



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Makanda v Osita (Civil Appeal E213 of 2023)  
[2025] KEHC 8510 (KLR) (Civ) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8510 (KLR)

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

**CIVIL**

**CIVIL APPEAL E213 OF 2023**

**WM MUSYOKA, J**

**JUNE 17, 2025**

**BETWEEN**

**DANIEL MAKANDA ..... APPELLANT**

**AND**

**EUGENE OSITA ..... RESPONDENT**

*(Appeal from the judgement of Hon. VM Mochache, Resident Magistrate (RM)  
and Adjudicator, of 21st February 2023, in Nairobi SCCC No. E3398 of 2022)*

**JUDGMENT**

1. The suit, at the primary court, was at the instance of the respondent. It arose out of a road traffic accident. Both parties were motorists along Gitanga Road, Nairobi, with the appellant driving a motor vehicle registration mark and number KCC 241J, while the respondent was riding a motorcycle registration mark and number KMFD 678Z. The respondent claimed that the appellant negligently handled his vehicle, with the result that it collided with the motorcycle, at the Muthangari Gardens junction. The accident caused the respondent to suffer bodily injuries, and exposed him to loss. The respondent sought general and special damages and costs.
2. The appellant resisted the claim. He conceded owning the motor vehicle, and the fact of the accident, but he did not admit that the respondent was riding the motorcycle. He did not admit negligence. In the alternative, he attributed negligence on the rider of the motorcycle.
3. A trial was conducted. Both parties testified. The respondent called a police witness. Judgement was delivered, on 21<sup>st</sup> February 2023. Liability was assessed at 100% against the appellant. The respondent was awarded general damages at Kshs. 800,000.00; special damages at Kshs. 3,550,000.00; further medical expenses at Kshs. 80,000.00; and costs and interests.



4. The appellant was aggrieved, and initiated this appeal. The grounds, in his memorandum of appeal, dated 21<sup>st</sup> March 2023, are: that his sworn evidence and documents were improperly expunged from the record; that non-compliance with an order for payment of costs could only be enforced before the appellant testified; that the finding that he was 100% liable was not supported by the evidence; that the general damages were manifestly high; and that the future medical expenses were not specifically pleaded and specifically proved.
5. The appellant subsequently amended his memorandum of appeal, on 26<sup>th</sup> November 2024, pursuant to leave granted on 21<sup>st</sup> November 2024, to add three more grounds on: whether the trial court lacked jurisdiction to hear and determine a claim after the mandatory sixty-day period, provided under section 34 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya, had lapsed; whether the trial court lacked jurisdiction to extend that time; and whether the trial court based its judgement on irrelevant considerations.
6. It was directed, on 9<sup>th</sup> May 2024, that the appeal be canvassed by way of written submissions.
7. The appellant flags three issues for determination: whether the Small Claims Court has jurisdiction to hear and determine matters after lapse of the sixty-day period, provided by section 34 of the *Small Claims Court Act*; whether the *Small Claims Court Act* allows the court to expunge received evidence from the record; and whether the court erred in the assessment of liability and compensation.
8. It is submitted that once the sixty-day period expired the trial court lost jurisdiction to hear and determine the matter and that there was no power to extend that period. Kenya Ports Authority v Modern Holdings (EA) Limited [2017] eKLR [2017] KECA 293 (KLR) (Makhandia, Ouko & M’Inoti, JJA), Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ), Aprim Consultant v Parliamentary Service Commission & 2 others CACA No. E039 of 2021 (unreported), Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation) [2023] KEHC 2417 (Gichohi, J), Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service [2019] eKLR (Karanja, Gatembu & Sichale, JJA), The Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Limited [1989] KLR 1653 [1989] eKLR (Nyarangi, Masime & Kwach, JJA), Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR (Makhandia, Ouko & M’Inoti, JJA) and Joseph Muthee Kamau & another v David Mwangi Gichure & another [2013] eKLR [2013] KECA 284 (KLR) (Visram, Koome & Odek, JJA) are cited in support.
9. On the expunging of evidence, it is submitted that the striking out of pleadings and other documents is draconian, and the *Small Claims Court Act* does not provide for timelines for filing of any documents, hence there is no penal provision for non-compliance. It is also submitted that section 17 of the *Small Claims Court Act* enjoins the court to uphold principles of natural justice; while section 32 provides that the said court is not bound by the rules of evidence. Teachers Service Commission v Obi [2024] KEELRC 838 (KLR)(Nderitu, J), Belinda Murai & others v Amos Wainaina [1979] eKLR (Madan, Wambuzi JJA & Miller AgJA) and Kenya Commercial Finance Company Limited v Richard Akwesera Onditi [2010] KECA 134 (KLR)(Omolo, Waki & Nyamu, JJA) are cited.
10. On liability, it is submitted that the respondent did not lead evidence on how the accident happened, for he merely said he was hit by the vehicle. It is submitted that the available evidence blamed the respondent for the accident. EMC (a minor suing through MNC) v James Irungu Nyanja [2020] eKLR (Ngenye-Macharia, J), Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another [2004] eKLR [2005] 1 EA 334 (O’Kubasu, Githinji & Waki, JJA) and Jane Muthoni Nyaga v Nicholas Wanjohi Thuo & another [2010] eKLR [2010] KEHC 1990 (KLR) (Karanja, J) are cited. On general damages, it is submitted that an award of Kshs. 350,000.00 should have been made, based on Reamic



