



**Muriuki v Thande (Civil Appeal E024 of 2023)  
[2025] KEHC 7834 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7834 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E024 OF 2023  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**ELIUD BUNDI MURIUKI ..... APPELLANT**

**AND**

**DUNCAN MAINA THANDE ..... RESPONDENT**

**JUDGMENT**

1. The appellant being dissatisfied with the decision of the lower Court at Baricho by Hon. S.M Nyaga, Senior Resident Magistrate on 23<sup>rd</sup> June, 2023 filed a memorandum of appeal dated 22<sup>nd</sup> March, 2023. The Appellant was involved in a road traffic accident (RTA) on 26<sup>th</sup> August, 2019 when the Appellant was riding motor cycle registration number KMEV 006A along the Kerugoya- Kagumo road when it collided with the Respondents motor vehicle registration number KBV 671M.
2. The Appellant filed *Baricho CMCC No. 158 of 2019* 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. 800,000/= The appellant has appealed to this court on the following grounds;
  - i. That the learned magistrate erred in fact and in law by finding the appellant 50% liable in negligence in disregard of the sum of evidence of the appellant.
  - ii. That the learned magistrate erred in fact by failing to appreciate the fact that the Respondent did not summon any eye witness or the driver of the suit motor vehicle to controvert the direct evidence of the appellant.



- iii. That the learned magistrate erred in law in failing to consider the submissions of the counsel of the appellant, the evidence and the witness testimonies presented at the hearing and erroneously reached a finding that the Appellant herein contributed to the accident.
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 sole issue for determination in this appeal is whether the general damages awarded by the trial court were reasonable
9. 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.
10. 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 Zhongmei 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.
11. I find that in our present case the injuries were less severe and fully healed and no loss of future income the Ksh.800,00 awarded was reasonable in the circumstances of this case and I have no persuasive reason to interfere with the trial court’s finding.



12. 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”.

13. I find that this appeal lacks in merit and I dismiss with costs to the Respondent.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF JUNE, 2025 IN THE PRESENCE OF:**

Karomo for the Appellant

Kabita for the Respondent

Siele/Mark (Court Assistants)

.....

**J.K. NG'ARNG'AR**

**JUDGE**

