



**Osore & another v Nyaosi (Civil Appeal E820 of 2023)  
[2024] KEHC 12688 (KLR) (Civ) (4 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12688 (KLR)

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

**CIVIL**

**CIVIL APPEAL E820 OF 2023**

**RC RUTTO, J**

**OCTOBER 4, 2024**

**BETWEEN**

**STEPHEN ETEMESI OSORE ..... 1<sup>ST</sup> APPELLANT**

**PLASTICS & RUBBER INDUSTRIES (2005) LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**STEPHEN NYAKWOYO NYAOSI ..... RESPONDENT**

*(Being an appeal from the Judgment of Honourable Senior Resident Magistrate  
Caroline Ndumia in SCCC No. E2451 of 2023, delivered on 18th August, 2023)*

**JUDGMENT**

1. This is an appeal against liability and quantum. In the trial court the Respondent herein sued the Appellants for general and special damages arising from an accident that occurred on 4<sup>th</sup> May, 2023 along Mombasa Road. In the Statement of Claim, the 1<sup>st</sup> Appellant was sued as being authorized driver and the 2<sup>nd</sup> Appellant was the registered owner and/or insured of motor vehicle registration number KAU 274Y while the Respondent was the driver of motor vehicle registration number KBN 421K.
2. It is alleged that the 2<sup>nd</sup> Appellant's motor vehicle No KAU 274Y was negligently and carelessly controlled by the 1<sup>st</sup> Respondent that it rammed into motor vehicle KBN 421K occasioning the Respondent severe injuries.
3. The Appellants, in their defence, denied the claim and the matter proceeded to full hearing. Thereafter, the trial court entered judgment in favour of the Respondent in the following terms:
  - a. Liability 100%
  - b. General damages Kshs. 400,000/=



- c. Future Medical Expenses Kshs. 20,000/=
  - d. Special damages Kshs. 5,550/=
  - e. Costs and interest of the claim.
4. Being aggrieved by the Judgment the Appellants filed this appeal citing the following grounds:
1. That the Learned trial Magistrate misdirected herself and erred both in law and in fact by holding the Appellants 100% liable for the accident whereas evidence on record called for dismissal of the suit on liability or a higher degree of contribution from the Respondent and thus arrived at an erroneous finding on liability.
  2. The Learned trial Magistrate misdirected herself and erred in law and in fact by holding that the Respondent had proved his case on liability against the Appellants on a balance of probabilities despite the weight of the evidence.
  3. The Learned trial Magistrate misdirected herself and erred in law and in fact by failing to dismiss the Respondent's suit in the lower Court in view of the evidence tendered before her.
  4. The Learned trial Magistrate erred in law and in fact in failing to appreciate and put into consideration the Appellant's documents produced as exhibits tendered in evidence and thus arrived at an erroneous finding on liability.
  5. The Learned trial Magistrate erred in law and in fact in failing to consider the Appellants witnesses evidence which showed that the Respondent was not treated at Mama Lucy Kibaki Hospital as alleged.
  6. The Learned trial Magistrate erred in law and in fact in failing to appreciate that the primary treatment documents having been disowned the Respondent could not have proven that he suffered the alleged injuries and thus arrived at an erroneous finding on liability and quantum.
  7. The Learned trial Magistrate erred in law and in fact in failing to appreciate that the primary treatment documents having been disowned, the burden of proof was upon the Respondent to prove that he was actually treated at the facility by providing the Outpatient Number (OP) and thus arrived at an erroneous finding on liability and quantum.
  8. The Learned trial Magistrate misdirected herself and erred in law and in fact by putting more weight to the Respondent's evidence and totally ignoring the Appellants' evidence and hence arrived at an erroneous finding on liability.
  9. The Learned trial Magistrate misdirected herself erred both in law and in fact by awarding general damages for pain and suffering that are so manifestly excessive as to be erroneous vis a vis the injuries sustained by the Respondent.
  10. The Learned trial Magistrate misdirected herself and erred in law and in fact in failing to consider the Medical Report on record and hence arrived at an award that is not supported by the Doctor's findings and hence arrived at an erroneous award that is so manifestly excessive as to be erroneous.
  11. The Learned trial Magistrate misdirected herself and erred both in law and in fact by not properly considering the severity of the Respondent's injuries and hence arrived at a wrong assessment of damages that is so manifestly excessive as to be erroneous.
5. The Appeal was canvassed by way of written submissions.



