



**Otema v Ndege (Civil Appeal E054 of 2024)
[2025] KEHC 14039 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E054 OF 2024
WM MUSYOKA, J
OCTOBER 7, 2025**

BETWEEN

JACKSON OTEMA APPELLANT

AND

FAUSTINE AJIAMBO NDEGE RESPONDENT

*(Appeal from the judgement and decree of Hon. A Karimi, Senior Resident Magistrate,
SRM, of 10th September 2024, in Port Victoria SRMCCC No. E002 of 2023)*

JUDGMENT

1. The suit, at the primary court, was by the respondent, against the appellant, for compensation, for loss and injury, arising out of a motor traffic accident on 30th April 2022, along the Bumala-Port Victoria road. The allegation was that she was a passenger in motor vehicle registration mark and number KCV 952L, which had an accident at the Kangara area, and she suffered injury and loss.
2. The claim was resisted by the appellant, who denied everything pleaded in the plaint, but alleged that the accident was caused solely by or was substantially contributed to by the negligence of the respondent.
3. A trial was conducted. 3 witnesses testified for the respondent, the appellant did not present a witness. Judgement was delivered on 10th September 2024. Kshs. 500,000.00 was awarded as general damages for pain and suffering, and Kshs. 1,011,916.00 as special damages. Liability was assessed at 100%. The total amount came to Kshs. 1,511,916.00.
4. The appellant was aggrieved, hence the instant appeal, on grounds that the special damages were awarded based on wrong principles; and the injuries pleaded were not considered in the assessment of general damages.



5. Directions were given, on 12th June 2025, for disposal of the appeal by way of written submissions. I have come across written submissions by the respondent, which I have read and noted the arguments made.
6. The respondent has identified 2 issues for determination, on admissibility of receipts for which stamp duty has not been paid, and whether the costs of Kshs. 172,400.00 had been proved. On the first issue, it is submitted that the receipts from Bungoma County Referral Hospital did not attract stamp duty, by virtue of section 88 of the *Stamp Duty Act*, Cap 480, Laws of Kenya, with respect to receipts for amounts of less than Kshs. 100.00. It is also argued that some of the receipts were computer generated, and had no provision for affixing a revenue stamp, and that without evidence from the receiver of the payment, it would be difficult to tell whether stamp duty had been paid or not. It is submitted that the receipt from Dr. Sokobe had been duly stamped.
7. The second issue around that, which the respondent submits on, is that the appellant never made that an issue at trial. He never objected at trial, to production of the receipts, and that that issue was raised for the first time in the final arguments, by way of written submissions. She cites Idris & another vs. Lime & another [2023] KEHC 18062 (KLR) (Wananda, J) and Wycliffe Lubanga Kefa vs. Dennis Ochola & another [2020] eKLR (Musyoka, J), for the argument that unstamped receipts could be accepted, so long as no one was complaining.
8. On the matter of Kshs. 172,400.00, she submits that she had produced evidence, on a balance of probability, to effect that she spent that amount of money as she shuttled from hospital to hospital, in pursuit of treatment, for her injuries. She asserts that that evidence was uncontroverted.
9. In the plaint, the respondent pleaded special damages of Kshs. 1,011,916.00, split between treatment expenses, fees for a medical report and the cost of obtaining the police abstract. Copies of invoices and receipts were attached.
10. At the trial, the respondent testified as PW1, and called 2 witnesses, who testified as PW2 and PW3. The 3 witnesses produced all those documents as exhibits. The record does not reflect any objection being raised by the appellant, and a ruling being made by the trial court on the admissibility and production of the said receipts, before they were marked as exhibits. Having not raised any objection, at trial, on their production, the appellant could not raise issue on their admissibility, after the court had already admitted them.
11. In any event, the issue of the stamps ought to be raised with the issuer of the receipt, and not with the recipient, for the duty lies with the issuer to affix the stamp on the receipt issued by them. There is no duty on the recipient of the receipt to affix the stamp. I fully associate with the sentiments expressed in Idris & another vs. Lime & another [2023] KEHC 18062 (KLR)) (Wananda, J) and Wycliffe Lubanga Kefa vs. Dennis Ochola & another [2020] eKLR (Musyoka, J), on that issue.
12. On the matter of Kshs. 172,400.00, I note, from the record, that the respondent called the person who offered the service, for which that amount was paid, as her witness. He described the service he offered to the respondent, and how he was paid by the respondent for it. He explained that the respondent was seeking medical services at the time. He explained further that he was paid in cash, and issued a receipt. That testimony was not impeached, during cross-examination.
13. The record speaks for itself. The respondent made allegations in her pleadings, which she proved at trial, by her own testimony, and the documents she produced, and by calling witnesses, who provided strong supporting evidence. That evidence was not controverted, for the appellant did not call any witness to challenge it, or paint a contrary picture.



14. The other issue, raised by the appellant, in his memorandum of appeal, is around the injuries pleaded in the plaint not being considered in the assessment of general damages.
15. The injuries pleaded were a comminuted fracture of the right tibia/fibula and blunt injury to the chest. The medical report, by Dr. Sokobe, which described the injuries, was put in evidence as an exhibit by the respondent. I note that a fact of that is noted in the judgement. The trial court, discussed the injuries, in the judgement, as captured by Dr. Sokobe, in his report, and cited *Kiama vs. Mutiso* [2024] KEHC 5235 (KLR), where an award of Kshs. 400,000.00 had been made for similar injuries, in assessing general damages. I see no foundation, then, for the argument that the injuries pleaded were not considered by the trial court, when it was assessing general damages.
16. I do not have before me, any material to support the argument that the case presented by the respondent did not reach the threshold for grant of the orders that were made to her, inclusive of the award of special damages. I find no merit in the appeal in the circumstances, and I hereby dismiss it, with costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 7TH DAY OF OCTOBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Kirabo, instructed by Kairu & McCourt, Advocates for the appellant.

Mr. Omondi, instructed by Omondi & Company, Advocates for the respondent.

