



REPUBLIC OF KENYA



**Kariuki v Maina alias Peter Murimi (Suing through Next of Friend Rosemaru Muthoni)
(Civil Appeal E009 of 2023) [2025] KEHC 7831 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7831 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E009 OF 2023
JK NG'ARNG'AR, J
JUNE 5, 2025**

BETWEEN

ELIZABETH WANJIKU KARIUKI APPELLANT

AND

JAMLICK MURIMI MAINA ALIAS PETER MURIMI RESPONDENT

SUING THROUGH NEXT OF FRIEND ROSEMARU MUTHONI

*(Being an Appeal from the Judgment of the Senior Resident Magistrate, Ireri
D. M at the Magistrate's Court at Baricho, Civil Suit Number 103 of 2019)*

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages that arose when the Respondent was involved in a road traffic accident with the Appellant's motor vehicle registration number KCK 980L.
2. The trial court conducted a hearing where the Respondent called four witnesses in support of his case and the Appellant called one witness in defence.
3. In its Judgment delivered on 16th December 2022, the trial court awarded the Respondent a net award of Kshs 1,362,690/=.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 5th January 2023 appealing against liability and quantum.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR).



6. I now proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiff's/Respondent's case.

7. Through his Complaint dated 11th May 2019, the Respondent stated that on 10th November 2018, he was hit by motor vehicle registration number KCK 980L while cycling along Sagana-Makutano road. It was his case that the Appellant was the registered owner of the said motor vehicle.
8. It was the Respondent's case that the Appellant was negligent in the accident. The particulars of the negligence were stated in paragraph 4 of the Complaint. That as a result of the accident, the Respondent suffered serious injuries.
9. The Respondents prayed for special and general damages against the Appellant.
10. Through his written submissions dated 26th March 2024, the Respondent submitted that the trial court was correct in apportioning the Appellant 90% liability. That from the record, he was hit from behind and further that the Appellant's driver did not keep a proper look out while on the road.
11. It was the Respondent's submission that the award of Kshs 1,500,000/= was just. The Respondent prayed that the Appeal be dismissed.

The Appellant's/Defendant's Case.

12. Through her statement of defence dated 24th September 2019, the Appellant denied the occurrence of the accident on 10th November 2018. The Appellant also denied being the registered owner of motor vehicle registration number KCK 980L.
13. It was the Appellant's case that if the accident occurred then it was caused by the Respondent's negligence. The particulars of negligence were contained in paragraph 4 of the Defence.
14. Through her written submissions dated 15th May 2024, the Appellant submitted that the Respondent failed to prove his case to the required legal standard. That PW3 who was not the investigating officer could not explain the circumstances of the accident. She further submitted that this court should set aside the order on liability and relied on *Margaret Kannes Muyanga vs Jamal Abdulkarim Musa (2020) eKLR*.
15. On quantum, the Appellant submitted that there was a repetition of the same injuries that were worded differently. That the Respondent suffered several soft tissue injuries and a single fracture of the linear frontal bone extending to sagittal suture. The Appellant further submitted that the award of Kshs 1,362,690/= was excessive and proposed an award of Kshs 300,000/= as awarded in *Jane Muthoni Nyaga vs Nicholas Wanjohi Thuo & another (2010) eKLR*.
16. I have gone through and carefully considered the Record of Appeal, the Appellant's written submissions dated 15th May 2024 and the Respondent's written submissions dated 26th March 2024. The two issues that I have sieved for my determination were liability and quantum.

Liability

17. In its Judgement dated 16th December 2022, the trial court apportioned liability at 90:10 in favour of the Respondent.
18. From the evidence on record, it was clear that a road traffic accident involving the Respondent and motor vehicle registration number KCK 980L occurred on 10th November 2018 along Sagana-



Makutano road. The dispute that was for determination was whom between the Respondent and the Appellant was to blame for the said accident.

19. Joseph Kangangi Kibuchi (PW4) testified that he witnessed the accident. He testified that on the material day, the Respondent was cycling along a footpath when motor vehicle registration number KCK 980L hit the Respondent from behind. PW4's testimony remained uncontroverted upon cross examination.
20. No. 75334 Cpl Evelyne Muthengi (PW3) testified that as at the time she was testifying, the matter was under investigations. When PW3 was cross examined, she testified that she was not the investigating officer and could not tell how the accident occurred.
21. On the other hand, the Appellant called her driver, Maurice Kariuki (DW1) as a witness. DW1 testified that on the material day, while driving at a speed of 60-70 kph, the Respondent entered the road abruptly and hit the motor vehicle. He further testified that the vehicle's windscreen and bonnet were damaged as a result of the accident. DW1's testimony remained uncontroverted after cross examination.
22. In my analysis of the evidence above, it is clear to me that there are two distinct narrations that attempt to explain the circumstances of the accident. Both the Appellant and Respondent blame each other for causing the accident. Further, No. 75334 Cpl Evelyne Muthengi (PW3) who would have helped in shedding light as to the circumstances leading to the accident, could not tell the trial court how the accident occurred.
23. In light of the above, it is difficult for this court to ascertain who caused the accident. In such cases, court have apportioned liability equally. In *Hussein Omar Farah v Lento Agencies* [2006] KECA 388 (KLR), the Court of Appeal observed that: -

“In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs, the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.....”
24. Similarly in *Postal Corporation of Kenya & another v Dickens Munayi* [2014] KEHC 1569 (KLR), the court held: -

“For the foregoing reasons, I am clear in my mind, that it is difficult to tell the extent to which each party (Respondent and Appellants' driver) contributed to the accident. And as rightly submitted by counsel for the Appellants, when the court is in doubt on the extent of contribution by either party, the most prudent thing to do is to apportion the contribution at a ratio of 50%:50%. I therefore entirely concur with the findings in the cited cases of *HAJI -VS- MARAIR FREIGHT AGENCIES LTD* (1984) KLR, 139 in which the Court of Appeal held;

“Where it is proved by evidence that both parties are to blame and there is no means of making a reasonable contribution the blame can be apportioned equally on each”
25. It is therefore my finding that the Respondent and the Appellant were equally to blame for the accident and I proceed to apportion liability at 50:50.