### **Appellants' submissions**

6. The Appellants relied on their submissions dated 1<sup>st</sup> July, 2024. They identified two issues for determination namely; whether the Respondent was injured in the said accident and whether the award on quantum was manifestly excessive.
7. The Appellants submitted that the Respondent was not injured and that the claim was fraudulent. That as per the 1<sup>st</sup> Appellant and his witness statement, there were no injuries as a result of the accident. He added that the investigation report by Eagle Adjusters confirmed that the Respondent was not injured and the treatment notes from Mama Lucy Hospital were not traced to the hospital.
8. The Appellants further submitted that Mama Lucy Hospital issued a letter dated 20<sup>th</sup> July 2023 indicating that the Respondent's name did not appear in their patients register.
9. The Appellant submitted that with the authenticity being denied, the Respondent did not prove the injuries allegedly sustained. He cited the cases in Daniel Otieno Migore V South Nyanza Sugar Co. Ltd [2018] eKLR and Madara & 2 Others V Chote & Another (Civil Appeal 111 of 2022) [2-23] KEHC 24270 (KLR)
10. It was also submitted that the Respondent did not discharge his burden of proof as the investigation report was not challenged. Further, it was submitted that no particulars of negligence were pleaded against the Appellants. He relied on Mombasa High Court Civil Appeal No. 223 of 2022 where the court held that failure to plead particulars was fatal to a claim.
11. Also cited was the case in Caren Auma Oyugi Okwiri V Emergency Relief Supplies Ltd & Another [2017] eKLR and Section 3 (4A) of the Insurance (Motor Vehicles Third Party Risks) Amendment Act in urging the court to dismiss the appeal for being fraudulent.
12. On the second issue whether the award on quantum was manifestly excessive, the Appellants submitted that should the court find that the Respondent proved his case on liability, then the court should find that the quantum awarded was excessive. He submitted that the award of Kshs. 200,000/= would be sufficient as guided in the case of Bolpak Trading Co. Ltd & Another V Gilbert Onyango Odie [2022] eKLR.
13. Counsel urged the court to allow the appeal as prayed.

### **Respondent's submissions**

14. The Respondent relied upon their submissions dated 3<sup>rd</sup> June, 2024 in which they set out three issues for determination namely; whether fraud was pleaded and strictly proved, whether the court erred in finding the Appellants 100% liable and whether the trial court's award on general damages was manifestly excessive?
15. On the first issue, whether fraud was pleaded and strictly proved. Counsel submitted in the negative and relied on the cases in Vijay Morjaria V Nansigh Madhusingh Darbar & Another [2000] eKLR and the Supreme Court case in Raila Amollo Odinga & Another V Independent Electoral and Boundaries Commission & 2 Others [2017] eKLR.
16. The Respondent argued that fraud was never pleaded in the Appellants' defence and therefore the same ought to be disregarded.



17. As to whether the trial court erred in finding the Appellants 100% liable, this was submitted negative. The Respondent urged the court to find that the trial court's finding on liability was based on good analysis of the facts.
18. Lastly, on whether the trial court's award on general damages were manifestly high, the Respondent, while submitting in the negative, argued that the award was commensurate with the injuries suffered. They submitted that the Appellants did not file any submissions before the trial court and thus the trial court did not consider their proposal before making the award.
19. In conclusion, counsel urged the court to find that the appeal herein lacked merit and dismiss the same with costs.

