



REPUBLIC OF KENYA



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**Nyagah & another v Julius (Civil Appeal E053 of 2023)
[2025] KEHC 10486 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E053 OF 2023
EM MURIITHI, J
JULY 17, 2025**

BETWEEN

JAMES NYAGAH 1ST APPELLANT

MATTHEW NJAGI NJERU 2ND APPELLANT

AND

JAMES MUCHIRA JULIUS RESPONDENT

*(Being an Appeal from the judgment of Honourable L. W. Kabaria (Mrs)
(P.M) delivered on the 23/6/2023 at Gichugu PMCC No. E013 of 2022)*

JUDGMENT

1. By Plaintiff dated 17/3/2022, the Respondent sued the Appellants seeking general damages, special damages of Ksh. 96,700 and costs of the suit plus interest. The Respondent pleaded that on or about 25/6/2021 at about 10.30 am, he was lawfully riding his motor cycle Registration No. KMDJ 985 F along Kianyaga Kiamutugu road, when the Appellants and/or their driver so negligently drove Motor Vehicle Registration No. KCM 389 Y Isuzu Lorry that it hit him, thereby occasioning him serious bodily injuries.
2. The Appellants denied the claim vide their statement of defence dated 14/4/2022 and prayed for the Respondent's suit to be dismissed with costs.
3. Upon full hearing of the case, the trial court apportioned liability at 100% and awarded general damages for pain, suffering and loss of amenities of Ksh. 1,750,000, special damages of Ksh. 28,370 together with costs and interest.



The appeal

4. On appeal, the Appellants vide their memorandum of appeal dated 14/7/2023 set out 4 grounds as follows:
 1. The learned magistrate erred in law and fact by apportioning liability at 100% against the Appellants considering the evidence tendered by the 1st Appellant during the hearing.
 2. The learned magistrate erred in law and fact by awarding the Respondent general damages which are inordinately high considering the nature of injuries sustained.
 3. The learned magistrate erred in law and fact by failing to appreciate that the Respondent had recovered from his injuries substantially.
 4. The learned magistrate erred in law and fact by departing from the conventional awards of damages for similar injuries.

Duty of the Court

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. [See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123].

Evidence

6. PW1 James Muchira Julius and the Respondent herein adopted his witness statement dated 17/3/2021 as his evidence in chief and produced the list of documents dated 24/3/2022 as exhibits. He testified that, “I am the Plaintiff. I sued James Njoroge and Mathew Njagi on an account that happened on 25/6/2021. The accident occurred at 10:30 along the Kiamutugu-Kianyaga road. I was on a motorcycle KMDJ 985F. My prayers are as in my plaint.”
7. On cross examination, he stated that, “Yes, someone was blamed for the accident by the police the one who hit me was blamed. [referred to the abstract-P Exh 1]. I have seen the abstract. Yes my advocate wrote a demand letter [referred to P.Exh 31]. Yes, the vehicle that hit was KCM 389Y. No, it didn't come from the road, it came from a car wash in reverse at a high speed and no one was on the lookout. The car wash is off the road. It is about 30 meters-40 meters from the road. It is very near the road. Let us say 10 meters. Yes, he reversed straight into the road. People wanted to beat him. He ran off. He is the one who hit me. [Referred to his receipts] Yes, I have sought special damages of Kshs 60,000. I brought receipts worth Kshs 96,000. No what are before court are not amounting to Kshs 28,000.”
8. In re-examination, he stated that, “[referred to demand letter] It says the lorry came from the car wash in reverse.”
9. DW1 James Namu Nyaga adopted his witness statement dated 29/7/2022 as his evidence in chief together with the list of documents dated 29/7/2022 as exhibits. He stated that, “I am a driver. I live in Kiamutugu Power center.”
10. On cross examination, he stated that, “The accident occurred on 25/6/2021. I was there when it happened I was driving the vehicle. Yes, the accident involved my lorry and James Muchira on his motorcycle. Yes, there is a car wash where it occurred. I confirm that the lorry was in motion when the accident occurred. I was driving the vehicle into the car wash. When you leave the road to enter into the carwash there is nowhere that you reverse. No, you don't need to maneuver for the lorry to enter



the car wash. I had gone past the yellow line my vehicle was in the car wash the rear is what had been left on the road. There was no one looking out for me. There is an eye witness there is a young man who sell fuel nearby. He wasn't called to record a statement. I heard a sound from the rear of something that had fallen. I stopped the vehicle and found it was a person. Yes, the point of impact was on the road. I checked the vehicle it didn't have any dent. Yes, because of its height. Had it hit the lorry it would have been visible because the motorcycle handles can touch the lorry. When I heard a sound, I checked and didn't see a dent. I can't tell the point of impact. The motorcycle had fallen on the side of the lorry and the rider was on the opposite side. I took him to Kiamutugu health center. I have never gone to visit him. We didn't settle his bill. According to the doctor he was injured. Yes, I was told to take the lorry to the police station. Later it was taken for inspection. I deposited cash bail and the vehicle was released. Yes, the case is still pending.”

11. In re-examination, he stated that, “Yes, my vehicle was in motion. I was lost completely inside the carwash when the accident occurred. Yes, I can't tell the point of impact with the lorry. The rider was on the road on the ground.”

Submissions

12. The Appellants propose a 50:50 liability ratio because there was no clear evidence on who was to blame for the accident, and cite Postal Corporation of Kenya & another v Dicken Munayi [2014] eKLR and Njami v Kagia [Civil Appeal E054 of 2022] [2024] KEHC 5498 [KLR]. They fault the trial court for making an inordinately high award of damages in view of the injuries sustained by the Respondent, and cite Mbae [Suing as the Legal Representative of the Estate of Kooome Mbae] v Kinya [2024] KEHC 2285 [KLR], Joseph Njeru Luke, Monica Kinyua, Joseph Ndirangu Wambui & Samuel Mugo v Stella Muki Kioko [2020] KEHC 9029, Joseph Mwangi Thuita v Joyce Mwole [2018] eKLR, George Raini Atungu v Jared Ogwoka Ondari [2021] eKLR and Deneva Heavy Tracks & Another v Chrispine Otieno [2022] eKLR. The Appellants' submissions on special damages are rejected because their appeal was pegged on the excessiveness or otherwise of the award of general damages.
13. The Respondent submits that he did not contribute to the accident in any way and urges the court not to interfere with the trial court's finding on liability. He urges the court to dismiss the appeal because the trial court applied the right principles in assessing the damages.

Analysis and determination

14. From the grounds of appeal as framed, the issues for determination are whether the apportionment of liability at 100% was proper and whether the award of general damages was inordinately high.

Liability

15. In his uncontroverted evidence, the Respondent and an eye witness stated that, “Yes, the vehicle that hit was KCM 389Y. No, it didn't come from the road, it came from a car wash in reverse at a high speed and no one was on the lookout. The car wash is off the road. It is about 30 meters - 40 meters from the road. Yes, he reversed straight into the road.”
16. The 1st Appellant, who also witnessed the accident, concurred that, “The accident occurred on 25/6/2021. I was there when it happened I was driving the vehicle. Yes, the accident involved my lorry and James Muchira on his motorcycle. Yes, there is a car wash where it occurred. I confirm that the lorry was in motion when the accident occurred. I was driving the vehicle into the car wash. Yes, the point of impact was on the road.”



17. This court finds that the 1st Appellant negligently reversed the car from the car wash directly to the road at a dangerously high speed, without due attention to other road users, thereby causing the accident.
18. Had the 1st Appellant exercised reasonable care, he would have seen the Respondent in good time to avoid hitting him. There is no indication that the Respondent was in any way negligent, and the court undoubtedly finds that the trial court's apportionment of liability at 100% against the Appellants was justified.

Inordinately high general damages

19. This court has previously considered the principles for appellate interference with an award of damages by a trial court in *Crown Bus Services Ltd & 2 others v BM [Minor suing through his mother & Next Friend] SMA* [2020] eKLR as follows:

“The well-known principles for interference of an award of damages by a trial court are laid down by the Privy Council in *Nance v British Columbia Electric Railway Co. Ltd.* [1951] A.C. 601, 613 and applied in East Africa by Sir K. O'Connor [with whom Sir Alastair Forbes, V.-P. and Newbold, J.A. agreed] in *Henry H. Ilanga v M. Manyoka* [1961] EA 705, 713 as follows: “The principles which apply under this head are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law [as taking in some irrelevant factor or leaving out of account some relevant one]; or, short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage [*Flint v Lovell*, [1935] 1 K.B.], approved by the House of Lords in *Davies v Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601.”

