



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki & another v Gatere (Civil Appeal E010 of 2024)
[2025] KEHC 9345 (KLR) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9345 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E010 OF 2024
GL NZIOKA, J
JUNE 9, 2025**

BETWEEN

JAMES MURITU KARIUKI 1ST APPELLANT

ERIC MURIITHI MURUNGI 2ND APPELLANT

AND

ELIANA WAMBUI GATERE RESPONDENT

*(Being an appeal from the judgment of Hon. E. K Aroma
delivered on 20th May 2024, vide CMCC NO. 317 of 2017)*

JUDGMENT

1. By a plaint dated 22nd May 2017, the plaintiff (herein “the respondent”) sued the defendants (herein “the appellants”) jointly and severally seeking for judgment against the appellants for
 - a. General damages, damages for loss of earnings and earning capacity
 - b. Special damages
 - c. Costs and interest of this suit
 - d. Interest on (a)(b) and (c) above at court rates
2. The respondent pleaded that on the 8th day of March 2015, she was walking off Nakuru-Nairobi road, when a motor cycle registration number KMCC 333L was cycled by the 1st appellant veered off the road and knocked her down. That the motor cycle cycled is owned by the 2nd appellant.
3. That, the 1st appellant failed to manage and/or control the said motor cycle and was negligent as stated in the particulars of negligence tabulated at paragraph 5 of the plaint.



4. In a nutshell, she avers that the 1st appellant was riding the motor cycle at an excessive speed, and while it was defective. Further that, he failed to slow down, brake and/or swerve to avoid the accident. That as a result of the accident she sustained blunt injuries to the left knee joint leading to torn ligament.
5. However, the appellants denied liability vide a statement of defence dated 28th May 2018. The appellants denied that the 1st appellant rode the motor cycle negligently as alleged and/or as per the particulars of negligence attributed to him. Further that, the motor cycle is owned by the 2nd appellant was denied. In the same manner the occurrence of the accident and the injuries the respondent alleged sustained were denied.
6. However, the appellants averred, on a without prejudice basis, that the accident occurred, though denied, then it was caused substantially or contributed to by the respondent. The appellant tabulated the particulars of negligence attributed to the respondent at paragraph 5 of the statement of defence.
7. The appellant is averred in a nutshell that, the respondent was negligent by stepping into the road recklessly and/or crossing the road thus exposing herself to a risk and failing to keep proper look out for the other road user and failing to see the motor cycle in time and avoid the accident.
8. At the close of the pleadings the case proceeded to full trial. The respondent's case was supported by her evidence in which she stated briefly that she was violently knocked down from the rear by the appellant's motor cycle and was injured on the left knee. That she was treated at Naivasha District Hospital where she was admitted for one day and later followed up on treatment at Panda clinic. She blamed the cyclist for the accident. She produced the medical documents in support of the injuries sustained.
9. The respondent's case was further supported by the evidence of PW1 No. 76934 PC Wafula Rodgers who produced the police abstract which indicated the accident involved the respondent, motor cycle registration No. KMCS 333L and motor vehicle KCC 306C. According to the witness, the cyclist was overtaking the motor vehicle on the left side and hit the respondent and that he was blamed for the accident.
10. PW3 Dr. Obed Omuyoma produced a medical report dated 10th May 2017, which he prepared upon examining the respondent. Of significance is the fact that, the respondent sustained the injury pleaded, and which the doctor classified as grievous harm. The Doctor further indicated that, the respondent had suffered 5% permanent disability.
11. PW4 Mesa Sylvester a medical officer at Naivasha District Hospital and PW5 Jackline Nderitu, a clinician at Poly Clinic both produced discharge summary and treatments notes in respect to the respondent
12. The defendant did not call any witness and/or adduce any evidence in support of its case
13. At the close of the entire case, and upon considering the evidence and submission by the respective parties the trial court delivered a judgment dated 20th February 2024, and held the appellants liable for the accident at 100%. The judgment on quantum was entered against the appellants and in favour of the respondent on quantum in the sum of Kshs 187,930, being Kshs 180,000 as general damages and Kshs 7,930 as special damages.
14. However, the appellants are aggrieved by the decision of the trial court on liability and quantum and appeals against it on the following grounds
 - a. The learned Trial Magistrate misdirected herself and erred in law and fact by writing and delivering a judgment against reasons and the weight of evidence.



