



REPUBLIC OF KENYA



**Wathithi v Njoroge (Civil Appeal E106 of 2023)  
[2025] KEHC 13432 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E106 OF 2023  
H NAMISI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**PAUL WATHITHI ..... APPELLANT**

**AND**

**PETER KIMANI NJOROGE ..... RESPONDENT**

*(Being an Appeal from Judgement of Hon. H. M. Nganga, Principal Magistrate  
in Gatundu Civil Suit No. E237 of 2021 delivered on 19 October 2022)*

**JUDGMENT**

1. This appeal arises from a suit filed by the Respondent against the Appellant for:
  - i. General damages for pain and suffering and loss of amenities;
  - ii. Special damages of Ksh 3,000/=;
  - iii. Costs of the suit
  - iv. Interest
2. The particulars of the suit are that on 5 November 2020, the Respondent was lawfully driving his motor cycle registration number KMCX 579X along Thika Flyover Road when the Appellant or his authorised driver, servant or agent negligently, carelessly and recklessly drove, controlled or managed motor vehicle registration number KBD 241Y at Gakoe Area, thus causing a collision with the Respondent's motor cycle. As a result of the said accident, the Respondent sustained injuries involving severe head injury with intracerebral haemorrhage, injury to chest and multiple soft tissue injuries.



3. The Appellant entered appearance and filed a Statement of Defence dated 21 September 2021, denying the allegations by the Respondent. The Appellant averred that the accident occurred purely out of and as a result of the negligence of the Respondent.
4. At the hearing, PW1, the Respondent adopted his witness statement as his evidence in chief. The Respondent testified that following the collision, he lost consciousness and woke up at Kijabe Hospital one week later. He suffered severe head injury with intracerebral bleeding, and multiple soft tissue injuries. He confirmed that he still suffered headaches on the left side.
5. PW2, Dr. Wokabi Washington, produced a Medical Report dated 29 October 2021. He confirmed the injuries which consisted of loss of consciousness, intracerebral haemorrhage, cerebral oedema and painful neck muscles. At the time of examination, the Respondent still experienced persistent headaches and chest pains, whenever he exerted himself. It was the Doctor's opinion that in such cases of head injuries, the chances of the Respondent developing epilepsy would be higher than normal.
6. PW3, Police Inspector Raphael Githuka, confirmed the occurrence of the accident. He further confirmed that the Appellant was to blame for the accident.
7. The Appellant did not call any witnesses or adduce evidence.
8. In its judgement, the trial court held the Appellant 100% liable for the accident. On the issue of quantum of damages, the trial Court considered the cases of Jecinta Wanjiku -vs- Samson Mwangi [2006] eKLR and Brian Omwenga Nyabuto -vs- Ringwani Investment [2005] eKLR. The trial court entered judgement in favour of the Respondent as against the Appellant as follows:  
  
Liability - Defendant 100%  
General Damages for Pain & Suffering - Kshs 1,200,000/=  
Special Damages - Kshs 123,000/=  
Total - Kshs 1,323,000/=  
  
Costs and interest at court rates from the date of judgement till payment in full.
9. Being aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
  - i. That the learned Magistrate erred in fact and in law in failing to consider the Defendant's evidence on quantum hence awarding a highly exorbitant award which is erroneous comparable to the evidence on record;
  - ii. The learned Magistrate erred in fact and in law in awarding the Respondent Kshs 1,200,000/= for general damages and Kshs 123,000/= for special with costs and interest, which amount was exorbitantly high in the circumstances and injuries suffered by the Respondent;
  - iii. The learned Magistrate erred in law and in fact in failing to consider the Appellant's evidence on points of law and fact with regard to quantum based on the injuries sustained by the Respondent;
  - iv. The learned Magistrate erred in law and in fact in failing to consider the evidence of the defence doctor in terms of injuries exaggerated;
  - v. The learned Magistrate's decision was unjust, against the weight of the evidence and was based on misguided points of law and wrong principles of law and has occasioned a miscarriage of justice;



- vi. The learned 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 in the amount of quantum and liability that is appropriate and applicable in similar injuries as the case she was deciding;
  - vii. The learned Magistrate erred in fact and in law in awarding damages that were too high in view of the injuries suffered by the Plaintiff.
10. Parties were directed to file submissions in respect of this appeal. Despite numerous opportunities to do so, the Appellant did not file any submissions.

#### Analysis and Determination

11. The duty of a first appellate court is well settled. It entails revisiting, re-evaluating and considering afresh the evidence presented before the trial court for the appellate court to make its own independent conclusions bearing in mind that unlike the trial court, it did not have the benefit of seeing or hearing the witnesses and give due allowance for that disadvantage. This was set out in the case of *Selle & Another vs Associated Motor Boat Company Limited*, [1968] EA 123.
12. It is trite that though an appellate court has mandate to interfere with findings of fact made by a trial court, this mandate should be exercised cautiously and only when it is clear that the trial court's decision or finding of fact was not based on any evidence or was based on a misrepresentation of the evidence or on wrong legal principles.
13. I have keenly read the contents of the Record of Appeal and the submissions by the respective parties. The appeal herein is on one issue; quantum of damages.
14. On the issue of damages, I am guided by the celebrated case of *Kemfro Africa Limited T/a Meru Express Service Gathogo Kanini -versus- A.M. Lubia & Olive Lubia (1982-1988)* KLR 727, where the Court of Appeal held:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.”

15. In the case of *Power Lighting Company Ltd & Anor -vs- Zakayo Saitoti Naingola & Anor* [2008] eKLR, the Court held:

“On quantum, the court in determining whether to interfere with the same or not, the court has to bear in mind the following principles on assessment of damages:

1. Damages should not be inordinately too high or too low;
2. They are meant to compensate a party, for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered;
3. Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts;



4. Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of Kenyan Shilling, then at the time of the judgement...”
16. Turning back to the grounds of appeal, the Appellant did not call any evidence in the trial court, and therefore, cannot be heard to claim that the trial court did not consider his evidence. As observed by the trial court, a defence is a mere pleading and does not amount to evidence.
17. Further, the Appellant challenges the trial court’s decision on the basis that the general damages awarded were exorbitant. The Appellant did not file any submissions herein to guide the Court on what he considers to be the appropriate damages in the circumstances. I have combed through the Record of Appeal and the trial court file, in the hope of reading the Appellant’s submissions before the trial court in order to get a sense of what he proposes to be an appropriate award for damages. I have not seen any. It is, therefore, very difficult for this Court to fathom what the Appellant’s grievance is. Without any submissions to guide this Court, I am left to rely on the submissions of the Respondent and the determination by the trial court.
18. In short, the Appellant has not presented any reasonable argument that would compel this Court to interfere with the determination by the trial court. Therefore, the appeal is unsuccessful. The same is dismissed with costs to the Respondent assessed at Kshs 65,000/=.

**DATED AND DELIVERED AT THIKA THIS 30 DAY OF SEPTEMBER 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered virtually in the presence of:

For Appellant: N/A

For Respondent: Ms. Munyua

Court Assistant: Lucy Mwangi