Investment Limited v Joaz Amenya Samuel [2021] eKLR (Ougo, J), TAM (a minor suing through her father and next friend JOM) v Richard Kirimi Kinoti & another [2015] eKLR (Njuguna, J), Ibrahim Kalema Lewa v Esteele Company Limited [2016] eKLR [2016] KEHC 5503 (KLR) (Sergon, J) and Erick Ratemo v Joash Nyakweba Ratemo [2018] eKLR [2018] KEHC 4138 (KLR) (Majanja, J).

11. The respondent has identified three issues for determination: whether a judgement of the Small Claims Court, after more than the sixty-days, is still valid; whether the issue regarding the expunging of documents by the trial court is moot; and whether the court erred on liability and assessment of damages.
12. On the first issue, he cites Biosystems Consultants v Nyali Links Arcade [2023] KEHC 21068 (Magare, J) and Lumumba v Gift Gas Limited [2023] KEHC 25998 (Majanja, J), to argue that a judgment delivered outside the sixty days was still valid. On the second issue, it is argued that the appeal was filed out of time, without leave of court, hence the appellate court lacks jurisdiction to address the matter of the expunging of the evidence of the appellant. Section 79G of the *Civil Procedure Act*, Cap 21, Laws of Kenya, is cited.
13. On liability, it is argued that after the expungement of evidence and documents of the appellant, the case for the respondent was uncontested and uncontroverted, hence liability stood at 100%. On quantum, it is submitted that the respondent sustained a fracture of the left femur, with permanent disability at 4%, and Pestony Limited & another v Samuel Itonye Kagoko [2022] eKLR (Meoli, J) is cited, where Kshs. 800,000.00 was awarded for a fracture of midshaft femur, with permanent disability of 5%. On future medical expenses, he cites the medical report of Mr. Wokabi, which had been produced unchallenged. He argues that the future medical expenses were pleaded, assessed and awarded.
14. The appellant has summarised his grounds of appeal and reduced them into three issues: jurisdiction of the trial court to hear and determine a matter outside the sixty days provided for in section 34 of the *Small Claims Court Act*, jurisdiction of the trial court to expunge evidence from the record, and assessment of liability and damages. The respondent has adopted those issues flagged by the appellant around those three grounds. He adds a twist, though, competence of this appeal, given that it was filed outside the thirty days allowed under section 76G of the *Civil Procedure Act*, with respect to the issue of expungement of the evidence.
15. I will start with the competence of the appeal, given that competence of a suit or cause often goes into jurisdiction, which would make it a preliminary issue. Is this appeal competent?
16. The respondent argues that the appeal herein was filed out of time, without leave of court. He points at section 79G of the *Civil Procedure Act*, which provides that “any appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against ...” Judgment was delivered on 21<sup>st</sup> February 2023, and the appeal was filed on 22<sup>nd</sup> March 2023. The appeal, from the judgement, was filed on time, within the thirty days allowed. However, the issue the respondent raises is not about the judgement of 21<sup>st</sup> February 2023, but the ruling of 27<sup>th</sup> January 2023, when the evidence on record was expunged, on account of failure by the appellant to pay the costs of Kshs. 50,000., that had been imposed on 17<sup>th</sup> January 2023, as a condition for admission of a witness statement late. The order was that the failure to comply, before the next mention, would result with expungement of the documents. The respondent argues that the order, which expunged the said evidence, was not appealed against, and suggests that an appeal grounded on the judgement of 21<sup>st</sup> February 2023 cannot possibly relate also to the decision of 27<sup>th</sup> January 2023, and, if the appellant wished to challenge the decision of 27<sup>th</sup> January 2023, by way of appeal, he should have appealed against



it, and if he was challenging it in the appeal herein, then that challenge was out of time by fifty-four days, that is to say the period from 27<sup>th</sup> January 2023 to 22<sup>nd</sup> March 2023.

