



Aoko v Odero (Civil Appeal E006 of 2025) [2025] KEHC 10278 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E006 OF 2025**

DK KEMEL, J

JULY 18, 2025

BETWEEN

HAZEL OMANGA AOKO APPELLANT

AND

KENNEDY OMONDI ODERO RESPONDENT

(Being an appeal from the judgment and decree of Hon. Eric Malesi (P.M) in Madiany Principal Magistrate’s Court Civil Case No. E008 of 2024 delivered on 22nd January 2025)

JUDGMENT

1. The Appellant herein Hazel Omanga Aoko filed a plaint dated 2nd April 2024 seeking general damages, special damages, and interest on the general and special damages at 14 % interest rate from the date of filing suit until payment in full. The claim arose from an alleged road traffic accident that occurred on 08/10/2023 involving motor vehicle registration number KCD xxxX make Toyota Harrier along Bondo –Usenge road at Ka Gola area which veered off the road and rolled severally wherein the Appellant who was a passenger therein sustained injuries.
2. Upon a full hearing, the trial magistrate entered judgement in favor of the Appellant as follows:
 - a. Liability between Appellant and Respondent respectively.....20% : 80%
 - b. General damages.....Ksh 1,800, 000.00
 - c. Less 20% liability Ksh 360, 000.00
Ksh 1,440, 000.00
 - d) Future medical expenses Ksh 1, 500, 000.00
Total Ksh 2,940, 000.00



3. Aggrieved by the aforesaid judgement, the Appellant has appealed to this Court on the following grounds:
 - i. The learned trial magistrate erred in law and fact by disregarding the Appellant's submissions on liability and quantum hence arriving at an unjust award.
 - ii. The learned magistrate erred in in law and fact in making a finding on liability based on mere allegations in the respondent's pleadings that were not backed by any evidence , oral or otherwise
 - iii. The learned trial magistrate erred in law and fact when he apportioned 20% liability to the Appellant when there was sufficient proof of him being a passenger and that the suit vehicle had sustained a tyre burst hence the accident.
 - iv. The learned trial magistrate erred in law and fact when he deviated from the pleadings, evidence and submissions of the plaintiff in regard to quantum of damages generally thereby arriving at a grossly low and inordinate award.
 - v. The learned trial magistrate erred in law and fact by failing to appreciate the principles informing the award on general damages relating to the nature of the injuries suffered by the plaintiff and their consequences as reflected in the doctors medical report thereby awarding a grossly low and manifestly inadequate figure of ksh 1,800,000/= which was not commensurate with the said injuries and thus occasioning substantial miscarriage of justice.
 - vi. The learned trial magistrate erred in law and fact by failing to consider the principle of inflation and effluxion of time when making an award of quantum thereby condemning the Appellant to an irritably and unjustified low award not in tandem with the injuries in issue.
 - vii. The learned trial magistrate erred in law and fact by making an award that was not commensurate with the awards made for similar injuries that were referred to him by the Appellant in his submissions, hence occasioning a miscarriage of justice.
4. The appellant thus prayed that the appeal be allowed and the judgment and decree of the learned trial magistrate herein be set aside and replaced with an enhanced award favorable to the Appellant.
5. Being a first appeal, I have a duty to appreciate the entire evidence and subject it to a fresh exhaustive scrutiny and arrive at my own independent conclusion. I have to bear in mind that I did not have the opportunity to hear or see the witnesses and hence, i must give an allowance for that. (See *Selle & Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123; *Peters v. Sunday Post Ltd*(1958)EA 424;*Mary Wanjiku Gachigi v Ruth Muthoni Kamau*(Civil Appeal No. 172 of 2000. (Tunoi, Bosire & Owuor JJA);*Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* Civil Appeal No. 345 of 2000.(Okubasi, Githinji & Waki JJA).
6. Hazel Aoko Omanga (PW1) testified that she was not working. That she recorded her statement and filed in court and which she adopted as her evidence in chief. Likewise, the documents listed in her list of documents were adopted and admitted as exhibits. She stated further that she was unable to do much and still walks with the help of crutches. That the left leg is shorter than the right leg.

