



**Ndirangu & another v Wasike (Civil Appeal E272 of 2021)
[2024] KEHC 142 (KLR) (Civ) (19 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E272 OF 2021
AN ONGERI, J
JANUARY 19, 2024**

BETWEEN

DANIEL NDIRANGU 1ST APPELLANT

FRANCIS MACHARIA NTHIGA 2ND APPELLANT

AND

PATRICK MUMASI WASIKE RESPONDENT

*(Being an appeal from the judgement and decree of Hon. D. O. Mbeja
(SRM) in Milimani CMCC No. 3328 of 2019 delivered on 18/1/2021)*

JUDGMENT

1. The respondent was the plaintiff in Milimani CMCC No. 3323 of 2019 where he was seeking general damages for pain and suffering and special damages for injuries he sustained on 30/9/2018 in a road traffic accident which occurred along Jogoo Road when the respondent who was a pedestrian was knocked by motor vehicle registration no. KBZ 229J belonging to the 1st appellant driven by the 2nd appellant.
2. The respondent sustained the following injuries Laceration of the occiput Blunt chest injuries
3. The appellant filed a statement of defence on 19/8/2019 denying the respondent's claim.
4. The trial court held that the appellants were 100% liable for the accident.
5. The court noted that the 2nd appellant did nothing to avoid the accident by slowing down or otherwise acting in a manner that could have aided him to avoid the accident having in mind the presence of other road users on the road.



6. The trial court assessed general damages for pain and suffering at kshs.200,000 and special damages of ksh.12,000/=.
7. The appellants have appealed against the judgment and decree of the trial court on the following grounds;
 - i. The learned magistrate erred in fact and in law in holding the appellants 100% liable.
 - ii. The learned magistrate erred in fact and in law in finding that the respondent was entitled to general damages of ksh.200,000/=.
 - iii. The learned magistrate erred in fact and in law in finding that the respondent was entitled to general damages that were too high in view of the evidence tendered.
 - iv. The learned magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.
8. The parties filed written submissions as follows;
9. The respondent submitted that he proved his case on a balance of propability as he testifies in the trial court and confirmed that on 30/9/2018 he was lawfully and carefully crossing jogoo road at a pedestrian crossing when the appellants' motor vehicle registration KBZ 229J approached at an extremely high speed consequently knocked down the respondent occasioning him serious bodily injuries. The appellants did not call any witnesses to rebut the respondent's testimony and therefore it stood uncontroverted.
10. The respondent argued that the trial court was right in holding the appellant 100% liable as the respondent cannot be penalized for poor workmanship and control of the vehicle since he was a pedestrian crossing the road at a pedestrian crossing.
11. On damages the respondent submitted that he suffered a laceration on the occiput, blunt chest injury and recurrent headaches as a result of the accident and in his submissions in the trial court prayed for an award on Kshs. 350,000 as reasonable compensation. In support he relied on the case of *Kitale Hauliers Limited v Emmanuel Soita Simiyu* [2013] eKLR Civil Appeal 107 of 2010, where the claimant suffered; Painful shoulders, Bruises on right forearm and left upper arms, Bruises on the knee, Painful back and the high court awarded Kshs. 200,000.
12. This being the first appellate court, the duty of the appellate court is to re-evaluate the evidence before the trial court and to arrive at its own conclusion whether to support the findings of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses.
13. The issues for determination in this appeal are as follows;
 - i. Whether the appellants were 100% liable for the accident
 - ii. Whether the assessment of damages was excessive.
14. On the issue as to whether the trial court was right in holding the appellants 100% liable for the accident, I find that the respondent's evidence was not controverted.
15. The plaintiff's evidence was that the 2nd appellant negligently drove the 1st appellant's motor vehicle that caused it to violently knock down respondent.
16. The appellants did not adduce evidence in opposition and they are estopped from adducing evidence in this appeal.



17. On the issue as to whether the award of damages was excessive, I find that the trial court applied the correct principles.
18. I have considered the following comparable authorities;
- a. In *Francis Ndung'u Wambui & 2 Others v Purity Wangui Gichobo* [2019] eKLR the respondent had suffered a deep laceration on the medial side of the left foot and a degloving injury on the left thumb and the award was on appeal reduced from Ksh.450,000/= to 250,000/=
 - b. In *Jubilee Hauliers Ltd & Another v Mary Waitthera Wanja* [2019] eKLR the respondent had suffered degloving injuries to the right elbow, multiple lacerations on the right arm, and soft tissue injuries on the chest; cut wound on the tongue and bruises on the forehead. An award of Kshs. 200,000/was upheld
 - c. In *G4s Security Services Ltd v Oyugi Obiria* [2018] eKLR, Civil Appeal 19 of 2016, the claimant suffered; blunt trauma to the neck, blunt injury to the back, tenderness to the right ear, blunt injury to anterior chest wall and swollen right hand. The High court upheld an award of Kshs. 180,000
19. I find no reason to interfere with the award of damages. The appeal herein lacks in merit.
20. I dismiss the appeal with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19TH DAY OF JANUARY, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the 1st Appellant

..... for the 2nd Appellant

..... for the Respondent

