



**Chepkwony v Chomba (Civil Appeal E005 of 2024)
[2025] KEHC 14047 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E005 OF 2024
RM MWONGO, J
OCTOBER 8, 2025**

BETWEEN

ROBERT KIPKORIR CHEPKWONY APPELLANT

AND

KELVIN KATHEE CHOMBA RESPONDENT

*(Appeal arising from the decision of Hon. D. Endoo in Embu
CMCC No. E056 of 2022 delivered on 28th September 2023)*

JUDGMENT

The Appeal

1. By a memorandum of appeal dated 22nd January 2023, the appellant seeks the following orders:
 - a. That this Appeal be allowed and the judgment of the lower court be set aside; and
 - b. The costs of the appeal be granted to the appellant.
2. The appeal is premised on the grounds that:
 1. That the Learned Magistrate erred in law and in fact in failing to consider evidence adduced on behalf of the Appellant that the Respondent's claim was fraudulent as the Respondent was not injured from the accident that occurred on 1st June, 2021 therefore arriving at a wrong decision;
 2. That the Learned Magistrate erred in fact and law in allowing the Respondent's claim for damages arising out of an accident that occurred on 01st June, 2021 and making an award of Kshs.3,493,671/= plus costs and interests of the suit against the weight of the evidence adduced during the hearing;



3. That the Learned Magistrate erred in law and in fact in failing to consider the written submissions of the Appellant on record and the authorities annexed therein in support of the Appellant's case while arriving at the award in damages; and
4. That the judgment of the learned trial Magistrate is against the law and weight of the evidence on record and against the doctrine of stare decisis.

Background

3. The respondent claimed that the appellant was the beneficial owner of motor vehicle registration number KBY 645Z which was insured by Safaricom PLC, a co-defendant in the case. He stated that on 01st June 2021, he was lawfully riding his motor cycle registration number KMDN 390K along Embu-Nairobi road near county barrier when the appellant's authorized driver negligently drove the said motor vehicle such that it collided with the respondent's motor cycle, causing an accident.
4. Through a further amended plaint dated 25th July 2022, the respondent sought judgment against the appellant for special damages of Kshs.30,500/=, loss of earnings at the rate of Kshs.1,000/= per day from date of the accident, costs of a home care giver at the rate of Kshs.15,000/= per month, general damages for pain and suffering, loss of amenities and consortium, loss of earning capacity, costs of a motorized wheel chair at the rate of Kshs.120,000/= every 3 years and costs of the suit plus interest. The driver of the motor vehicle was also sued as a co-defendant alongside the appellant.
5. The respondent allegedly claimed that the appellant was vicariously liable for the accident. According to the plaint, the respondent suffered the following injuries which allegedly rendered him immobile and in need of a wheelchair for the rest of his life:
 - a. Spinal injury with paraplegia;
 - b. Thinning of the lower limbs (disuse atrophy);
 - c. Bilateral lower limb weakness;
 - d. Inability to support the body from the umbilical cord downwards;
 - e. Inability to use both lower limbs;
 - f. Wound on the chin and neck;
 - g. Wound on the right lumbar region;
 - h. Permanent scars on the neck, chin and left lumbar region; and
 - i. Permanent disability with over 50% loss of function.
6. The appellant and his co-defendant filed a joint amended statement of defense in which he denied the averments made in the plaint and put the respondent to strict proof. They stated that the respondent is not entitled to the award of damages as prayed since they are not based on facts.

The Evidence in the trial Court

7. PW1 was PC Noor Adam who stated that the accident was reported at the police station. He stated that he was not the investigating officer in the case but he knew that a police abstract was issued upon demand from the victim. He did not visit the scene although he was the one who prepared the abstract. He could not speak conclusively as to the circumstances of the accident. On cross-examination he said the initial report blamed the respondent for the accident but he did not know why.