### **Analysis and Determination**

20. To begin with, I note that the Appellant in his submissions is urging this court to exercise its mandate as an appellate court and re-look at the evidence, re-evaluate the same and arrive at its own assessment. While this is the correct position with regard to ordinary appeals, it is the converse when it comes to appeals from the Small Claims Court.
21. Appeals from the Small Claims Court, are limited and well prescribed under Section 38 of the [Small Claims Court Act](#) which limits the jurisdiction of this Court to matters of law only. It provides that:
  38.
    - (1) A person aggrieved by the decision or an order Appeals of the Court may appeal against that decision or order to the High Court on matters of law.
    - (2) An appeal from any decision or order referred to in subsection (1) shall be final.”

What constitutes, points of law, has been settled see the case of Otieno, Ragot & Company Advocates v. National Bank of Kenya Limited [2020]eKLR.

22. Based on the above provision of law and the authority referred to, this court has a duty to consider the grounds of appeal as they appear in the Memorandum of Appeal dated 21<sup>st</sup> August 2023, the Record of Appeal, and the submissions of both parties and discern the primary question of law that calls for determination.
23. This court notes that the Memorandum of Appeal has set out eleven grounds of appeal all of which are based on issues of fact and law. It is trite as a good measure to ensure prudent use of scarce judicial time that in an appeal of this nature, a Memorandum of Appeal needs to be concise and focused on the points of law devoid of evidence and facts. The litigant's plea before court should be precise and targeted. A litigant should desist from verbose pleadings where they enumerate several grounds of appeal that are mostly jungled up and repetitive with the expectation that the court will engage in the gambling game and decipher for itself what the litigant seeks. The Appellants ought to have with precision pointed out the issues of law emanating from the decision being appealed against.
24. The gambling craft game by the Appellants is fortified by the fact that despite enumerating 11 grounds of appeal he only delimits 2 issues for determination to wit; Whether the Respondent was injured in the said accident; and whether the award of damages was manifestly high. What's more, the Appellants grievance against the decision largely circled around the error to consider the evidence by the trial court on various aspects such as whether the injury occurred, whether there was fraud, whether the Respondent was treated at Mama Lucy Hospital and the Doctor's medical report.



25. On the first issue, the Applicant is urging this court to make a finding that the Respondent was not injured and that the claim was fraudulent. This is a pure question of fact for it calls for a conscious examination of the facts as presented in order to come up with a factual finding. This court will not heed to such a request as this will amount to exceeding the jurisdiction granted to it under section 38 of the *Small Claims Court Act*. The Appellant's did not frame any legal issue arising beyond the trial court's consideration of the evidence as already stated above.
26. On the second issue as to whether the award of damages was manifestly high, I am guided by the general principle that it must be shown that the trial court proceeded on either wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low [See *Butt v Khan* [1981] KLR 470] and *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR]. In essence, the Appellants challenge the trial court's assessment of damages for injuries sustained by the Respondent.
27. The Respondent injuries were listed in the Medical report by Dr. Titus Ndeti Nzina as follows:
1. Blunt injuries to the head.
  2. Blunt injuries to the jaw.
  3. Blunt injuries to the anterior chest wall.
  4. Fractured rib.
  5. Loss of one tooth.
28. The Respondent was awarded general damages of Kshs. 400,000/=. In granting the award, the trial court was guided by the case of *Joseph Mutua Nthia v Fredric Katuva* [2019] eKLR where the respondent suffered injuries to the left face, loss of 2 teeth, blunt chest injury and blunt back injury and the trial court awarded Kshs 400,000/- as general damages and the award was upheld on appeal.
29. According to the Appellants, a sum of Kshs. 200,000/- would have been awarded instead of the KShs.400,000/-. Notably, the Appellants did not submit on the issue of quantum during trial. Having said this, I have considered the authority as relied on by the trial magistrate and I am convinced that the award of Kshs.400,000/= by the trial magistrate was fair and just as compared to the injuries sustained. This court shall not interfere with it.
30. The upshot of the above is that the appeal lacks merit and the trial court judgment as to liability and quantum is upheld.
31. The Appellants shall bear the costs of the appeal.
- Orders accordingly.

**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS 4<sup>TH</sup> DAY OF OCTOBER 2024**

For Appellants:

For Respondent:

Court Assistant:

