



REPUBLIC OF KENYA



**KENYA LAW**  
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**Yasmin v Nyelele (Civil Appeal 67 of 2020)**  
**[2025] KEHC 8858 (KLR) (Civ) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8858 (KLR)

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

**CIVIL**

**CIVIL APPEAL 67 OF 2020**

**JM NANG'EA, J**

**JUNE 17, 2025**

**BETWEEN**

**VIRANI MOHAMED FAZAL YASMIN ..... APPELLANT**

**AND**

**MBUVI NYELELE ..... RESPONDENT**

*(Being an appeal from Judgement and Decree of the Honourable D. O. Mbeja (SRM) delivered on 27th January, 2020 in CMCC No. 9499 of 2018)*

### **JUDGMENT**

1. The claim before the lower Court was instituted over injuries the Respondent suffered in a road traffic accident which occurred on 8<sup>th</sup> July, 2018 whilst the Respondent was a pedestrian along Lusaka road, Nairobi. The Appellant's motor vehicle registration number KBQ 692 N allegedly knocked down the Respondent owing to careless or negligent driving thereby occasioning him bodily injuries.
2. The Appellant traversed all the material claims in the suit, including the allegation of negligent driving and injury attributed to him, putting the Respondent to strict proof.
3. The matter was heard in full, and the lower Court delivered judgment in favour of the Respondent in the following terms;
  1. Liability - 100% against the Appellant
  2. General damages - Kshs. 200,000.
  3. Special damages of - Kshs. 3,550.
  4. The costs of the claim and interest from the date of delivery of the judgment.



4. The Appellant was dissatisfied with the outcome and preferred this appeal vide Memorandum of Appeal dated 10<sup>th</sup> February , 2020 on 4 grounds that can be summarized into 2 thus:
  - a. That the Learned Magistrate erred in law and fact in finding the Appellant wholly liable for the claim against the weight of evidence adduced in the trial.
  - b. That the learned trial magistrate erred in law and fact in assessing manifestly excessive general damages relative to the Respondent’s injuries while overlooking the Appellant’s submissions.
5. The Appellant therefore prays that the Appeal be allowed and the judgment of the Trial Court be set aside and/or substituted with an appropriate judgement on liability and general damages. The Appellant also seeks the costs of the Appeal and in the lower court action.

### **Appellant’s Submissions**

6. Regarding liability, the Appellant argues that the Respondent did not discharge his burden of proof on a balance of probability pointing out that his evidence on how the accident occurred was not corroborated by an independent witness. It is further submitted that the police abstract report tendered in evidence does not aid the Respondent since it is shown thereon that the accident was pending investigations at the time of preparation of the abstract. The Appellant opines in the circumstances that liability ought to have been ascribed to the parties equally (see case law in Commercial Transporters Limited vs Registered Trustees of the Catholic Archdiocese of Mombasa (2015) eKLR cited in Counsel submissions).

### **Respondent’s Submissions**

7. The Respondent’s advocates fully support the learned trial magistrate’s decision. The court is told that the accident vehicle driver carelessly or negligently drove the vehicle as determined by the trial court. The court is inter alia referred to this court’s judgement in Jona Venzil Nguko & Another vs John Mawaka Amisi & Another ( Suing as father, brother and personal representative of the estate of Joseph Mbatha Mwaka) (2015) Civil Appeal No. 589 of 2010 where my sister R.E Aburili held;

“A driver of a motor vehicle must be on the lookout and a driver approaching a pedestrians crossing or bus stop must be cautious and by merely being found on the road with the intention to cross does not connote negligence for which contributory evidence should be attributed”.

### **Analysis and determination**

8. This being a first appeal, this court cannot interfere with factual findings of the Trial Court unless it is shown that the court considered irrelevant factors or disregarded relevant factors. (see *Selle & Another vs Associated Motor Boat Company Ltd & Others* [1968] EA 123}. The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:

- i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and



iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”