8. PW2 was the respondent. He stated in his witness statement that he was riding his motor cycle when the appellant's motor vehicle which was being driven in the opposite direction swerved onto his lane and hit his motor cycle in the process of avoiding another accident while attempting to overtake. He said that he was hit from the right-hand side, and thrown in the air after which he landed on the appellant's vehicle's windscreen.
9. PW2 stated that he lost consciousness and when he awoke, he found himself at Embu Level 5 Hospital where he learned that he had been rushed by fellow motor cycle riders. It was his evidence that he was admitted and treated at the said hospital from 09th June 2021 to 30th June 2021. In the course of his treatment, the doctors gave him the devastating news that he would not be able to walk again for the rest of his life, and would always need a wheelchair.
10. He stated that since the accident, he has lost the ability to attend to his own personal needs and he needs a full-time care giver. He has also lost his livelihood since his earning capacity is completely lost and he now depends on well-wishers for his sustenance. He stated that the motor cycle he was riding at the time of the accident was given to him by one Eric Mucangi and from it, he made an income of Kshs.1,000/= per day.
11. As a result of the accident, he now lives with 50% disability from the injuries he sustained. He was 25 years old at the time of the accident and his nuclear and extended family depended on him for support but his dreams have been cut short. On cross-examination, he reiterated that the motor cycle was leased from a friend and it was not insured. At the time of the accident, he did not have a driving license. He stated that he was wearing a helmet and reflector jacket at the time of the accident. He blamed the driver of the appellant's motor vehicle for the accident. He did not know whether an investigation was done but when he was hit from the right side, he was thrown into the air and he landed on the windscreen and bonnet of the vehicle.
12. PW3 was Swaleh Wanjira who stated that at the time of the accident, he was driving behind the appellant's motor vehicle when he noticed the driver of that vehicle trying to overtake a vehicle that was ahead of him but it was not safe to do so. Soon, he heard a loud bang and when he went to check, he found that a motor cycle rider had been hit and was lying on the tarmac in a pool of blood. He stated that the driver of the motor vehicle attempted to escape but he was accosted by members of the public who had gathered. He is the one who arranged to have PW2 taken to the hospital.
13. He blamed the driver of the appellant's motor vehicle for the accident. He said that the appellant, the respondent and him were all headed towards the same direction. On cross-examination, he stated that he did not know whether the accident was investigated and he did not see any police officers at the scene. Following the accident, he couldn't tell whether the respondent was wearing a reflector jacket because he was covered in blood.
14. PW4 was Dr. Dennis Mwenda of Embu Level 5 Hospital. He confirmed that the respondent was involved in an accident and was treated at the medical facility, where he was admitted on 09th June 2021 and was discharged on 30th June 2021. He testified that the respondent had presented with sudden loss of function and sensation in the lower limbs where muscle power was 0/5. He was diagnosed with a spinal injury with paraplegia which means loss of power in both limbs thus being unable to walk. At the time assessment and preparation of the medical report, his lower limbs had started thinning compared to the rest of his body and he needed a wheelchair fulltime. Disability was assessed at 50% in the medical report he prepared on 07th April 2022, which was produced as evidence.
15. DW1 was Denis Mwambia Nyaga, the driver of the appellant's motor vehicle. He stated that on the day of the incident, he was driving at a speed of 60KPH when a motor cycle suddenly appeared and



crossed his path. He tried to apply the brakes but it was too late and a collision happened accidentally. He tried to flee the scene but he was accosted by members of the public who had threatened to burn the motor vehicle and so he remained at the scene. He said that he was rescued from the angry mob by police officers and the accident was reported at Embu Police Station. Upon cross-examination, he said that just before the accident which occurred between 8pm and 8:10pm, he had just crossed a bump on the road and that he was not speeding. He was driving a manual car at normal speed and that the accident was a head-on collision.