- b. The learned Trial Magistrate misdirected herself and erred in law and fact by disregarding reliable medical evidence and instead relying on the untruthful, contradictory testimony of the respondent.
 - c. The learned Trial Judge misdirected herself and erred in law and fact by holding the Appellants 100% liable against decided case law, yet the respondent never called sufficient evidence whatsoever to prove negligence at 100% against the appellants, and failing to appreciate that the respondent was cross-examined and the result of that cross-examination has some evidential value that proved that the respondent was 100% liable, having admitted on cross-examination to have caused the accident.
 - d. The learned Trial Magistrate misdirected herself and erred in law and fact by assessing and awarding unreasonable, excessive general damages for pain and suffering which was so inordinately high as to represent an entirely erroneous estimate, while there was no evidence or basis at all in law or fact in support of such an astronomical award.
 - e. The learned Trial Magistrate erred in law and fact and misdirected herself by ignoring and/or disregarding the ratio decided in relevant binding case law.
 - f. The learned Trial Magistrate misdirected herself and erred in law and fact by ignoring precedent and trite law that only what is specifically pleaded in the plaint and strictly proved can be awarded.
 - g. The learned Trial Magistrate misdirected herself and erred in law and fact by ignoring the appellants' written submissions on court record and all the relevant binding case law and pertinent issues raised therein and failing to address any of all the raised relevant pertinent issues in her judgment.
 - h. The learned Trial Magistrate misdirected herself and erred in law and fact by wrongly exercising her judicial discretion against the appellants and against reason and the Rules of Natural Justice in the circumstances of the matter.
 - i. The learned Trial Magistrate erred in law and fact by delivering a judgment wholly unsupported by evidence on record.
 - j. The judgment of the trial court, as written and delivered cannot be supported in law or fact.
15. The appeal was disposed of vide filing of submissions considered herein. On the issue of liability, the respondent testified as to how the accident occurred and called PW2 PC Wafula Rodgers who produced the police abstract which indicates that the 2nd appellant's agent who was riding the subject motor cycle overtook the PSV on the left side and hit and injured the respondent.
16. The appellant's cannot turn their submissions into evidence to rebut the respondent's evidence. They cannot argue that through cross-examination of the respondent, the appellant's proved its case or that, the respondents' evidence was inadequate. Consequently, the trial court arrived at the right decision in holding the appellants 100% liable for the accident. I uphold that finding.
17. On quantum I note that, the plaintiff testified as to the injuries she sustained and treatment received. Her evidence was corroborated by PW3 Dr. Obed Omuyoma PW Mesa Silvester and PW4- Jackline Nderitu who produced medical reports.
18. Upon consideration of those documents, it is noted that the medical document produced by (PW4). Jackline Nderitu a Clinician at Polyclinic, (at page 11 of the Record of Appeal), is incomplete therefore



least helpful. Similarly, the medical report at page 14 of the record of appeal, which seems to be part of the P3 form is incomplete and least helpful. Finally, the discharge summary from Naivasha District Hospital is not included in the Record of Appeal.

19. Be that, as it were the medical report dated 10th May 2017, makes reference to the treatment notes form Panda Clinic dated 16th March 2015, from Naivasha District Hospital dated 16th March 2015 and P3 form filed at Naivasha District Hospital dated 24th March 2015. The doctor's Medical report was based on the same and physical examination of the respondent. The report indicates the respondent sustained a blunt injury to the left knee joint leading to torn ligament. The doctor concluded that the respondent suffered permanent disability of 5%
20. Notably when the respondent closed her case, the appellants did not call any evidence in support of their case. Yet, I note in the record of appeal at page 36 a medical report by Dr. M.S Malik who examined the respondent which indicates that she had healed with no permanent disability. However that report does not seem to have been produced in evidence. Therefore cannot be considered.
21. Be that as it may, the trial court considered the amount proposed by each party as general damages and the authorities relied on. The court was well guided on the authority cited by the respondent which relates to a more serious injuries and I concur. Even then the respondent is not aggrieved by the sum awarded.
22. However, I note that, the appellant's proposal of a sum of Kshs 100,000 is not tenable for two reasons, first, the appellants did not stipulate the injuries each party suffered in the respective authorities and how they compare with the injuries herein. Secondly, the accident herein occurred in the year 2015. The respondent has waited for compensation for ten years, had the respondent been awarded the Kshs 100,000 ten years ago, it would definitely have accrued interest to the sum awarded herein. Finally if the respondent was put on P.O.P application and torn left collateral ligament confirmed as evidenced by the X-ray taken, then the sum of Kshs 180,000 cannot be said to be inordinately high.
23. The upshot is that I dismiss the appeal in its entirety with costs to the respondent.
24. It is so ordered

DATED, DELIVERED AND SIGNED THIS 9TH DAY OF JUNE 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:-

Mr. Kinyanjui for the appellant

Ms Kiberenge for the respondent

Hannah court assistant