Quantum

26. The trial court awarded the Respondent Kshs 1,500,000/= as general damages.
27. It is trite that for this court to interfere with the above award, it must be shown that the trial court acted upon some wrong principle of law or, that the amount awarded was so extremely high or so very small as to make it, in the judgement of the court, an entirely erroneous estimate of the damage to which the Appellant was entitled. Further, that that awards must be reasonable and comparable to awards in similar cases.
28. From the Plaintiff, the Respondent suffered the following injuries: -
 - a. Severe head injury.
 - b. Convulsions and loss of consciousness.
 - c. Liner frontal bone fracture extending to sagittal suture.
 - d. Right orbital region swelling with foreign bodies.
 - e. Bruise and cut wounds above, on the right side and below the right eye.
 - f. Right upper lip deep cut wound.
 - g. Deep bruise over left shoulder.
 - h. Multiple bruises over posterior right shoulder area.
 - i. Left upper arm cut wound.
 - j. Posterior left elbow cut wound.
 - k. Multiple right forearm cuts and bruises wound.
 - l. Deep cut multiple wounds at the back right hand.
 - m. Multiple bruise wounds on the right hand.
29. Rosemary Nyaguthii Muthoni (PW2) produced the Discharge Summary, CT scan and P3 Form as P. Exh 1, 2 and 3 respectively. I have looked at the exhibits and they indicate that the Appellant suffered a head injury (frontal bone linear fracture) and soft tissue injuries.
30. Dr. Kane Maina (PW1) a general practitioner at Wanachi Medical Services testified that he examined the Respondent on 16th February 2019 and produced a Medical Report as P. Exh 5. I have looked at the Medical Report and it stated that the Respondent suffered several soft tissue injuries and was unable to concentrate on one topic. When PW1 was cross examined, he testified that he examined the Respondent three months after the occurrence of the accident. PW1 further testified that the Discharge Summary (P. Exh 1) did not mention dislocation of the right shoulder and that the CT scan (P. Exh 2) showed a fracture of the skull.
31. The Respondent produced a Medical Report from Dr. Ichamwenge Ruth as D. Exh 1. I have looked at the Medical Report and it confirmed the frontal bone linear fracture and healed scars on his face and upper limbs.
32. Flowing from the above, it is my finding that the Respondent suffered several soft tissue injuries and a frontal bone linear fracture. I have found the following authorities quite helpful in terms of comparison: -



- i. In *Onditi v Anytime Limited* [2024] KEHC 1614 (KLR), the court upheld the award of Kshs 200,000/= for the following injuries; active haemorrhage from the left ear, multiple bruises on the right elbow joint laterally, deep cut wound on the right knee joint laterally, deep cut wound on the right thigh, head injury, deep cut wound on the right ankle joint and a skull fracture.
 - ii. In *Nyota Tissue Products v Charles Wanga Wanga & 4 Others* [2020] KEHC 6207 (KLR), the Plaintiff sustained head injury with open depressed frontal fracture. The court substituted an award of Kshs. 1,200,000/= with that of Kshs. 500,000/=.
 - iii. In *Moiz Motors Limited & another v Harun Ngethe Wanjiru* [2021] KEHC 8702 (KLR), the Plaintiff sustained soft tissue injuries and moderate head injury and was hospitalized for three days. The court substituted an award of general damages of Kshs. 700,000/= with that of Kshs. 500,000/=.
 - iv. In *Omondi v Anzofu* [2024] KEHC 2675 (KLR), the court reduced the award of Kshs 1,000,000/= to Kshs 300,000/= for the following injuries; trauma to the head, fracture of the skull, bruises (r) parietal scalp with profuse bleeding, trauma to the left upper arm, trauma over the shoulder joint as evidenced by bruises; and blood loss.
33. Flowing from the above, it is my finding that the award of Kshs 1,500,000/= by the trial court as general damages was excessive and was not commensurate to the injuries sustained by the Respondent. I therefore substitute the award of Kshs 1,500,000/= with an award of Kshs 500,000/=.
34. With regard to special damages, the Respondent pleaded Kshs 14,100/= as medical expenses. Rosemary Nyaguthii Muthoni (PW2) produced a bundle of receipts as P. Exh 7. I have looked at the receipts and I have confirmed that the Respondent's medical expenses totalled to Kshs 14,100/=. I therefore uphold the trial court's award of Kshs 14,100/=.
35. Flowing from the above, the amount awarded to the Respondent is as follows: -
- General Damages Kshs 500,000/=
- Add special damages Kshs 14,100/=
- Kshs 514,100/=
- Less 50% Contribution Kshs 257,050/=
- Kshs 257,050/=
36. In the end, the Appeal dated 5th January 2023 succeeds as the amount awarded to the Respondent is reduced from Kshs 1,362,690/= to Kshs 257,050/=.
37. Each party to bear their own costs in this Appeal while the costs in the suit remain as awarded by the trial court.
- 30 days stay of execution is granted.

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

Kabita for the Appellant

Waweru for the Respondent

Siele/Mark (Court Assistants)

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J.K. NG'ARNG'AR
JUDGE

