



REPUBLIC OF KENYA



KENYA LAW
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**Njue v Maiya & 2 others (Civil Appeal E064 of 2024)
[2025] KEHC 9482 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E064 OF 2024
AN ONGERI, J
JULY 2, 2025**

BETWEEN

TIMOTHY NJUE APPELLANT

AND

REUBEN MALUSI MAIYA 1ST RESPONDENT

DONATIO NJIRU GITARE 2ND RESPONDENT

ALI CARS LIMITED 3RD RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. C. K. Kitbinji
(PM) in Voi CMCC No. E136 of 2021 delivered on 13th November 2024)*

JUDGMENT

1. The 1st Respondent Reuben Malusi Maiya was the Plaintiff in Voi CMCC No. E136 of 2021 where the sued the Appellant as the 1st defendant together with the 2nd and 3rd Respondents who were the 2nd and 3rd Defendants respectively. The 2nd Respondent was enjoined as a 3rd Party.
2. The claim was in respect of a road traffic accident that occurred along Nairobi – Mombasa road at Ndii Area on 28th November 2020 at around 5:30p.m when the Respondent was travelling in motor vehicle registration No. KCP 193G Toyota saloon car belonging to the 3rd Party (Donatio Njiru Gitare).
3. The Appellant filed a Statement of Defence denying the Plaintiff's claim.
4. The 3rd Respondent averred that it had sold the motor vehicle to 3rd Party Donatio Njiru Gitare (the 2nd Respondent).
5. Further that the 3rd Respondent (Ali Cars Limited) retained the log book while the 3rd Party was in possession of the motor vehicle.



6. The Appellant was the driver of motor vehicle registration No. KCP 193G Toyota Belta.
7. The evidence in brief was that the Appellant was hired by the 3rd Party Donatio Njiru Gitare as the driver of the motor vehicle.
8. The 3rd Party had bought the motor vehicle from the 3rd Respondent in this appeal (Ali Cars Limited) who was 2nd Defendant in the primary suit.
9. A sale agreement was produced to that effect. The 1st Respondent said the Appellant was overtaking when the accident occurred.
10. The Appellants said he had given the 1st Respondent a lift. 1st Respondent who was the Plaintiff in the primary suit said he had been given a lift together with another person when the accident occurred.
11. The trial court found the Appellant and the 3rd Party 100% liable in negligence.
12. The 1st Respondent sustained the following injuries:-
 - i. Fracture of the right 1st, 2nd, 3rd and 5th ribs.
 - ii. Blunt trauma to the neck and right flank.
 - iii. Post trauma cervical spondylosis (arthritis/arthralgia) neck area.
 - iv. Bruises and abrasions on the right waist/illac.
13. The trial court assessed damages as follows:-

General damages for pain and suffering Kshs. 800,000/=

Future medical expenses Kshs. 96,000/=

Special damages Kshs. 5,550/=

Total Kshs. 901,550/=
14. The Appellant has appealed to this court against the judgment of the trial court on the following grounds:-
 - i. The Learned Magistrate erred in fact and in law in finding the Appellant was negligent and or driving at a high speed.
 - ii. The Learned Magistrate erred in fact and in law by failing to consider and appreciate the circumstances under which the accident occurred.
 - iii. The Learned Magistrate erred in fact and in law in finding that the Appellant was 100% liable for the accident.
 - iv. The Learned Magistrate erred in law in holding that the Appellant being an agent of 2nd Respondent was joint and severally liable together with his principal the 2nd Respondent.
 - v. The Learned Magistrate erred in principle in assessing general damage to the 1st Respondent at Kshs. 800,000/= which is manifestly excessive.
 - vi. The Learned Magistrate erred in law in by failing to consider the Appellant's written submissions.
15. The parties filed written submissions as follows;



16. The Appellant submitted that he has appealed against the entire judgment and decree of the trial court, arguing that the magistrate erred in both fact and law.
17. The Appellant contests the finding of negligence, asserting that the evidence presented by the 1st Respondent was inconsistent with the pleaded case and failed to prove excessive speed or unsafe overtaking.
18. The 1st Respondent's witnesses, including a medical examiner and a police officer, provided testimony that either lacked first hand knowledge of the accident or contradicted the pleaded allegations.
19. Notably, the police officer confirmed that the Appellant swerved to avoid a head-on collision, which does not constitute negligence.
20. The Appellant argued that the court disregarded this key evidence and instead relied on unsubstantiated claims, violating the principle that parties are bound by their pleadings.
21. On liability, the Appellant challenges the finding of 100% negligence, contending that the accident resulted from unavoidable circumstances—an oncoming lorry forcing evasive action.
22. The court's failure to consider these mitigating factors rendered the decision erroneous.
23. Additionally, the Appellant disputes the imposition of joint and several liability with the 2nd Respondent (his disclosed principal), arguing that vicarious liability should only attach to the principal, against whom interlocutory judgment had already been entered.
24. Regarding damages, the Appellant argues that the award of Ksh. 800,000 for general damages was excessive compared to precedents involving similar injuries (fractured ribs and blunt trauma).
25. Citing comparable cases where awards ranged between Ksh. 250,000 and Ksh. 450,000, the Appellant proposes a reduced award of Ksh. 300,000.
26. Finally, the Appellant asserted that the trial court failed to consider his written submissions, leading to a flawed judgment.
27. In conclusion, the Appellant urged the appellate court to allow the appeal, set aside the trial court's judgment, and either dismiss the suit against him or reduce the damages awarded.
28. He submitted that the costs of the appeal should also be granted to the Appellant.
29. The 1st Respondent opposed the appeal, arguing that the trial court correctly apportioned 100% liability against the Appellant based on overwhelming evidence.
30. The Appellant, as the driver of motor vehicle KCP 193G, was found to have acted negligently by driving at high speed, losing control while attempting to overtake, and causing the accident—a fact corroborated by the police investigation and the Appellant's own guilty plea in related criminal proceedings.
31. The 1st Respondent, a fare-paying passenger, played no role in the accident, and no evidence was presented to suggest contributory negligence on his part.
32. Judicial precedents, such as *Naftaly Muiruri Macharia v Samuel Maina & Another* and *Isaac K. Chemjor & Another v Laban Kiptoo*, support the principle that a driver bears full liability for a self-involving accident where no other causative factors are established.



