulations
 - e. Failing to wear a seat belt while being a passenger in motor vehicle registration number KCM 227B.
7. The matter proceeded to full hearing and on 16th March 2023, the claim against the 2nd Respondent was withdrawn. On the other part, an interlocutory judgment was entered against the 1st respondent.
8. The claimant’s counsel sought for and was allowed to proceed by invoking Section 30 of the SCCA and produced the claimant statement dated 20th January 2023, documents dated 16th February 2023 and closed his case, matter set down for judgment on 23rd March 2023. The judgment was delivered accordingly.
9. On 4th August 2023, the trial court was moved by application dated 3rd August 2023, and a preliminary objection seeking to set aside the judgment entered against the respondent. Subsequently the preliminary objection was withdrawn and the judgment set aside.
10. On 14th September 2023, the claimant testified and produced documents annexed to the claim as exhibit number 1 – 11. The medical report was marked as [MFI 1] which was then produced by consent of the parties.
11. The respondent case was supported by the evidence of Dr. George Mwaura who examined the applicant and produced a medical report marked as [Respondent exhibit 1].



12. By a judgment dated 9th October 2023, the trial court entered judgment in favour of the claimant as against the respondent as follows:

The court thus enters judgment in favour of the claimant against the 1st respondent in the following terms:

- a. Liability - 100% [against the 1st Respondent]
- b. General damages - Kshs. 380,000/=
- c. Special damages - Kshs. 77,645/=
- Total - Kshs. 457,645/=
- d. Costs and interest thereon from the date of this judgment."

13. It is against the said judgment that the respondent appeals on the following grounds:

- a. The Learned Magistrate erred in fact and in law in arriving at the decision against the weight of the evidence on record.
- b. The Learned Magistrate's award of damages of Kenya Shillings Three Hundreds and Forty-five Thousand and Forty-five shillings [345, 045/=] was excessive and grossly erroneous in light of the evidence tendered.
- c. The Learned Magistrate failed to consider and/or ignored the defence submissions on record and hence came to a wrong conclusion in assessing damages.
- d. The Learned Magistrate overall in handling of the assessment of damages was punitive to the Appellant rather than compensatory to the Respondent contrary to public policy in such cases.

14. As a result of the afore, the appellant prays that this Honourable Court do set aside the entire lower court judgment and/or interfere with the said judgment to the extent that meets the end of justice.

15. The court directed that vide its order of 15th January 2024 the appeal be disposed of vide filing of submission. On 13th March 2024, the appellant informed the court that he had not filed the submission and the appellant being unrepresented, the court ordered him to appear before the Honourable Deputy Registrar to assist him understand the process of appeal. The matter was stood over to 21st March 2024. However, no party appeared before the Honourable Deputy Registrar, and the matter was stood over to 25th April 2024.

16. On 25th April 2025 the appellant was informed of the procedure to initiate and prosecute an appeal. However, by 30th May 2025, no submission had been filed. To the contrary, the Applicant filed a notice of motion application dated 28th May 2024, seeking for stay of execution of the judgment. The same was eventually determined vide orders of 18th November 2024.

17. The appeal was listed for hearing and the appellant relied on the materials on record without filing submissions and so did the respondent. Consequently, the appeal is considered on the materials on the record thereof.

18. Having considered the same, I note that first and foremost an appeal from the small claim court in generally on matter of law as envisaged under the provision of Section of the Act.

19. In regard to the matter herein, I note that the grounds of appeal are basically on factual matter as to the weighty of evidence adduced and the decision of the trial court. Further, the quantum given is faulted



on the ground that, the same is excessive and grossly erroneous contrary to public policy. Further, in awarding the same, the respondent's submissions were ignored.

20. Be that as it were, even if the court were to consider the matter on merit and in the interest of justice, it is evident from the judgment that the trial court considered the evidence adduced on liability and quantum.
21. In that regard to quantum, I find that the trial court considered the documents produced in relation to the injuries sustained by the respondents at paragraph 7 and 8 of the judgment and also the submissions on the same at paragraph 11 of the judgment. However, it is not evident whether, the appellant filed any submissions in the trial court and whether they were considered or not.
22. Be that as it may, the respondent was treated in three different institutions and even admitted for 3 [three] days at Kenyatta National Hospital. The award of Kshs. 380,000 as general damages cannot be said as excessively and/or punitive.
23. As a result, I decline to interfere with the same. The special damages are well instituted in the judgment. Therefore, the appeal is dismissed with costs to the Respondent.

DATED, DELIVERED AND SIGNED THIS 5TH DAY OF JUNE, 2025.

GRACE L. NZIOKA

JUDGE

In the presence of;

Mr Owour for the respondent

Appellant in person

Hannah Court Assistant

