



REPUBLIC OF KENYA



KENYA LAW
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**Okeyo v Njagi (Civil Appeal E891 of 2023)
[2025] KEHC 11275 (KLR) (Civ) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11275 (KLR)

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

CIVIL

CIVIL APPEAL E891 OF 2023

JM NANG'EA, J

JULY 25, 2025

BETWEEN

VERONICA AKINYI OKEYO APPELLANT

AND

BRIAN MACHARIA NJAGI RESPONDENT

(Being an appeal from Judgement and Decree of the Honourable Peter Wabomba Wasike (SRM) delivered on 22nd June, 2023 in Milimani Commercial Courts (CMCC No. E3558 of 2020)

JUDGMENT

1. The claim before the lower Court was instituted over injuries the Appellant suffered in a road traffic accident which occurred on 8th November, 2019 whilst she was a pedestrian along Waiyaki Way, Nairobi. The Respondent's motor vehicle registration number KCP 373 H allegedly knocked down the Appellant owing to careless or negligent driving thereby occasioning her bodily injuries.
2. The Respondent traversed all the material claims in the suit, including the allegation of negligent driving and injury attributed to him, putting the Appellant to strict proof.
3. The matter was heard in full, and the lower Court delivered judgment in favour of the Appellant in the following terms;
Liability -50%:50%.
General damages -Kshs. 1,000,000 subject to the liability ratio.
Special damages of-Kshs. 928, 265 subject to the liability ratio.
The costs of the claim and interest were further granted to the Appellant.



4. The Appellant was dissatisfied with the outcome and preferred this appeal vide Memorandum of Appeal dated 1st September , 2023 on 5 grounds that can be summarized into 3 thus:
 - a. That the Learned Magistrate erred in law and fact in finding the parties equally 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 failing to consider medical evidence adduced.
 - c. That the learned trial magistrate erred in law and fact in failing to make a fact a finding on the claim for future medical costs despite being pleaded.
5. The Appellant therefore prays that the Appeal be allowed and part of the judgment and decree of the Trial Court be set aside; Judgement be entered in her favour as prayed in the suit; review and increment of the award of general damages and that the Appellant be granted the costs of the Appeal and in the lower court action.

Analysis and determination

6. I have considered the parties' respective submissions filed online. Regarding liability, the Appellant argues that she discharged the burden of proof on a balance of probability that the Respondent was wholly liable while the Respondent is of the contrary opinion. In circumstances where there is no credible evidence as to causation of or blameworthiness for an accident , liability ought to be ascribed to the parties equally as held inter alia Commercial Transporters Limited v Registered Trustees of the Catholic Archdiocese of Mombasa [2015] eKLR.
7. In *Jona Venzil Nguko & Another v 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 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”.
8. In *Kanyangu Njogu v Daniel Kimani Maingi* [2000] eKLR and *William Kabogo Gitau V. 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 v Geoffrey Kariuki Mwenda & Another* [2007] eKLR.
9. 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 v Associated Motor Boat Company Ltd & Others* [1968] EA 123}. The Court of Appeal for East Africa in *Peters v 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.”

10. In the instant matter, the evidence is that the Appellant was crossing a two-lane dual carriage road at an undesignated section near a round/about. She may have been lawfully crossing but ought to have observed due care in the circumstances. In my opinion the trial court rightly apportioned liability between the parties equally on a balance of probability in the circumstances. The Respondent had a responsibility to drive carefully being in charge of a motor vehicle while the Appellant was only a pedestrian.
11. The Appeal on the claim for future medical costs relating to removal of the Appellant’s metal implants is merited. Although the Appellant did not specifically refer to the claim on the body of the plaint, mention of the claim in the prayers section of the suit was sufficient pleading. There is no dispute that the Appellant suffered serious injury leading to the medical procedure by which metal implants were inserted in her body. Future medical costs of removal of the metal implants might not have been known to the Claimant at the time of filing suit. Dr. Mwaura’s medical report on the Appellant as per the record of the trial court estimates the costs at Ksh. 800,000/=. There is no ground on which to doubt or dispute this opinion.
12. The court accordingly allows the claim for future medical costs in the sum of Ksh. 800,000/=.
13. The Appellant does not appear to be challenging the lower court’s awards in general and special damages in the sum of Ksh. 928,265/= which, in any event, the court finds no cause to interfere with.
14. Accordingly, the Appeal partly succeeds only to the extent that the lower court’s Judgement is varied to include an award of Ksh. 800,000/= in future medical costs relating to removal of the metal implants. The parties will bear their own costs of the appeal.
15. Judgement accordingly.

J. M. NANG’EA, JUDGE

JUDGEMENT DELIVERED VIRTUALLY THIS 25TH DAY OF JULY 2025 IN THE PRESENCE OF:

The Appellant’s Advocate, Mr Wamai.

The Respondent’s Advocate, Absent

The Court Assistant, Jeniffer

J. M. NANG’EA, JUDGE