17. The issue of expungement of the witness statement and the police abstract, on 27<sup>th</sup> January 2023, is a storm in a teacup. In the first place, a witness statement is not a pleading. It is not in the same vein with a plaint and defence, under the Civil Procedure Act and Rules, nor a statement of claim and a response, under the Small Claims Court Act. The striking out of the witness statement of a defendant or respondent, does not leave the defendant or respondent without a defence or response or answer to the pleadings of the other party. A witness statement is not evidence. It is unsworn. It is not in the same league with an affidavit. It is not a statement on oath. The striking out or expungement of a witness statement does not weaken the case of the party filing it, as it is of no evidential value.
18. The practice of filing witness statements, in civil litigation, is a recent one. It is borrowed from criminal practice, where the witnesses, presented by the prosecution, would invariably have recorded statements with the police during investigations, and it is the said statements that are used to guide the prosecution of the criminal charges. Initially, the prosecution was not obliged to share the said statements with the defence, until recently, sometime just before the promulgation of the Constitution of Kenya in 2010, which made it mandatory to share such statements with the defence. See Thomas Patrick Cholmondeley v Republic [2008] (Omolo, O’Kubasu & Onyango Otieno, JJA). There is no requirement, in the Criminal Procedure Code, Cap 75, Laws of Kenya, for the filing, in court, of the prosecution witness statement. That witness statement is not evidence in criminal cases, and criminal court does not rely on it to make its decisions. Where and when any of the parties to the criminal proceedings wishes to rely on it as evidence, it has to be put in the court record, by way of production as an exhibit, upon which the criminal court would be entitled to treat it as evidence, and to rely on it to make its decisions.
19. The character of the witness statement in civil proceedings is the same as that in criminal proceedings. The only difference is that the Civil Procedure Rules requires its filing and service on the other side. See Order 3 rule 2 and Order 7 rule 5 of the Civil Procedure Rules. The fact of the filing of the witness statement, in civil proceedings, does not elevate it to the status of a pleading or an affidavit. It is not evidence. The civil court should not treat it as such. It is not a sworn statement, and it should not be treated as evidence. It should also be clear that a witness statement is not one of the evidentiary documents referred to in section 30 of the Small Claims Act and section 32 of the Evidence Act, Cap 80, Laws of Kenya.
20. The witness statement is a mere guide to the parties, on what the witness would testify about, to obviate ambush and to expedite proceedings. The case the parties are expected to prove is that disclosed in the pleadings, and the documents, if any, that they rely on, and not in the witness statement. With these on record, the failure to file a witness statement should not hurt. There is need to avoid elevating witness statements to the level of pleadings and affidavits. The practice of filing witness statements developed as a matter of expediency, but care should be taken, to obviate sacrificing justice at the altar of expediency.
21. The witness statement, in civil proceedings, is to be treated as evidence in two possible scenarios. The first is where it is produced by a party, usually the opposing side, as an exhibit. The second would be where the parties dispense with oral or viva voce evidence, and opt to rely on the witness statements filed, which are then adopted as the evidence. The second scenario has gained currency at the magistrate’s court. In proceedings founded on the Civil Procedure Rules, that approach is not feasible, for it is not provided for. The parties are obliged to present witnesses, who may adopt their witness statements as evidence, or produce them as exhibits to support their respective cases. The practice of not presenting witnesses, and relying solely on witness statements, is alien. It has no foundation in law, and it is flawed, to the extent that proceedings would be founded on unsworn statements.