16. DW2 was PC Noor Adam who also testified as PW1 for the plaintiff. He stated that the accident was reported at Embu Police Station and he recorded it but he did not investigate it. He produced the OB extract of the accident and stated that his colleagues PC Gitau and PC Gitonga visited the accident scene. According to him, the rider of the motor cycle was to blame for the accident. On cross-examination, he stated that the rider went to the police station to record his statement after he had been blamed for the accident. The original investigating officer has since retired but he used the facts gathered from the ground to determine that it was the rider of the motor cycle who was to blame for the accident.

Findings of the Trial Court

17. The trial court considered the evidence adduced and submissions made by the parties. It apportioned liability at 60:40 against the appellant and his co-defendants jointly and severally. The respondent was awarded:
 - a. General damages for pain and suffering-Kshs.3,000,000/=
 - b. Loss of future earning-Kshs.1,086,142.50/=
 - c. Loss of earning capacity- Kshs. 1,086,142.50/=
 - d. Special damages-Kshs.30,500/=
 - e. Costs of a home caregiver-Kshs.500,000/=
 - f. Cost of motorized wheelchair-Kshs.120,000/=
 - g. Costs of the suit with interest on all monetary awards.

Submissions on the appeal

18. The appellant relied on the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123 and urged the court to re-evaluate the evidence adduced before reaching its own independent finding. He stated that his evidence as adduced by DW2 was not considered by the trial court yet it proves that the respondent, who did not have a driving licence, was overtaking negligently at a corner and he encroached into his lane. That the respondent had no business being on the road yet he was not licenced to ride that motor cycle.
19. He challenged the trial court's findings on liability based on section 107 of the *Evidence Act* and the case of *Statpack Industries v James Mbithi Munyao* [2005] KEHC 2043 (KLR) where it was held that a finding on liability must be based on evidence. Further reliance was placed on the case of *Bawani Stores Limited & another v Margaret Magiiri Gitau* [2015] KEHC 3454 (KLR) where the court held that proof of injuries does not mean proof of negligence on the defendant's part. As to whether the respondent was entitled to the reliefs awarded, he urged the court to still look at the evidence which does not support the claim at all.



20. The respondent submitted that out of the cumulative award of Kshs.3,493,671/=, the appellant has already settled Kshs.3,000,000/=. He stated that in as much as negligence was claimed against him, the appellant did not prove this. He supported the trial court's findings on both liability and quantum and urged the court to uphold them. He relied on the case of Catholic Diocese of Kisumu v Tete [2004] KECA 154 (KLR) and stated that the damages were awarded through the court's discretion which cannot just be overturned carelessly.

Issues for Determination

21. The issues for determination are:
- a. Whether the trial court's finding on liability should be set aside or reviewed;
 - b. Whether the awarded damages should be set aside.

Analysis and Determination

22. As a first appellate court, it is the duty of this court to examine the evidence adduced at trial afresh. This was held in the case of Coghlan v. Cumberland (1898) 1 Ch. 704, where the Court of Appeal (of England) stated as follows:

“Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong..When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen.”

23. Section 107 (1) of the *Evidence Act* provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”

24. The evidential burden is further established under sections 109 and 112 of the *Evidence Act*. In the case of Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] KEHC 8440 (KLR) the evidential burden was discussed and the court stated that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as



Section 108 of the Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side.”

25. The standard of proof in civil cases such as this one is on a balance of probabilities. In the case of *Miller v Minister of Pensions (1947) 2 All ER 372* discussing the burden of proof the court had this to say:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not. This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

