



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwaka (Suing as the mother and next friend of MM - Minor) v Kimani  
(Civil Case E006 of 2025) [2025] SCC 13 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] SCC 13 (KLR)

**REPUBLIC OF KENYA  
IN THE SMALL CLAIMS COURT AT VOI  
CIVIL CASE E006 OF 2025  
FM MULAMA, RM  
MAY 9, 2025**

**BETWEEN**

**JULIANA MBULWA MWAKA (SUING AS THE MOTHER AND NEXT FRIEND  
OF MM -MINOR) ..... CLAIMANT**

**AND**

**HUMPHREY NJUGUNA KIMANI ..... RESPONDENT**

**JUDGMENT**

**Introduction.**

1. The claim arises out of an accident that occurred on 21/12/2024 involving motor vehicle registration number KCD 471K that was at the time being driven by the Respondent's authorized driver that while being driven with the claimant as a lawful passenger, it collided with an oncoming truck registration number KCJ 021M/ZG 7683.
2. That as a result of the said accident, the claimant avers that she sustained injuries to which she now seeks compensation.
3. The claim is opposed by the respondent who denies any liability and infact avers that the claimant was negligent in ways that contributed to the accident including but not limited to failing to fasten safety belt and engaging the driver of the motor vehicle registration number KCD 471K in an animated conversation.
4. By consent of parties the matter proceeded by way of documents under S30 of the SCC with further directions that parties do file and exchange written submissions.
5. I have considered the claim, the response thereto, submissions and the authorities attached thereto.



## Issue for Determination.

- a. Whether the Respondent is liable for the accident.
- b. What is the quantum of damages awardable if any.
- c. Who bears costs of the claim.

## Analysis and Determination.

### a. Whether the respondent is liable for the accident.

6. It is now trite that accidents do not just happen. They are either caused by someone or something. In this case, it is said that the respondent's driver caused the accident although denied by the respondent but as held by the court of appeal in the case of *Rahab Micere Murage (Suing as a Representative of the Estate of Esther Wakiini Murage) v Attorney General & 2 others* [2012] eKLR held that well driven motor vehicles do not just get involved in accidents.
7. The court of appeal underscored the fact that accidents are caused by someone or thing. In the circumstances of this case, the claimant avers that the respondent's driver veered off his lane and went to the opposite lane where the motor vehicle lost control and rammed into an oncoming truck hence the accident.
8. These averments have not been denied or rebutted by the said driver and/or any other witness on the part of the respondent. The best the respondent has done is to generally and merely deny liability. He does not give his side of the story and more importantly how the claimant contributed to the accident, either in part or in whole.
9. The respondent has casually intimated that the claimant contributed to the accident and liability should not attach to him. It is not in doubt that the plaintiff was a passenger on the said motor vehicle and it is trite given the circumstances of this accident, the claimant minor and given his age could not do anything that could lead to the accident.
10. The circumstances of the accident were that the driver of the suit motor vehicle veered off to the opposite lane and rammed into an oncoming vehicle. This in my view was a miscalculated move by the driver in a bid to overtake. He ought to have ensured it was clear and safe for him to overtake and he had all the control of the motor vehicle and the claimant had very little to contribute to either cause or stop the occurrence of the accident.
11. In the case of *Boniface Waiti and Another v Michael Kairuki Kamau* (2007) eKLR cited with approval in the case of *Zachary Samita Lukorito v Environmental Combustion & Consultants Ltd & 2 others* (2016) eKLR where Justice Nambuye observed:

“It is now trite law that passengers have no control over the manner of driving of a vehicle in which they are conveyed and cannot be penalised for the poor workmanship of the control of the vehicle. The explanation on causation of the accident in such circumstances lies with the driver---”
12. The circumstances of this accident are in pari materia with the finding of Lady Justice Nambuye in the above cited case and there is no evidence whatsoever to prove that the claimant contributed to the accident. I wonder how a 5-year-old could engage the respondent's driver in an animated talk or is it a clear copy and paste scenario? I digress.



13. Furthermore, the abstract produced in evidence blames the respondent's driver for the accident.
14. I have said enough from my analysis above to intimate that the claimant had no role in the occurrence of the accident. The court therefore finds the respondent 100% liable for the accident.

**b. What is the quantum of damages awardable if any.**

15. It is the claimant's case that as a result of the accident the minor suffered the following injuries; deep cut wound on the occipital region of the scalp, haematoma right parietal region, cut around the left angle of the mouth and laceration on the right shoulder.
16. A perusal of the medical documents filed herewith opine that the nature of injuries were soft tissue injuries and were assessed as harm. Dr. Hanif in his report dated 17/1/2025 confirm the injuries sustained and further confirmed that as at the time of examination the claimant had fully recovered.
17. The plaintiff has proposed what in his view is a proper compensation for the injuries and has proposed Kshs.400,000/= and has placed reliance on 3 cases as cited in the submissions. I have considered and read those cases and I note that the injuries sustained by those claimant and/or plaintiffs were more severe than those suffered by the claimant herein.
18. The respondent on the other hand has proposed Kshs.80,000/= as adequate compensation for the injuries sustained by the claimant and has relied on 2 authorities which I have similarly considered and appreciated.
19. It is trite law that no 2 cases can be completely similar but it is a settled principle that comparable injuries should attract comparable awards see the case of *[Odinga Jacktone Ouma v Moureen Achieng Odera](#)* [2016] eKLR.
20. I have on my part considered the following authorities which in my view have similar injuries as those suffered by the claimant. In the case of *[Matunda\(fruits\) Bus services Ltd v Agnes Chemngeno Tuiya](#)* [2021] eKLR where the respondent sustained deep cut wound in the scalp, cut wound on right temporal region of the scalp, deep cut wound on the right shin, blunt injuries to the neck, loose 2 upper teeth and lower incisor teeth and cut on the lower lip and the court on appeal substituted an award of Kshs.390,000/= with an award of Kshs.250,000/=
21. Considering the said case and the fact that the injuries sustained in the Matunda bus case are more serious than in this matter, and also considering the fact that the decision was made in 2021 hence the issue of inflation, I am inclined to award the claimant Kshs.180,000/=
22. On special damages, it is trite law that they have to be specifically pleaded and proved. The claimant has pleaded Kshs.3,550/= being costs incurred in obtaining the medical report and the motor vehicle copy of records. I have perused the record and only the expense for the medical report for Kshs.3,000/= has been proved. I proceed to award the same. The expense for Kshs.550/= has not been proved and it is disallowed.

**c. Who bears costs of the claim?**

23. The basic rule on attribution of costs is that costs follow the event. It is also well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.
24. The claimant having been successful in the matter and that costs follow events she is awarded costs of the claim.



**Conclusion and Disposition.**

25. The upshot of the foregoing I make the following final orders;

- a. The claim contained in the statement of claim dated 6<sup>th</sup> February 2025 is allowed in the following terms.

Liability - 100%

General damages - Kshs.180,000/=

Special damages - Kshs. 3,000/=

Total - Kshs.183,000/=

- b. The claimant is awarded costs and interests from the date of judgment until payment in full.  
c. Let the file be closed forthwith.

26. Orders accordingly.

**F.M. MULAMA**

**ADJUDICATOR/RM**

In the presence of:-

Court Assistant:- Shariffa Abdalla.

Mr. Kiwinda for the Claimant

Ms. Musanzu for the respondent.

**DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 9<sup>TH</sup> DAY OF MAY 2025.**