22. The witness statement is not a document on oath. There should be sensitivity to how it is handled. The unsworn witness statement cannot and should not override the sworn testimony of a witness. So that where there is inconsistency, between the unsworn witness statement and the sworn oral testimony of the maker of that unsworn statement, the sworn oral testimony would triumph. Likewise, where the witness statement is struck out, but its maker nevertheless gives or makes an oral sworn statement during the trial, it cannot be taken that he did not adduce evidence to support his case, for his oral sworn statement would be superior to the unsworn witness statement. In addition to it being unsworn is the fact that its contents are not tested through cross-examination. The only permissible unsworn statement is that of a minor of tender years, by virtue of the *Oaths and Statutory Declarations Act*, Cap 19, Laws of Kenya, but even for that there should be testing through cross-examination.
23. Incidentally, the *Small Claims Court Act* and the Small Claims Court Rules do not provide for filing of witness statements at all, unlike what the Civil Procedure Rules provide in Order 3 rule 2 and Order 7 rule 5. There is, therefore, no basis for the Small Claims Court to direct parties to file witness statements, and to expunge evidence from the record on the basis that witness statements were filed late. There is just no provision at all, in the proceedings under the *Small Claims Court Act* and Rules, for filing of witness statements.
24. The Civil Procedure Rules do not govern and regulate proceedings at the Small Claims Court, according to Order 3 rule 2 of the Civil Procedure Rules, which states:
- “2. Documents to accompany suit [Order 3, rule 2]
- All suits filed under rule 1(1) including suits against the government, except small claims, shall be accompanied by—
- (a) ...
- (b) ...
- (c) written statements signed by the witnesses excluding expert witnesses; and
- (d) ...
- Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.”
25. So, what happened here? Parties were given fourteen days, on 14<sup>th</sup> November 2022, to file witness statements and lists of documents. On 17<sup>th</sup> January 2023, it transpired that the witness statement by the appellant and his list of documents were filed outside the fourteen days, and without leave of court. The court then admitted the statement but condemned the appellant to pay costs of Kshs. 5,000.00 by the next mention; in default of which the statement was to be expunged. The next court session was on 27<sup>th</sup> January 2023. The appellant had not complied with the order of 17<sup>th</sup> January 2023, with respect to payment of Kshs. 5,000.00. The consequence was that the witness statement, and the police abstract, that had been produced as R. Exhibit No. 1, were expunged from the record.
26. The appellant testified on 17<sup>th</sup> January 2023. He mentioned that he had recorded a witness statement. He did not express himself to be adopting its contents as his testimony in chief, neither did he purport to produce it as an exhibit. What he produced as an exhibit was a police abstract. He then went on to explain how the accident happened. He was cross-examined and re-examined.



27. So, did the orders of 27<sup>th</sup> January 2023 have any effect on the proceedings of 17<sup>th</sup> January 2023? The expunging of the witness statement did not affect what happened on 17<sup>th</sup> January 2023. The witness statement, which the court admitted on 17<sup>th</sup> January 2023, was not adopted by the appellant as his evidence. He did not produce it as an exhibit. The expunging of the said witness statement was absolutely of no consequence. The witness statement was not evidence. It was not adopted by its maker, nor produced by him as evidence. The maker gave sworn oral testimony. That oral sworn statement overrode any unsworn witness statement. Even if that witness statement were to remain in place, it would be useless, in view of the oral sworn statement of the appellant. In any case, the *Small Claims Court Act* and the Small Claims Court Rules do not provide for the filing of witness statements in the first place.
28. Part of what was expunged from the record was the police abstract produced by the appellant, as R. Exhibit No. 1. I wonder why that document was produced, by the appellant at all, for its contents and substance are the same as the police abstract produced by the respondent, in the bundle marked as Claimant Exhibit Nos. 1 to 9. The expunging of that document did not deprive the court of its contents, for the same contents were to be found in the same document that had been produced by the respondent earlier. So, whether R. Exhibit No. 1 was expunged or not made no difference.
29. Did the trial court consider the expunging of the witness statement, and the police abstract, to be of consequence? Yes, it did. At paragraph 10 of its judgement, it concluded that the appellant did not call and or file any evidence to try to controvert the case by the respondent.
30. That conclusion was not borne out by the record. The appellant called evidence. He presented himself as his own witness. He gave evidence on how, in his perspective, the accident happened. He testified as follows:
- “...the accident occurred on my lane. My motor vehicle was on the left side of the road and the passenger and the rider was on the right side of the road. The point of impact was on the right side of my motor vehicle. The motorcycle rested on the yellow line after the accident.”
31. There can be no foundation for the conclusion by the trial court that the appellant did not call evidence. He testified. He narrated how the accident happened. He was party to the accident. He was driving motor vehicle KCC 241J. He was an eyewitness. His information was first-hand. The expunging of his witness statement did not mean his sworn oral testimony or sworn oral statement was expunged too. I reiterate, that a witness statement is not evidence. It cannot override sworn oral evidence. The said witness statement should not even have been filed, in the first place, as it was not a requirement under the *Small Claims Court Act* and the Small Claims Court Rules.
32. The court also said that he did not file evidence. The document that he had filed, the police abstract, was expunged from the record. But, as indicated above, a copy of the same police abstract had been produced earlier, by the respondent. It was still available for perusal by the trial court, to evaluate the veracity of the sworn oral statement made by the appellant.
33. It is unfortunate that the status of these unsworn written statements was elevated above sworn oral evidence or sworn oral statements.
34. There was absolutely no basis for expunging the witness statement, as that statement is not even provided for under the governing statutory rules of procedure. In any event, the expunging of the unsworn witness statement did not amount to expunging the evidence, so long as the appellant testified on oath, on events that had unfolded before his own eyes. The notion that a witness ought not testify because he has not filed a witness statement has little foundation in law, for as long as the sworn oral