Liability

26. The question of liability is always a matter of fact. As such, this court must re-look the circumstances under which the accident in question allegedly occurred as recorded in the evidence. Matters of fact are determined from evidence and the burden of proof lies on the party alleging the facts to prove them. PW2 alleged that he was hit by the appellant’s vehicle while he was riding his motor cycle towards Nairobi on the same lane as the appellant. In his amended statement, he said the defendant’s motor vehicle came from behind him attempting to overtake. This move was interrupted by another vehicle so the defendant swerved back and hit him from the right side.
27. The respondent produced photos from the scene of the accident, which shows that the appellant’s vehicle was damaged on the left-hand side and had a broken windscreen. PW2 testified that he was hit from the right side by the appellant’s vehicle which was attempting to overtake unsuccessfully and when it was not safe to do so.
28. PW3 testified that he witnessed the accident. He said that he had been following the plaintiff’s motorcycle and saw the defendant’s driver behind him trying to overtake the plaintiff. After PW3 overtook the plaintiff’s motorcycle, he heard some noise, a loud bang, as the accident occurred. He stopped, assisted the plaintiff and managed to take some pictures. Clearly, he was driving behind the appellant who was driving behind the respondent and they were all on the same lane. It was his evidence that the accident occurred when the appellant was attempting to overtake. He blamed the appellant for the accident.
29. DW1 was the driver of the appellant’s vehicle at the time of the accident. He admitted that the collision happened accidentally after he had just crossed a bump on the road. He denied that he was speeding at the time of the accident. Even though he said that the collision was head-on, the evidence points to the contrary, as the picture exhibited shows his vehicle was damaged on its left front side and window. On a balance of probabilities, it is evident that the appellant hit the respondent from his left side which is the plaintiff’s right side, occasioning him the named injuries. The trial court apportioned liability at 60:40 against the appellant based on how the accident happened. From the evidence, the liability is shared between the appellant and the respondent. In my view, the apportionment of liability is fair in the circumstances.

Quantum

30. The second issue is that of quantum. The trial court awarded the respondent the following damages which will now be discussed:



- a. General damages for pain and suffering-Kshs.3,000,000/=
- b. Loss of future earning-Kshs.1,086,142.50/=
- c. Loss of earning capacity- Kshs.1,086,142.50/=
- d. Special damages-Kshs.30,500/=
- e. Costs of a home caregiver-Kshs.500,000/=
- f. Cost of motorized wheelchair-Kshs.120,000/=
- g. Costs of the suit with interest on all monetary awards.

General Damages for Pain and Suffering

31. When assessing general damages for pain and suffering, the trial court noted that the respondent had prayed for Kshs.6,000,000/= for the injuries that rendered him paraplegic. The trial Magistrate stated that she considered the cases relied upon and awarded Kshs.3,000,000/= under that head. The respondent had relied on the case of Brian Muchiri Waihenya v Jubilee Hauliers Ltd & 2 others [2017] KEHC 5093 (KLR) where the court awarded Kshs.8,000,000/= to the plaintiff who had become paraplegic with 100% disability. He also relied on MKK v John Mutua Kimeu [2018] KEHC 391 (KLR) where the plaintiff had acquired 100% disability from the accident and the court awarded Kshs.9,000,000/= as general damages. Further reliance was placed on Alex Otieno Amolo & another v Hayer Bishan Singh & Sons Limited [2016] KEHC 4101 (KLR) where the plaintiff was also rendered paraplegic with 86% disability and the court awarded Kshs.6,000,000/=.
32. On the basis of these 3 cases, the respondent herein prayed for Kshs.6,000,000/= as general damages for pain and suffering. However, given that in these cases the injuries were substantially more severe and the assessment of disability much higher than what was suffered by the respondent, the trial court's assessment of general damages for pain and suffering was fair and appropriate in the circumstances.

General Damages for Loss of Future Earnings

33. The trial court awarded damages for loss of future earnings and loss of earning capacity separately but the figures assessed are identical. These 2 heads of damages are distinct and should be treated as such. In S J v Francesco Di Nello & another [2015] KECA 606 (KLR), the Court of Appeal distinguished them thus;

“...claims under these heads of loss of future earnings and loss of earning capacity are distinctively different. Loss of income which may be defined as real actual loss is loss of future earnings. Loss of earning capacity may be defined as diminution in earning capacity. Loss of income or future earnings is compensated for real assessable loss which is proved by evidence. On the other hand, loss of earning capacity is compensated by an award of general damages once proved....”

