



**Ali & another v Bagajo alias Lasi Suleiman (Civil Appeal E148 of 2022)  
[2024] KEHC 14650 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14650 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E148 OF 2022  
CJ KENDAGOR, J  
NOVEMBER 20, 2024**

**BETWEEN**

**MOHAMUD ALI ..... 1<sup>ST</sup> APPELLANT**

**QUANTI BILL COMPANY LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LAS SULEIMAN BAGAJO ALIAS LASI SULEIMAN ..... RESPONDENT**

*(Being an Appeal from the Judgment of Honourable M.A. Odhiambo Resident Magistrate in Meru CMCC NO. E15 OF 2019 and delivered on 30th September, 2022)*

**JUDGMENT**

**Background.**

1. This appeal was initiated through a Memorandum of Appeal dated 15<sup>th</sup> October, 2022 and presents the following Grounds of Appeal:
  - i. The Learned Magistrate erred in fact and in Law in awarding the Respondent 100% liability against the Appellants; General Damages Kshs.1,700,000/= which amount was exorbitantly high in the circumstances and injuries suffered by the Respondent;
  - ii. The Learned Magistrate erred in fact and in law in holding that the Respondent had proved his case on a balance of probabilities which finding was against the height of the evidence on record.
  - iii. The Learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of facts and wrong principles of law and occasioned a miscarriage of justice.



- iv. The Learned Trial magistrate erred in law and in fact in failing to pay regard to submissions and decisions filed alongside the Defendant's submissions that were guiding the amount of quantum that is appropriate and applicable on similar injuries as the case he was deciding.
  - v. The learned Magistrate erred in fact and law in finding that the Respondent was entitled to general damages that were too high in view of the injuries suffered by the Plaintiff.
2. The appeal was canvassed through written submissions, and this Court reviewed all documents on record, including the original record, while writing this judgment.
  3. In the Judgment delivered by the trial Court, the learned trial magistrate apportioned liability at 100% against the appellants. The trial Court awarded the Respondent Kshs.1,700,000/= as general damages, Kshs.125,600/= as special damages, costs of the suit, along with interest at court rates.

### **Analysis and determination**

4. I have reviewed the grounds for appeal and submissions from both parties, the issues for determination are:
  - i. Whether the Respondent proved his case on liability;
  - ii. Whether the trial court's assessment of damages was excessive.
5. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower Court and satisfy itself that the decision was well-founded. In *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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...”
6. The Respondent's claim before the trial court was that on 14<sup>th</sup> February, 2016, the Respondent was a passenger travelling in Motor Vehicle Registration Number KCE 657Y along Meru-siolo road when the driver, the 1<sup>st</sup> Appellant herein, negligently and recklessly drove the said vehicle permitting it to lose control and cause an accident that caused the Respondent herein bodily severe injuries.
7. The Respondent herein testified and produced exhibits in Court supporting her claim against the Appellants herein. That included the following: -
  - i. Police Abstract;
  - ii. P3 form;
  - iii. Medical report by Dr. J.W. Kihumba;
  - iv. Receipt for the medical report by Dr. Kihumba;
  - v. Medical report from Nairobi West Hospital;
  - vi. Treatment Clits/Record/Discharge Summary;
  - vii. Receipts and invoices from Nairobi West Hospital;



- viii. Motor Vehicle search certificate;
  - ix. Receipt for M/V search certificate;
  - x. Copy of the Demand Notice to the 1<sup>st</sup> Defendant;
  - xi. Copy of Demand Notice to the 2<sup>nd</sup> Defendant; and
  - xii. Copy of Notice to Directline Assurance Co. Ltd.
8. The exhibits tendered before the trial Court show that an accident occurred on the 14<sup>th</sup> September, 2016 and that as a result of the accident, the Respondent herein sustained injuries complained of and that formed the subject matter of the suit.
9. In its judgment, the Trial Court observed that the Respondent’s claim remained uncontroverted on the following grounds: -
- i. The evidence and the police abstract produced by the Respondent showed that an accident occurred and it was self-involving; the Respondent was a passenger and did not have control of the motor vehicle;
  - ii. The 1<sup>st</sup> Appellant was the driver of Motor Vehicle KCE 657Y at the material date and time;
  - iii. The said police Abstract did not indicate anywhere that the file was still under investigations;
  - iv. A copy of the motor vehicle search revealed that the 2<sup>nd</sup> Appellant is the owner of the motor vehicle KCE 657Y, hence vicariously liable for the a
  - v. The Appellants herein did not call any witness or tender any evidence to refute the evidence adduced and the contents of the Police Abstract and the copy of Motor Vehicle records produced by the Respondent herein.
10. I associate myself with the authority relied on by the trial Court in *David Kahahi Stephen Muthutheri v Midland Emporium Ltd, G. Tatius Michael, Fred Mariko Agwata & Jeremiah Otara Maangi* [2017] KEHC 3887 (KLR) where J.N Mulwa Judge held as follows;
- “The defendants did not call any evidence in support of their respective defences. The plaintiffs evidence thus was unchallenged and uncontroverted. Section 107 and 108 of *Evidence Act* is categorical that he who asserts must prove. Both defendants blamed each other for the causation of the accident but none testified to prove their allegations. It is trite that mere statements in a defence, unless supported by evidence remains as such. Unchallenged defence stands unsubstantiated. See *Trust Bank Ltd -vs- Paramount Universal Bank Ltd & 2 Others HCCC NO. 1243 of 2001* (Milimani).”
11. The Learned Magistrate held that in the absence of any evidence to the contrary, the Court will take that the accident occurred as stated by the Plaintiff. I do hold that the Respondent herein proved her case on a balance of probabilities and that the Learned Magistrate, in so finding, had due regard to issues of law and fact as presented by the Respondent herein; as such, I find no reason to disturb the trial court’s finding on liability.
12. On quantum, the Appellants herein submitted an award of Kshs.1,700,000/= is way too excessive for the injuries sustained The Appellants submitted that an award of Kshs.300,000/= would be adequate compensation for the injuries outlined as;
- i. Mild head injury with Glasgow corna scale of 13/15;