- statement of the witness overrides his unsworn written statement, which statement is itself extracted from the same witness. Why not hear from the horse's mouth directly, instead of relying on some written statement extracted from him.
35. Is there jurisdiction for the trial court to order expunging of such witness statements and other documents from the record after the witness has testified and relied on them? No. The *Small Claims Court Act* and the Small Claims Court Rules do not provide for witness statements. The expungement had something to do with costs not being paid. Ideally, costs of litigation are settled at the conclusion of the proceedings. Indeed, after delivering judgement, on 21<sup>st</sup> February 2023, the trial court imposed costs on the appellant. The costs of Kshs. 5,000.00, assessed on 17<sup>th</sup> January 2023, could still be recovered as part of what was ordered on 21<sup>st</sup> February 2023. There was no point of pushing the appellant, by expunging his documents, when, ultimately, he was still to shoulder the costs of the suit, were he to lose the case in the end. Even if costs were ordered against the respondent, had he lost the suit, the Kshs. 5,000.00 would have had to be deducted from what the respondent would have been required to pay to the appellant.
36. Section 34 of the *Small Claims Court Act* provides for expeditious disposal of cases filed under the Act. Under section 34(1), the claims should be disposed of within sixty days from the date of filing. Does this mean that jurisdiction would be lost, should the handling of the matter exceed the sixty days? Does it mean that a trial, conducted beyond the sixty-day period, is rendered invalid by section 34(1) of the *Small Claims Court Act*? The appellant argues that it does. The respondent argues that it does not.
37. The position taken by the appellant is informed by *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ), where it was stated that High Court proceedings, in election petitions, which are conducted after the lapse of the six months allowed by the relevant law, rendered the proceedings, and the consequent judgement, a nullity. A similar position was taken in *Aprim Consultant v Parliamentary Service Commission & 2 others CACA No. E039 of 2021* (unreported), with respect to Judicial Review proceedings relating to disputes under the Public Procurement and Assets Disposal Act, where section 175 provides for a time limit of forty-five days. It was held that jurisdiction ended once the forty-five days lapsed. In *Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J) it was held that, under the *Small Claims Court Act*, by virtue of section 34, once the sixty days lapse, a judgement delivered outside that period would be a nullity.
38. The respondent disagrees. He cites *Biosystems Consultants v Nyali Links Arcade* [2023] KEHC 21068 (Magare, J) and *Lumumba v Gift Gas Limited* [2023] KEHC 25998 (Majanja, J), where it was held that expiry of the sixty days, provided for under the *Small Claims Court Act*, does not take away jurisdiction, for the timelines given are merely administrative.
39. In *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ), it was held that section 75 of the *Elections Act*, places a time limit of six months for hearing and determination of election petitions, and once that time lapses the court would have no jurisdiction to determine the petition, and as such no remedy would be available to either party. In *Aprim Consultant v Parliamentary Service Commission & 2 others CACA No. E039 of 2021* (unreported), it was held that the Public Procurement and Assets Disposal Act, at section 175(3), gave the High Court forty-five days to determine a Judicial Review application on a decision of the Review Board. It was asserted that that provision is in mandatory terms, and it left no interpretative wriggle-room.



40. Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation) [2023] KEHC 2417 (Gichohi, J) was premised on Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and Aprim Consultant v Parliamentary Service Commission & 2 others CACA No. E039 of 2021 (unreported), and it was held that section 34 of the [Small Claims Court Act](#) is in mandatory terms, and it left little room for manoeuvre. The court proceeded to nullify a judgement of the Small Claims Court delivered outside the sixty days.
41. In Lumumba v Gift Gas Limited [2023] KEHC 25998 (Majanja, J), the High Court sought to distinguish Aprim Consultant v Parliamentary [Service Commission & 2 others CACA No. E039 of 2021](#) (unreported), on the basis that the sixty-day rule was directory rather than mandatory. The court clutched on the portion of section 34(1) of the [Small Claims Court Act](#), which has the phrase “so far as is practicable.” However, that phrase is limited to cases being heard and determined on the same day. It has nothing to do with the portions on cases being heard on a day-to-day basis until concluded and the sixty-day limitation. That phrase directs the court, so far as it is practicable, to hear and determine the matters expeditiously, if possible or practicable to hear and determine them the same day, and if not on a day-to-day basis. However, whatever the case, determination should be within sixty days from the date of filing.
42. I see no difference in the phraseology in sections 75 of the [Elections Act](#), 175 of the Public Procurement and Assets Disposal Act and 34(1) of the [Small Claims Court Act](#). I see no distinguishing features between them. All three provisions are in mandatory terms. The provision in section 34(1) of the [Small Claims Court Act](#) should be available for construction in the same manner as section 75 of the [Elections Act](#) was construed in Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ), and section 175(3) of the Public Procurement and Assets Disposal Act, in Aprim Consultant v Parliamentary [Service Commission & 2 others CACA No. E039 of 2021](#) (unreported).
43. The sixty-day rule is a strict statutory limitation, and I see no wriggle room. Once the sixty days lapse or expire, the Small Claims Court would be bereft of jurisdiction, and whatever it does thereafter would be a nullity. It is a risk that any one initiating a suit, under the [Small Claims Court Act](#), takes. There is the benefit of expeditious disposal of claims, and the hazard of being caught up in the limitation period of sixty days.
44. I would follow Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation) [2023] KEHC 2417 (Gichohi, J), and hold that the judgement in Nairobi SCCC No. E339 of 2022, was delivered outside the sixty-day rule, hence it was a nullity. The claim was filed on 7<sup>th</sup> November 2022 and the judgement was delivered on 21<sup>st</sup> February 2023. That was a total of one hundred and seven days after the filing of the claim. Judgement should have been delivered by 6<sup>th</sup> January 2023. The judgement delivered on 21<sup>st</sup> February 2023 was, therefore, a nullity. The [Small Claims Court Act](#) and the Rules do not provide for extension of that sixty-day period, and the trial court had not even purported to extend it.
45. Let me say the last thing on this, with respect to that timeline being strict. Section 34(3) outlaws or limits grant of adjournments, save for “exceptional and unforeseen circumstances.” Section 34(4) outlines what these “exceptional and unforeseen circumstances” would be. The objective, of outlawing or limiting adjournments, is so that the court is able to hear and determine the matter within the strict timeline of sixty days. If the sixty-day timeline was not strict, Parliament would not have, no doubt, gone into all that trouble.