On cross-examination, she stated that the Respondent is her brother in law. That she was not a fare paying passenger.
7. That marked the close of the Appellant's case.



8. Kennedy Omondi Odero (DW1) testified that he is an aviation technician working in South Sudan. That he is the owner of the suit motor vehicle and had a valid driving license. The documents in his list of documents were admitted in evidence as exhibits in support of the defense case. That marked the close of the defense case.
9. The appeal was canvassed by way of written submissions. Both parties duly complied.
10. The appellant's submissions are dated 8th April 2025 in which she has appealed against both liability and quantum.
11. On liability, the Appellant averred that she was the one who testified in the case while the Respondent never testified. Furthermore, she submitted that the accident occurred after a tyre burst, which caused the suit motor vehicle to roll severely. That the Respondent never testified to rebut the evidence adduced by the Appellant during trial. It was thus erroneous, she averred, that the learned trial magistrate found the Appellant 20% liable for the accident, as no evidence was adduced to show her 20% contribution.
12. She relied on several authorities, among them was the case of *Janet Kathambi v Charity Kanja* [2021] eKLR, where the court observed that there was nothing to show the plaintiff's contribution to the accident.
13. Similarly in *Beatrice William Muthoka & Another suing as legal representative of the estate of the late William Muthoka Yumbia(deceased) v Agility logistics limited*[2020]eKLR where the court observed that the defendant had not shown the deceased's contribution in the occurrence of the accident and hence he proceeded to hold the defendant vicariously liable for the negligent actions of her driver. The deceased was a pillion passenger at the time of accident.
14. The Appellant therefore prayed that this Court reverses the award on liability and holds the Respondent 100% liable in favor of the Appellant.
15. On quantum, the Appellant relied on several authorities as well as submitting that the award by the trial magistrate was inordinately low. She listed the injuries sustained as follows:
 - i. Chest pain.
 - ii. Dislocation of the hip joint.
 - iii. Open fracture on the left ankle.
 - iv. Right subtalar joint dislocation with gloving wound.
 - v. Suprapubic tenderness.
 - vi. Widespread lung contusions.
 - vii. Trace of pericardial effusion.
 - viii. Right 1st rib minimally displaced fracture.
 - ix. Displaced fractures of the right superior and inferior pubic rami.
 - x. Left superior pubic ramus minimally displaced fracture.
 - xi. Diastatic fracture of the right sacroiliac joint.
 - xii. Right sacral bone fracture with comminuted bone fragments.



- xiii. No-displaced fracture neck of the left femur.
 - xiv. Suprapubic anterior abdominal wall subcutaneous edema.
 - xv. Focal right lobe of liver hypo density.
16. The Appellant submitted among others that as at the time of the examination by the doctor, she was still wheel chair bound, there was also shortening of the right leg by 2cm which requires further surgery of fusion on the dislocated right subtalar joint and was thus 20% incapacitated.
 17. It was her submission that at the time of testifying in court, she had left a huge medical bill of Ksh 1, 988 275.00 at Agha Khan Hospital which is the reason why she was not given a discharge summary.
 18. She relied on several authorities as she prayed that the award on quantum be enhanced. Among them was the case of *John Kabanda Maina v Evans Kamau Mwaura & 2 others* [2019]eKLR where an award of Kshs 2 400 000/= was made wherein the plaintiff sustained head injury with cerebral concussions, fracture of six teeth, injury of the right chest wall causing pneumothorax entry into the chest cavity, fracture of the pelvis-displaced fracture of the right superior and inferior pubic ramii, diastasis of the right knee resulting in the tear of the lateral meniscus. She submitted that these are the injuries that are almost like those in the instant case but those in the Appellant’s case are more severe due to the requirement of numerous surgeries.
 19. She also relied on the case of *Millicent Atieno Ochuonyo v Katola Richard* [2015] eKLR in which the plaintiff was awarded ksh 2 400 000/= in the year 2019, after sustaining a pelvic fracture consisting of a fracture of the right pubic ramus, fracture of the diastasis of the symphysis pubis, walked with a slight limp and suffered an incapacitation of 20%.
 20. On the other hand, the Respondent vide his submissions dated 21st May 2025, submitted that the Appellate Court should not interfere with the apportionment of liability of the trial court. Reliance was placed on several cases including *Mkuba v Nyamuro* [1983] KLR at 403 where Kneller JA & Hancox Ag JJA held that:

“A court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”
 21. On quantum, the Respondent submitted that general damages are supposed to compensate the injured to the extent that such injury can be assuaged by a money award. (See *Tayab v Kinanu* [1983] KLR 114.
 22. He also relied on *Butt v Khan* [1982-88] KAR 1 where it was held:

“An appellate court shall not disturb an award for damages unless it is 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”
 23. I have considered the evidence adduced before the trial court as well the rival submissions and find the issue for determination is whether the appeal has merit



24. I am guided by the case of *Mkuba v Nyamuro* [1983] KLR at 403 as quoted by the Respondent that:
- “A court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”
25. I am also persuaded by the decision of the court in *Butt v Khan* [1982-88] KAR 1(*supra*) where it was held:
- “An appellate court shall not disturb an award for damages unless it is 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.”
26. However, taking a good look at the injuries sustained by the Appellant as listed above, and guided by the principle of Stare decisis, the award granted by the trial court can barely settle the pending hospital bill of Ksh 1, 988 275.00; not mentioning the pending surgeries and future medical expenses. Again, the 20% incapacitation may also require her to employ personnel to aid in her day to day activities.
27. In the *Mkuba case (supra)*, the court held that an appellate court can interfere with the finding of a trial court if it's based on no evidence. Upon a thorough analysis of the trial proceedings, I find no evidence adduced by the Respondent to the effect that the Appellant did not have a seat belt on. I am therefore of the view that indeed the conclusion by the trial magistrate was based on no evidence. That being the position, and placing reliance on the case of *Janet Kathambi v Charity Kanja* [2021] eKLR, as quoted by the Appellant, I find no evidence adduced by the Respondent to show how the Appellant contributed to causing the accident. In any event, the Appellant was a passenger who had no control in the manner in which the Respondent's vehicle was managed and or controlled or even serviced. The issue of the tyre burst could be attributed to a number of factors such as whether the Respondent had maintained the tyre pressure and the quality of the tyre itself, controlled the vehicle appropriately in the event of such a tyre burst etc. All these factors are attributable to the Respondent as the owner of the vehicle and that the Appellant could not have any input thereon. In the premises, the finding on contributory negligence by the trial court against the Appellant was erroneous and must therefore be interfered with.
28. On quantum of damages, it is very clear from the exhibits on record and the evidence adduced by the Appellant as a whole that the injuries sustained by the Appellant were very severe. Guided by the principle of stare decisis and relying on the above cases as quoted by the parties, it is my humble view that the damages awarded by the trial magistrate were inordinately low in the circumstances as to represent an erroneous estimate of those damages. I must also take into consideration the effects of inflation on the shilling and thus find that a sum of Kshs 2, 500,000/ as general damages would have been sufficient to take care of the Appellant's pain, suffering and loss of amenities.
29. In light of the foregoing observations, it is my finding that the Appellant's appeal has merit. The same is allowed. The judgement of the learned trial magistrate dated 22/1/2025 is hereby set aside and substituted with the following orders:
- a) Liability against the Respondent.....100%.
 - b) General damages of Kshs 2, 500, 000/.
 - c) Future medical expenses.....Kshs 1, 500,000/.



d) Cost of the suit.

As the appeal has succeeded, the Appellant is awarded the costs of the appeal.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 18TH DAY OF JULY 2025.

D. KEMEI

JUDGE

In the presence of:

N/A M/s Okumu.....for Appellant

Okoyo Omondi.....for Respondent

Okumu.....Court Assistant