34. The respondent stated that at the time of the accident, he was using his friend's motor cycle to earn a living of Kshs.1,000/= per day. As a result of the accident, he became paraplegic with 50% disability. He is unable to function with his body from the umbilical cord downwards. The medical reports indicate that he has permanently lost his ability to walk again for the rest of his life. This may mean that he may also never earn a living again from his motor cycling ventures. He was 25 years old at the time of the accident. The trial court assessed damages for loss of future earnings using the minimum wage as



a multiplicand, with a multiplier of 15 years to arrive at Kshs.1,086,142.50/= as damages for loss of future earnings.

General Damages for Loss of Earning Capacity

35. As for the award of Kshs.1,086,142.50/= as damages for loss of earning capacity, it is unclear in the trial court's judgment as to how the figure was assessed. As stated in the cited Court of Appeal cases of (S J v Francesco Di Nello & another (supra)), damages for loss of earning capacity are to be assessed as general damages, either separately or combined with other general damages.

36. It is clear, as earlier noted, that the injuries sustained have diminished the respondent's capacity to earn in the manner he knew best. He may never be able to ride a motor cycle again in his life. In *Beatrice Anyango Okoth v Rift Valley Railways (Kenya) Limited & another* [2018] KEHC 543 (KLR) the court held:

“...damages under this heading are awarded where it is proved that owing to the injury suffered by the plaintiff, his chances of getting a job in the labour market comparable to the one he held before the injury are diminished or just lowered....The court would be properly entitled to make a global award because there is a general agreement in decisions rendered by courts that there is no formula in assessing damages for lost and diminished earning capacity provided the judge takes into account the relevant factors....”

37. It is my view that here, the award of damages for loss of earning capacity should be assessed separately based on the existing jurisprudence. In the case of *Nyatogo v Mini Bakeries Limited* [2023] KEHC 1593 (KLR), the plaintiff suffered paraplegia with 15%-50% disability from the accident. The court awarded a global sum of Kshs.800,000/= for loss of earning capacity. In *Alpharama Limited v Joseph Kariuki Cebon* [2017] KEHC 1818 (KLR), the court stated that this award is based on the annual earnings that will be lost by the plaintiff as a result of the disability arising from the accident, and held:

“...The traditional approach adopted by the courts when calculating a claim for future loss is to assess what lump sum is needed to compensate the claimant for the future loss. The starting point in this calculation will be to determine what annual net loss the claimant will incur in the future (the "multiplicand"), which is the annual loss of earnings. The multiplicand will then be multiplied by a "multiplier". The multiplier is assessed having regard to the number of years between the date of the settlement and the date when the loss stops. In a claim for future loss of earnings, this may be the date when the claimant would, but for the injury, have retired.”

38. Even though the trial court's assessment of loss of earning capacity was unsubstantiated, it appears to have been informed by the assessment of damages for loss of future earnings. The amount awarded, all factors considered, is fair in the circumstances and it need not be displaced.

Costs of a Home Caregiver

39. The respondent had prayed for costs for a home care giver for 25 years at the rate of Kshs.15,000/= per month. The trial court found no basis to award this claim and so it settled for a global award of Kshs.500,000/=. In assessing these costs, the court should be informed by the fact that were it not for the accident, the respondent would not be an invalid, needing assistance with day-to-day activities. He testified that since the accident, he cannot even meet his personal needs. This is adding to the fact that he has completely lost his ability to walk for the rest of his life.



