



**Mediant International Limited v Kahuria (Civil Appeal
192 of 2023) [2025] KEHC 10515 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL 192 OF 2023
RC RUTTO, J
JULY 17, 2025**

BETWEEN

MEDIANT INTERNATIONAL LIMITED APPELLANT

AND

STEPHEN MUTHINI KAHURIA RESPONDENT

(An appeal from the judgment and decree of the Chief Magistrate's Court at Mavoko (S. Kandie, R.M.) delivered on 31st July 2023 in CMCC No. E1010 of 2021)

JUDGMENT

1. In a plaint dated 15th December 2021, the respondent instituted proceedings against the appellant following a road traffic accident that occurred on 2nd June 2021. The respondent alleged that the appellant was the registered, beneficial, and/or insured owner of motor vehicle registration number KCU 437W. On the day of the accident, the respondent was riding motorcycle registration number KMEY 765X along the Nairobi–Mombasa highway. Upon reaching Mlolongo Primary School, it was claimed that the appellant's driver negligently operated motor vehicle KCU 437W at an excessively high speed, lost control, and collided with the respondent. As a result, the respondent suffered bodily injuries and sought relief for: general damages, special damages amounting to Kshs.3,550.00, costs of the suit and interest on the awarded amounts.
2. In a judgment delivered on 31st July 2023, the trial court found the appellant 100% liable for the accident. The respondent was awarded: Kshs.403,550.00 for general and special damages, Costs of the suit and interest.
3. Aggrieved by these findings, the appellant filed this appeal vide a memorandum of appeal dated 14th August 2023, raising five grounds. In summary, the appellant contended that: the trial magistrate failed to properly consider its submissions and erroneously held that it was fully liable for negligence; and that the learned magistrate applied wrong principles in awarding general damages of Kshs.400,00.00



that was excessively high. The appellant prayed that the appeal be allowed with costs to the appellants, and that the respondent's suit be dismissed with costs.

4. The appeal was argued through written submissions. The appellant's submissions, dated 4th November 2024, contended that based on the respondent's own testimony and corroborating police evidence, the accident was caused by the respondent. Specifically, the appellant argued that: the respondent was riding behind the appellant's vehicle, he was intoxicated, which impaired his ability to control the motorcycle leading to the accident, the appellant's vehicle sustained damage to the rear right bumper and rear light lamp, indicating that the collision occurred from behind.
5. The appellant contended that the trial magistrate erred by casting doubt on the credibility of the police abstract it had tendered as evidence, instead of making findings in its favor. It argued that the magistrate lacked valid grounds to question the authenticity of the abstract and maintained that it was duly produced in court. The appellant further disputed the magistrate's findings on the respondent's alleged intoxication, asserting that it was not necessary for the respondent to be formally charged with a traffic offense in order for liability to be found against him. Additionally, the appellant lamented that the photographs it had presented in evidence were not duly considered. It reiterated its position that the respondent failed to prove his case on a balance of probabilities, and consequently, urged the court to quash and set aside the findings of the trial court.
6. With regard to the award of damages, the appellant submitted that the sum of Kshs.400,000.00 was grossly excessive in light of the nature of the injuries sustained by the respondent. It proposed a reduction of the general damages to Kshs.200,000.00, relying on the precedent set in *Kamenju Charles v. Gideon Muia Mutisya* [2014] eKLR.
7. The respondent opposed the appeal and filed his written submissions dated 13th December 2024. He argued that the trial court's findings were sound and ought to be upheld. He contended that the totality of the evidence presented pointed to negligence on the part of the appellant's driver. Regarding the photographs referred to by the appellant, the respondent asserted that they were rightly excluded for non-compliance with Section 106B of the *Evidence Act*. As for general damages, the respondent maintained that the amount awarded was proportionate to the injuries he suffered and was in line with comparable judicial precedent. He urged the court to dismiss the appeal with costs.
8. I have reviewed the memorandum of appeal, considered both parties' written submissions, examined the record, and analyzed the relevant law. As a first appellate court, my primary duty is to re-evaluate, reassess, and re-analyze the evidence on record, while bearing in mind that I did not have the opportunity to observe the demeanour of the witnesses firsthand [See *Postal Corporation of Kenya v. Andrew K. Tanui* [2019] KECA 489 (KLR)]
9. The record shows that the respondent called three witnesses. Among them, PW1, Dr. G.K. Mwaura, testified that he examined the respondent on 26th October 2021, following the road traffic accident. He confirmed that the respondent sustained the following injuries: deep cut wounds on the head, above the left eye, and left ankle joint, dislocation of the right ankle, swelling, tenderness, and pain in the right foot.
10. PW1's findings, prognosis and opinion (at the time of the examination) were that the respondent's healing was incomplete as he had pain on his right ankle on exertion and bouts of headaches. His view was that he had suffered severe and moderate soft tissue injuries and his prognosis was fair. He compiled the report that was produced a medical report as part of the evidence. He also presented receipts totalling to Kshs13,000.00 covering Kshs.10,000.00 for his court attendance and Kshs.3,000.00 for preparing the medical report.



11. PW2, PC Kariuki, confirmed that a road traffic accident occurred on 2nd June 2021 at approximately 4:45 p.m. near Mlolongo Primary School involving the appellant and the respondent. He stated that a police abstract dated 24th June 2021 had been issued to the respondent and was produced in evidence. However, he clarified that he was not the investigating officer and was therefore unable to confirm the scope of investigations conducted regarding the accident.
12. PW3, the respondent, testified that on the material date, he was riding motorcycle registration number KMEY 765X along the Nairobi–Mombasa highway. Both he and the appellant’s vehicle were headed in the same direction, with the respondent riding behind. Upon reaching Mlolongo Primary School, the respondent attempted to overtake the appellant’s vehicle. He alleged that the appellant’s driver accelerated suddenly and lost control, resulting in a collision that left him with: a dislocation of the right ankle; deep cuts on the left ankle, forehead, and above the left eye; and a swollen, painful right foot.
13. PW3 attributed the accident to the appellant’s driver, citing failure to keep proper lookout, driving the suit vehicle at a high speed, failing to control the vehicle, driving without due regard to other road users, failing to brake, stop, swerve, slow down or in any other manner managing the vehicle so as to avoid the accident and driving recklessly, carelessly and dangerously.
14. To support his claim, the respondent produced medical documentation from Athi River Shalom Community Hospital, dated 24th June 2021, which confirmed the injuries outlined in PW1’s earlier medical report. The treatment administered included medication, wound dressing, and bandaging of joints. The respondent was discharged on the same day. He also submitted his P3 form, demand letter, statutory notice, motor vehicle search, and receipts.
15. The appellant presented two witnesses. DW1, CPL Amdany, relied on a police abstract dated 4th June 2021 to confirm the accident. He stated that the accident involved the appellant’s motor vehicle, driven by DW2 Agnes Adhiambo Ochieng, and the respondent’s motorcycle. He noted damage to the vehicle’s rear light lamp and right rear bumper, suggesting rear impact. DW1 alleged that the respondent was intoxicated and in possession of 20 litres of illicit brew, but admitted that no photographs of the accident scene were taken and he was not the investigating officer.
16. DW2, the driver of the suit vehicle, testified that she was branching off the main road after passing the Mlolongo footbridge when she heard a loud bang behind her. She observed a motorcycle, two individuals, and several yellow jerricans flying over her vehicle before landing on the right side of the road. DW2 immediately stopped and noticed damage to the right rear bumper and rear lamp/reflector. Police officers arrived shortly thereafter, and the injured individuals were taken to a hospital. DW2 recorded her statement and the vehicle was later inspected by NTSA, resulting in an inspection report. She was issued with a police abstract and an NTSA inspection report. She produced the motor accident claim form and photographs of the vehicle before and after repairs.
17. The main issue for determination is whether the trial magistrate reached a correct determination on liability and quantum of damages. It is undisputed that the accident occurred on 2nd June 2021 at 4:45 p.m., involving the appellant’s vehicle (KCU 437W) and the respondent’s motorcycle (KMEY 765X), both traveling in the same direction near Mlolongo Primary School. The point of impact was the vehicle’s rear right side.
18. According to the respondent, he was lawfully riding motorcycle registration number KMEY 765X near Mlolongo Primary School when the appellant’s driver, allegedly driving carelessly, negligently, and at an excessive speed, lost control of motor vehicle KCU 437W, resulting in the collision.



19. PW2, PC Kariuki, confirmed that the accident occurred and that a police abstract had been issued by Athi River Police Station. However, he did not give any testimony on how the accident transpired or who was at fault. Under cross-examination, PW2 stated that he was not the investigating officer, had no access to the police file, and was unaware whether investigations had been concluded.
20. Conversely, the appellant testified that she was driving in the outer lane (left side of the road) from Mlolongo toward Total Sabaki, intending to branch off from the main road. She reported hearing a loud bang from behind, and then saw a motorcycle, two individuals, and several yellow jerricans fly over her car, landing on the right side of the road. Upon stopping, she observed that the motorcycle had hit the rear of her vehicle.
21. In support of the appellant’s case, DW1 Cpl. Amdany confirmed the occurrence of the accident. Like PW2, he acknowledged under cross-examination that he was not the investigating officer and had no access to the police file. He further stated that two police abstracts had been issued—the second one, dated 4th July 2021, indicated that the motorcycle was at fault and that the rider was allegedly intoxicated. However, no alcohol tests were conducted to substantiate this claim.
22. There are notable gaps in the account of how the accident occurred. It is significant that neither party called any independent witnesses to testify on how the accident unfolded. The respective accounts provided do not establish a clear sequence of events that would allow this court to definitively assign blame to either party based on the balance of probabilities. These uncertainties undermine the trial court’s finding that the appellant was wholly responsible for the accident.
23. Accordingly, I find that both the appellant and the respondent contributed to the accident. Each owed a duty of care to the other while using the road. The respondent, who was riding behind the appellant, did not offer any evidence of precautions taken to avoid the accident. Instead, he placed sole blame on the appellant—who, given the rear impact, did not have the benefit of seeing the motorcycle approach.
24. While the respondent was accused of driving under the influence, I find that no concrete evidence was presented to confirm the respondent’s intoxication. Any conclusion regarding his alleged drunkenness remains speculative.
25. The trial magistrate expressed doubt regarding the police abstract submitted by the appellant, but it is unclear whether this stemmed from concerns over timing or authenticity. It is worth noting that the respondent received his police abstract 22 days after the accident. I find no reason to question the validity of either abstract given that it was admitted that the two abstracts were issued by the Athi River Police Station. As for the photographs produced by the appellant, they were properly excluded under Section 106B(4) of the *Evidence Act*, as no certificate of authenticity was submitted.
26. Based on the analysis above, I find the trial court’s finding attributing 100% liability to the appellant under the circumstances to be erroneous and proceed to set it aside. Consequently, I substitute it with a finding that both parties are equally responsible. Therefore, liability shall be apportioned 50:50 between the appellant and the respondent.
27. On damages, it is trite law that appellate court will only interfere with an award of damages in certain circumstances as expounded by the Court of Appeal in the case of Bashir Ahmed Butt vs. Uwais Ahmed Khan [1982-88] KAR 5 that held as follows:

“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.”

28. It is undisputed that the respondent sustained the following injuries, deep cut wounds in his head, above his left eye and left ankle joint, a dislocation of his right ankle and a swollen tender and painful right foot. The injuries were classified by PW1 as severe and moderate soft tissue injuries.
29. The trial court relied on the decisions in *Miriam Njeri Murimi v. Kenya Broadcasting Corporation* [2009] eKLR and *Blue Horizon Travel Co. Ltd v. Kenneth Njoroge* [2020] eKLR) to support the award of Kshs.400,000.00 in general damages. The decisions relied on by the trial court bore similar injuries to those suffered by the respondent. The appellant relied on *Kamenju Charles v. Gideon Muia Mutisya* [2014] eKLR to propose a reduction to Kshs.200,000.00. However, upon comparing the injuries and considering inflationary factors, I find that the award of Kshs.400,000.00 was fair and properly assessed. I therefore decline to interfere with it. On special damages a sum of Kshs.3,550.00 was pleaded and adequately proven.
30. In conclusion, the appeal partially succeeds to the extent that liability is apportioned equally at 50:50, and the total sum of Kshs.403,550.00 shall abide by the apportionment of liability. Each party shall bear its own costs for this appeal.
31. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF JULY, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Appellant

.....for Respondent

Selina Court Assistant