46. On liability, it is evident that the trial court was prejudiced the moment it expunged the witness statement of the appellant and his police abstract exhibit, on the notion that that was the only available evidence on the side of the appellant. I have exhaustively dealt with the matter of the witness statement and the police abstract above, and concluded that the expunging should have had no effect on the case by the appellant. The appellant testified. He was an eyewitness to the events in question, given that he was one of the drivers of the two vehicles involved. What he said on oath should have carried weight, and should have been considered.
47. The trial court should have analysed the evidence presented by both sides. The respondent testified that the appellant was overtaking another vehicle, when his vehicle hit the motorcycle. He denied that he too was overtaking a bus, when the two vehicles collided, but conceded that there was a bus ahead of him, which moved aside to drop passengers, he had some space to pass, and as he was passing the collision happened. The appellant testified that the accident was on his lane, the point of impact was on his right side of his vehicle, as he was driving on the left side of the road, while the respondent was on the right lane going in the opposite direction. He asserted that the motorcycle rested on the yellow line after the accident. The police officer, called by the respondent, testified that the appellant was on the left side of the road, and on his rightful lane, and that the motorcycle was in the middle of the road. He stated that, according to the police abstract, the driver of the motorcycle was to blame. He stated that he could not substantively blame the appellant. No one was charged with a traffic offence, related to negligence or carelessness.
48. What should have been made of that evidence? The evidence that emerged was that the appellant's vehicle was on its right lane, on the left side of the road. The respondent was riding past a bus that was dropping passengers. After the collision, his motorcycle rested in the middle of the road, on the yellow line. That pointed to the respondent being the motorist who had encroached on the side of the other motorist. Consequently, he could not have been 0% liable for the accident and the appellant 100% liable. At the worst, liability should have been assessed at 50%:50%, and, at best, the appellant should have borne 30% to 40% liability, with the respondent bearing 60% to 70% liability.
49. On damages or compensation, the issue is on the general damages awarded for pain and suffering. The injury sustained was a fracture of the left femur. The appellant argues that the award made was high and disproportionate. He says that in *Reamic Investment Limited v Joaz Amenya Samuel* [2021] eKLR (Ougo, J), where the claimant had a femur fracture with soft tissue injuries, the court awarded Kshs. 350,000.00. The respondent disagrees and cites *Pestony Limited & another v Samuel Itonye Kagoko* [2022] eKLR (Meoli, J), where the claimant had a fracture of the left femur midshaft with permanent disability of 5%. He argues that he too had a left femur with permanent disability of 4%. In *Pestony Limited & another v Samuel Itonye Kagoko* [2022] eKLR (Meoli, J) Kshs. 800,000.00 was awarded, equivalent to what the trial court awarded. The trial court itself relied on *Pestony Limited & another v Samuel Itonye Kagoko* [2022] eKLR (Meoli, J).
50. The statement of claim noted the injury to be a fracture of the left femur with permanent disability at 4%. That was lifted from the medical report of Mr. WM Wokabi, Consultant surgeon.
51. In *Kurgat & Another v Onyiero* [2024] KEHC 7162 (KLR) (Ougo, J), the claimant had a fracture of the femur, with 10% permanent incapacitation, and Kshs. 830,000.00 was awarded. In *Jacaranda Bodaboda Operators & Another v Nyasero* [2023] KEHC 238 (KLR)(J. Njagi, J), the injuries were a fracture of the shaft of the right femur with 10% permanent disability, Kshs. 750,000.00 was awarded. In *Wanje v Samwel* [2025] KEHC 3478 (KLR) (Thande, J), the injury was a fracture of the midshaft right femur bone, with severe soft tissue injury, and the court awarded Kshs. 700,000.00. In *Kimani v Murugi* [2024] KEHC 6744 (KLR) (Nzioka, J), the injury was a fracture of the femur of the right leg



and a wound, Kshs. 550,000.00 was awarded. In *Kibisu v Njuguna & Another* [2024] KEHC 9283 (KLR) (Namisi, J), there was a fracture of the right femur, with 12% permanent disability. General damages were assessed at Kshs. 700,000.00. In *Obare & 2 Others v Ochieng* [2024] KEHC 1077 (KLR) (Majanja, J), there was a fracture of the proximal femur of the right leg, with soft tissue injuries, and Kshs. 800,000.00 was awarded.

52. From the above review, for the period 2023 to 2025, the courts are awarding damages, for comparable injuries, in the range of Kshs. 550,000.00 to Kshs. 850,000.00, of course, dependent on the degree of seriousness of the injuries. The award, by the trial court, was made in 2023, and appears to be within the range, although on the slightly higher side. Kshs. 700,000.00 would have been a more realistic figure.
53. In view of everything said, there is merit in the appeal herein, for the reasons discussed. I will determine the appeal on the issue of jurisdiction. As the sixty-day period had lapsed, as at the date judgement was delivered, the trial court no longer had jurisdiction, and it should not have returned any verdict. Consequently, I will allow the appeal herein. The judgement, of 21<sup>st</sup> February 2023, is hereby set aside, and substituted with an order dismissing the suit before the trial court. The appellant shall have costs of this appeal, and at the court below. The original trial court records shall be returned to the relevant registry. This appeal file shall be closed. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Ndegwa, instructed by Muchui & Company, Advocates for the appellant.

Ms. Wambani, instructed by Mr. Kiyondi Nyachae, Advocate for the respondent.