- ii. Left clavicular fracture;
  - iii. Left rib fractures (2<sup>nd</sup> and 3<sup>rd</sup>) with long contusion and hemothorax;
  - iv. Right frontal lobe contusion;
  - v. Bruises on the head, face and shoulders;
  - vi. Laceration of the right eyebrow; and
  - vii. Tenderness with reduced breath sounds on the left chest and swelling deformity of the left clavicle.
13. The prevailing general principle is that an assessment of damages for personal bodily injuries calls for the discretion of the Court's discretion, which must be exercised judiciously, considering the facts of each case, particularly the injuries sustained and comparable awards previously made for similar injuries. In *Nyambati Nyaswabu Erick Vs Toyota Kenya Ltd & 2 Others* (2019) eKLR, Justice D.S Majanja held and which holding I fully associate myself with that: -
- “General damages are damages at large and the Court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method approach should be that comparable injuries would as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly the same.”
14. To determine whether or not to overturn the trial Court's decision regarding the amount of damages, I must confirm that either the Learned Magistrate considered irrelevant facts when assessing the damages, failed to consider a relevant fact, or that the awarded amount is either excessively low or excessively high, indicating it is a fundamentally incorrect estimate of the damages.
15. In assessing damages, the trial Court observed that the amount proposed by the Appellants was too low compared to the injuries sustained by the Respondent. The Court noted that the authorities cited by the Appellants were from many years back. The Court further noted that the authorities relied upon by the Respondent were comparable to the injuries sustained and which comparison informed the award of Kshs.1,700,000/=.
16. I have read the authorities cited by the Appellants in the Magistrates Court; *Catherine Gatwiri –vs- Peter Mwenda Karaai* [2018] eKLR, *Joyce Wanjiru Kamau –vs- Kenya Cannery Ltd & Another NRB* HCC No. 360 of 1989 (UR), [\*George Kinyanjui T/A Climax Coaches & Equity Bank Limited –vs- Hassan Musa Agoi HCCA No. 29 of 2012\*](#) and *Hassan Noor Mahmoud –vs- Tae Youn Ann* [2001] eKLR relied on by the Appellants in the trial Court and I agree with the trial Court that the said authorities are too old and neither are the injuries comparable to those sustained by the Respondent herein.
17. The authorities relied on by the Respondent in the trial Court are more persuasive. The treatment notes and the Medical Report indicate that the Respondent sustained life-threatening injuries leading to hospitalization in a high-dependency unit. As part of the treatment, a left tube thoracostomy was placed. The medical assessment was after one year from the date of the accident, and she complained of severe chronic pain in the chest and neck and severe frontal headaches. The doctor opined that she is at risk of post-traumatic convulsive disorder and requires long-term follow-up. The award was a correct estimate, and I uphold the assessment of general damages at Kshs.1,700,000/=. Special damages pleaded and proved at Kshs.125,600/= remain undisturbed. Interest shall accrue at Court rates for



general damages from the date of the trial Court's Judgment, while interest on special damages shall be from the date of filing the suit.

18. The Appeal lacks merit and is dismissed with costs to the Respondent herein.

It is so ordered.

**DELIVERED, DATED, AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS  
ONLINE PLATFORM ON THIS 20<sup>TH</sup> DAY OF NOVEMBER 2024.**

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant – Beryl

Advocate for the Appellants –

Advocates for the Respondent –