20. The injuries sustained by the Respondent are particularized in the plaint to include right side internal bleeding of the head [epidural hematoma], brain swelling [oedema], multiple skull fractures, air collection beneath the skin, left 7th and 8th rib fracture and displaced, air collection inside the skin of the chest, fracture of the left lower radius bone [colles] bone, fracture of the clavicle bone [collar bone], deep cut wound on the upper part of the left shin and abrasion of the mid left shin area.
21. The Respondent recorded in his statement which he adopted as his evidence in chief that, “From there I lost consciousness. I recovered my consciousness after 4 days. I was informed by my wife that after the accident I was taken to Kiamutugu Health Center. On the same date of the accident on 25/6/2021 I was taken to Kerugya General Hospital where I was admitted. I was discharged on 28/6/2021. I then taken to Kerugoya Medical Centre on the same day of 28/6/2021 and admitted until 7/7/2021. I went home and on 11/7/2021 I was taken to Karira Our Lady of Lourdes Hospital where I was admitted until 15/7/2021. I was re-admitted at Karira Our Lady of Lourdes Hospital on 19/7/2021 and discharged on 28/7/2021. On 26/8/2021 I went for review clinic at Karira Our Lady of Lourdes Hospital where I was removed the plaster of paris on my hand. I also made follow up clinics at Karira Our Lady of Lourdes Hospital for review on the treatment of my ribs and chest.”
22. The Appellants produced a medical report by Dr. Waithaka Mwaura, an Occupational Physician dated 13/6/2022. On examining the Respondent on the said date, which was approximately a year after the accident, the Respondent complained of inability to carry heavy objects with the upper limb,



permanent scars and a deformed left clavicle, and the doctor assessed the degree of residue permanent disability at 15%.

23. The injuries the Respondent sustained were majorly soft tissue in nature save for a fracture of the left 7th and 8th rib, a fracture of the lower radius bone and a fracture of the clavicle bone, which culminated in his admission at Kerugoya General Hospital, Kerugoya Medical Centre and Karira Our Lady of Lourdes Hospital for a cumulative period of 25 days.
24. There is no gainsaying that the injuries the Respondent sustained were severe, which left him with permanent scars and a deformed left clavicle. While the Respondent may have fully recovered, he was permanently incapacitated on account of the Appellants' negligence.
25. It is settled law that comparable injuries should attract comparable damages. In *Kitavi v Coast Bottlers Limited* [1985] eKLR, the court [Kneller JA] had this to say:

“It is now settled law that what the appellant was entitled to was a reasonable compensation assessed with moderation and conformity with the general method of approach, local courts have taken. Guidelines and brackets for various injuries are useful aids to some hope of consistency but awards will very much depend on the facts of each case and any attempt to standardize “or rigidily” classify them will be in vain and wrong.”

26. In *Penina Waithira Kaburu v LP* [2019] eKLR, the court [Ngaah Jairus J] upheld an award of general damages of Ksh. 2,000,000 for a claimant who suffered multiples fractures on the pelvis, injuries on the urethra and bruises on the legs.
27. Similarly in *Edward Mzamili Katana v CMC Motors Group Ltd & Another* [2006] eKLR, the court [D.K Maraga J, as he then was] awarded Ksh. 2,000,000 where the claimant sustained head injury leading to concussion, cut wound and bruises of the scalp, fracture of the left scapula, compound fracture dislocation of the left elbow, chest injury with multiple fractures of left 5th, 6th and 7th ribs and fracture of the left femur upper 1/3 shaft.
28. Consequently, this court finds that the trial court's award of general damages of Ksh.1,750,000 was comparable to the injuries the Respondent sustained, and thus commensurate to the pain he suffered.

ORDERS

29. Accordingly for the reasons set out above, this court finds the appeal to be without merit and it is dismissed.
30. The appellant shall pay the costs of the appeal to the Respondent.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances;

Mr. Tambo for the Appellant.

Ms. A. Thungu for the Respondent.