40. In the case of MKK v John Mutua Kimeu [2018] KEHC 391 (KLR) where the plaintiff had suffered paraplegia with 100% permanent disability, the court reasoned thus regarding assessment of costs for a care giver:

“On costs of a Nursing Assistant, the plaintiff has since the accident relied entirely on the assistance of his father, who feeds him, bathes him and changes his diapers. PW1 testified that the plaintiff’s wife abandoned him after the accident. It is the finding of this court that had it not been for the accident, PW1 would not have had the extra burden he has had for the last 6 years of taking care of the plaintiff. I therefore hold that the plaintiff is entitled to a Nursing Assistant to take care of him. The plaintiff’s Counsel prayed for Kshs.10,000/ per month to take care of the said expense. It is common knowledge that the changing of diapers, feeding and bathing an adult is a departure from the usual ordinary work that is done by House Helps and calls for better remuneration. The court also notes that the said amount will remain constant over the years but the value of the Kenya Shilling will not remain the same over the years to come. I therefore find that the amount of Kshs.10,000/= requested for is reasonable. I therefore award the sum of Kshs.10,000/= to the plaintiff for the employment of a Nursing Assistant to help him. The award therefore works out as follows - $Kshs.10,000 \times 12 \times 32 = 3,840,000/=$.”

41. In the present case, the respondent suffered paraplegia with 50% disability. Either way, the need for a care giver to take care of the respondent’s reduced ability cannot be wished away and that is why the trial court made a global award. It is important to note that the respondent was 25 years old at the time of the accident and according to the prognosis offered by PW4, the respondent will never walk again and his legs have already started thinning. This means that he may live a long life needing constant care of a care giver at home to meet his personal needs. In these circumstances, I see no reason to resort to a global award where the facts are clear. In my view, the cost of a care giver at Kshs.10,000/= per month for 20 years is fair in the circumstances. The assessment comes to $Kshs.10,000 \times 12 \times 20 = Kshs.2,400,000/=$.

Cost of Motorized Wheelchair

42. The respondent prayed for a motorized wheelchair at a cost of Kshs.120,000/= every three years. Since the time of the accident, the respondent has been and will be condemned to a wheelchair for the remainder of his lifetime. His prayer for a motorized wheelchair is valid since it will be his only mode of mobility. However, he failed to substantiate his claim for the wheelchair every three years, during which time he will be possibly still needing a wheelchair. As for that claim, the trial court was fair in awarding Kshs.120,000/=.

Special Damages

43. For medical expenses, the respondent produced an invoice dated 30th June 2021 for Kshs.27,300/= which indicates that only Kshs.12,350/= was paid leaving a balance of Kshs.14,950/= and there is a receipt for Kshs.2,000/=. A receipt for Kshs.550/= for motor vehicle records search was also produced. Special damages must be specifically pleaded and strictly proved. Here, the only proved amounts are $Kshs.12,350/= + Kshs.2,000/= + Kshs.550/=$ which brings the total to Kshs.14,900/=. This sum shall be awarded.

Disposition

44. In light of the foregoing discussion, the appeal is hereby dismissed as shown hereunder, and orders are hereby made as follows:



1. The findings of the trial court on liability are upheld at a ratio of 60:40 against the appellant;
 2. Damages are hereby awarded as follows:
 - a. General damages for pain and suffering-Kshs.3,000,000/= with interest;
 - b. Loss of future earning-Kshs.1,086,142.50/=;
 - c. General damages for Loss of earning capacity- Kshs.1,086,142.50/= with interest;
 - d. Special damages-the trial court's award of Kshs.30,500/= is hereby set aside and substituted with an award of Kshs.14,900/= with interest from the date of filing the suit;
 - e. As for costs of a home caregiver, the trial court's global award of Kshs.500,000/= is hereby set aside and substituted with an award of Kshs.2,400,000/=; and
 - f. Cost of motorized wheelchair-Kshs.120,000/=.
 3. Costs of the trial court and this appeal be awarded to the respondent;
 - 4 All monetary awards shall be subjected to interest at court rates until payment in full.
45. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 8TH DAY OF OCTOBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Ms. Kiplimo for Appellant
2. Ms. Wambui for Respondent
3. Francis Munyao - Court Assistant