9. Having considered the record of appeal, the evidence adduced and the arguments proffered by the parties’ respective Counsel, it is noted that the Appellant is challenging the lower court’s judgement on liability and quantum of damages assessed. I will consider the grounds of appeal together and determine whether liability was properly lawfully adjudicated, and further if the general damages award was inordinately high as to represent an entirely erroneous estimate of damages awardable to the Respondent in the particular circumstances of this case.
10. Regarding the issue of liability, the Respondent testified that the Appellant’s vehicle hit him as he stood on the left side of the road intending to cross over to the other side. He denied a suggestion that he was crossing the road at the material time. He admitted that there was no “zebra” crossing sign at the spot.
11. A police abstract report dated 8<sup>th</sup> July 2018 indicating that the accident was still under investigations was tendered and admitted in evidence
12. On his part, the Appellant called his vehicle driver (Mohamed Mansoor Omar). He confirmed the collision between the vehicle and the Respondent but blames the latter for dangerously crossing the road where there was no “zebra” crossing sign. He, however, conceded that he had time to see him crossing the road a few meters ahead. He had stepped on the brakes but still knocked the Respondent. Was the Appellant’s liability established on a balance of balance of probability?
13. In *Kanyangu Njogu vs Daniel Kimani Maingi* ( 2000) eKLR and *William Kabogo Gitau vs George Thuo & 2 Others* (2010) 1 KLR 526 it was held that where the court is to decide between two probabilities a balance of probability is shown if there is evidence that one probability is more probable than not. The legal position was also underscored in the case of *Palace Investments Ltd vs Geoffrey Kariuki Mwenda & Another* (2007) eKLR.
14. The appellant or his driver had a good opportunity to see the Respondent before knocking him down. It is more probable than not that in the circumstances the Appellant was wholly culpable for engaging excessive speed that caused him to be unable to control the vehicle. The Appellant had a greater responsibility to drive carefully being in charge of a motor vehicle while the Respondent was merely a pedestrian. I find that the trial court did not err in adjudging the Appellant wholly liable for claim.
15. Regarding assessment of damages, the general guiding principle were highlighted by the Court of Appeal in the celebrated case of *Butt vs Khan* [1978] KECA 24 (KLR) where the Court stated that:-

“... 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”
16. Further the Court of Appeal in *Kemfro Africa Limited t/a “Meru Express Services (19760” & Another vs Lubia & Another (No.2)* [1985] KECA 137 (KLR) was of the view that:-

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out a relevant one, or



that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilanga vs Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd vs Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.”

17. In *Harun Muyoma Boge vs Daniel Otieno Agulo MGR* [2015] eKLR it was opined that the assessment of general damages is not an exact science and the court takes into account the nature and extent of injuries in relation to previous awards for similar or comparable injuries.
18. I have looked at the injuries as particularized in the Statement of Claim, The Respondent’s medical-legal report dated 28<sup>th</sup> August 2018 shows that he suffered soft tissue injuries to wit; lacerations to the scalp and the back as well as bruises to the right earlobe and right hand. The injuries left scars on the affected parts. The Trial Court, guided by decisions cited by learned Counsel before him, made an award of Ksh. 200,000 in general damages in favour of the Respondent.
19. Having taken note of the injuries sustained by the Respondent; the medical evidence adduced before the trial court and case law that guided the Trial Court, I find that the amount of Kshs. 200,000/- assessed and granted in general damages is not inordinately high but is comparable to awards granted in similar cases.
20. To sample further comparable cases, in *Duncan Mwenda & 2 Others vs Silas Kinyua Kithela* (2018) eKLR, the claimant sustained severe head injury with intracerebral haematoma; damage to the exterior tendon of the left middle finger and soft tissue injuries on the chest wall. He was admitted in hospital for 5 months in an unconscious state . He complained of recurrent headache, chest pain, inability to extend the left middle finger and inability to hold tightly with the left hand. Like in the instant case the injuries, however, healed well without permanent disability. This court assessed and awarded general damages of Ksh. 350,000 in that case in which the injuries sustained are even more severe relative to the instant case.
21. In *Catherine Wanjiru King’ori & 3 Others vs Gibson Theuri Gichubi* (2005) the Claimant was granted Ksh. 300,000 for soft tissue injuries to the left ankle, legs and chest.
22. In the case of *Poa Link Services Co. Ltd & another vs Sidhani Boaz Bonzemo* [2021] eKLR the court assessed general damages in the sum of Kshs. 350,000 for blunt injury to the chest as well bruises to the lower abdomen; the right hip joint, thigh and knee. These injuries are also soft tissue in nature as compared to the instant matter.
23. For more or less similar injuries, the Claimant in *Embu HCCA No. 71 of 2016 (Bonface Mugendi & Another vs Emilio Murimi Njue)* was awarded a similar sum of Ksh. 350,000 general damages.
24. The trial court’s award is therefore within the range of previous awards of general damages in comparable cases and is not to be faulted.
25. The Appellant does not appear to be challenging the award of special damages which, in any event, the Respondent specifically pleaded and strictly proved as required in law.
26. For the foregoing reasons, I find that the appeal is not merited and is therefore dismissed in its entirety with costs to the Respondent.

**J.M. NANG’EA,**  
**JUDGE.**



**JUDGEMENT DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF JUNE 2025 IN THE PRESENCE OF:**

The Appellant's Advocate, Mr Omangi

The Respondent's Advocate, Absent

The Court Assistant, Jeniffer

**J.M. NANG'EA,**

**JUDGE.**