33. On the issue of general damages, the 1st Respondent contended that the award of Kshs 800,000 was justified given the severity of his injuries, including multiple rib fractures, blunt trauma, and a 5% permanent disability.
34. That comparable cases, such as *Comply Industries Limited v Joseph Kuria Kabutu and Joseph Kimanthi Nzau v Johnson Macharia*, demonstrate that similar injuries have attracted comparable or higher awards.
35. The 1st Respondent emphasized that the trial court properly considered medical evidence, inflationary trends, and the principle of fair compensation, as articulated in *Butt v Khan* and *Kemfro Africa Limited v A.M. Lubia*.
36. Regarding joint and several liability, the 1st Respondent asserted that the trial court correctly held the Appellant and the 2nd Respondent (the vehicle owner) jointly liable.
37. That the Appellant, as the driver, was acting as the 2nd Respondent's agent, and vicarious liability applies.
38. The 1st Respondent noted that the Appellant retains the right to seek indemnity from the 2nd Respondent or the insurer if execution proceeds against them.
39. In conclusion, the 1st Respondent urged the court to dismiss the appeal in its entirety, uphold the trial court's judgment, and award costs with interest.
40. The 3rd Respondent's written submission argued that the trial court correctly absolved them of liability in the case involving a motor vehicle accident (CMCC No. 136 of 2021).
41. That the 1st Respondent had sued the Appellant, the 3rd Respondent, and the 2nd Respondent for damages.
42. That during the trial, the 3rd Respondent presented an agreement proving they had sold the vehicle in question to the 2nd Respondent before the accident occurred.
43. That the trial court, in its judgment, found that the 3rd Respondent had sufficiently demonstrated they were no longer the owners of the vehicle at the time of the accident and thus bore no liability.
44. The Appellant's Memorandum of Appeal does not challenge this specific finding.
45. Consequently, the 3rd Respondent urged the court to uphold the trial court's decision, maintaining that they were rightly absolved of any responsibility in the matter.
46. 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 it would support the findings of the trial court. In *Selle –Vs- 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 demeanor of a witness is inconsistent with the evidence in the case generally."

47. The issues for determination are as follows:-
 - i. Whether the 1st Respondent proved his case to the required standard.
 - ii. Whether the award of damages was excessive.
48. I have carefully re-evaluated the evidence adduced before the trial court and considered the submissions of all parties, this court makes the following determination on the appeal.
49. On the issue of liability, the trial magistrate correctly found the Appellant 100% liable for the accident.
50. The evidence on record, including the police abstract and the Appellant's own admission of having swerved to avoid an oncoming vehicle, establishes that the accident resulted from the Appellant's negligent driving.
51. As held in *Naftaly Muiruri Macharia v Samuel Maina & Another* [2019] eKLR, a driver who causes an accident through unsafe overtaking bears full responsibility.
52. The principle in *Isaac K. Chemjor & Another v Laban Kiptoo* [2019] eKLR further reinforces that where a driver loses control of a vehicle resulting in an accident, negligence is presumed unless rebutted. The Appellant failed to discharge this burden.
53. Regarding the award of general damages, while the trial court properly considered the nature of injuries sustained by the 1st Respondent, the award of Kshs. 800,000 appears excessive when compared to recent precedents.
54. In *Comply Industries Limited v Joseph Kuria Kabutu* [2021] eKLR, the Court of Appeal reduced an award for similar rib fractures from Kshs. 700,000 to Kshs. 450,000, noting that awards must be commensurate with comparable injuries.
55. Similarly, in *Joseph Kimanthi Nzau v Johnson Macharia* [2020] eKLR, multiple rib fractures with permanent disability attracted Kshs. 500,000.
56. Guided by the principles in *Butt v Khan* [1981] KLR 349 and *Kemfro Africa Limited v A.M. Lubia* [1982-88] 1 KAR 727 that damages must be reasonable and comparable to similar injuries, this court finds Kshs. 600,000 appropriate for general damages.
57. On vicarious liability, the trial court correctly applied the principle in *Dyna Industries Ltd v David Kariuki & Another* [2018] eKLR that an employer is vicariously liable for the negligent acts of an employee committed in the course of employment.
58. The Appellant was driving the 2nd Respondent's vehicle with express authority, making joint and several liability proper. However, as held in *Mungai v Wambugu* [1984] KLR 165, the Appellant retains the right to seek indemnity from the principal.
59. Consequently, the appeal partially succeeds on quantum only.
60. The trial court's judgment is upheld save for the award of general damages which is reduced from Kshs. 800,000 to Kshs. 600,000.
61. The special damages of Kshs. 5,550 and future medical expenses of Kshs. 96,000 remain undisturbed.



62. The total award is thus Kshs. 701,550 with interest from the date of the trial court's judgment.

63. Each party shall bear their own costs of this appeal.

DATED, SIGNED AND DELIVERED THIS 2ND JULY, 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Appellant

.....for Respondents

