



**Mwangangi v Motrex Limited (Civil Case E014 of 2024)
[2025] SCC 8 (KLR) (21 May 2025) (Judgment)**

Neutral citation: [2025] SCC 8 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E014 OF 2024
FM MULAMA, RM
MAY 21, 2025**

BETWEEN

OSCAR NZILE MWANGANGI CLAIMANT

AND

MOTREX LIMITED RESPONDENT

JUDGMENT

1. Oscar Nzile Mwangangi claims against Motrex limited following an accident that occurred on 25/11/2024 along Mombasa-Nairobi highway while driving his motor vehicle from Voi to Mtitio Andei and as a result of which he sustained injuries and now seeks compensation for those injuries.
2. It is the claimant's contention in his statement of claim dated 10/12/2024 that on the material day he was driving his motor vehicle on the said road and while approaching Ikanga, he parked his vehicle lawfully off the road to pick a fuel cap that had fallen on the road and while in the process of collecting the said fuel cap, the respondent's authorized agent, servant and/or driver so negligently drove, managed and/or controlled the motor vehicle registration number KDG 815D that was heading in the opposite direction and which was over speeding causing it to lose control veer off its lane and ram into the claimant who was on the opposite lane and as a result the claimant sustained serious injuries to which he blames the respondent for. Particulars of negligence were pleaded as against the respondent.
3. The respondent on the other hand denied the occurrence of the accident and further denied any liability on his part and pleaded contributory negligence as it also relied on the doctrine of volenti non fit injuria.
4. By consent of parties the matter was heard viva voce and parties thereafter asked to file submissions. I have considered the claim and supporting documents, the response, the oral evidence and the submissions of the claimant. The respondent did not file submissions at the time I was writing this judgment.



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.

5. 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.
6. In support of its contention that the claimant in fact caused the accident, the respondent produced a dashcam video that shows in brief how the accident happened.
7. I have looked at the said video vis a vis the claimant's own averment in the claim and his witness statement and I wish to state that contrary to the said averments, the respondent's motor vehicle was not over speeding and it did not lose control as alleged.
8. In as much as over speeding may be relative and depending on one's lenses, a speed of 50km/hr cannot be said to be over speeding as this has been found to be manageable speed that motorists are allowed to drive at especially when in town centres and learning institutions and some of us may be aware of the speed guns whose work was majorly to ensure that there is compliance with the speed of 50Km/hr.
9. Further, from the video as I watched it, the motor vehicle did not lose control and all I was able to see was an attempt by the driver to avoid hitting the claimant who was on the road.
10. It is therefore my considered view that the video produced gives a real time account of how the accident occurred and I will use the same in addition to the respective parties' position on the matter.
11. From the video it is clear and contrary to the testimony of the claimant, that he never made any signs and/or signals to the respondent to stop although this is not conclusive since the video only shows fewer seconds however, a look at the video as produced, I could not see any lorry parked off the road and secondly it is clear that the claimant never made any signals to the respondent driver to stop or notify him of his intention to pick something on the road.
12. From the start of the video the claimant can be seen running on the shoulder of the road then suddenly makes a run across the right-hand lane of the respondent's driver while looking away from the lorry and suddenly picks the thing before he was knocked down after the driver made attempts to avoid hitting him.
13. It is not clear in my mind what urgency the claimant had that could not wait for the respondent's lorry to pass before collecting whatever it was. It was only safe for him to watch out for the oncoming vehicles before making such a move. He should be very lucky that he is alive to this moment.
14. It was incumbent upon the claimant as ably directed by the respondent's counsel that he had the obligation to look right, look left then right again and when it is clear he would then cross.



This is a skill that most if not all of us were taught in school especially in primary school and there was an instance at least from my school teacher Ms. Ng'ang'a that it was not enough to just look right, left and right again and across oblivious of the presence of traffic/vehicles, one had to only cross when it was clear for him/her to cross. The claimant disobeyed this cardinal traffic rule/code of conduct.

15. It is therefore not true when the claimant in his testimony states that he managed to pick the fuel cup/lid and went back to the opposite lane and the respondent's lorry hit him on that lane. The video clearly shows he was hit immediately after picking the lid and while he was approaching the yellow line and started the ran after the respondent's driver hooted at him. It is also at that point that the respondent's driver attempted to avoid hitting him but it was late although it appears he was knocked even after made up his mind to swerve to avoid hitting him [see 0:00:07 of the video]
16. However, the respondent's driver in the video from the way he was driving at one point he's seen driving the vehicle with his both hands while on the major part of the video he is seen driving with one hand while supporting the steering wheel with the elbow of his left hand while scratching his eyes, nose and mouth [see 0:00:01 of the video] and at some point the elbow is retrieved fully out of the steering wheel and he now drives with one hand and only returned both hands when he attempted to swerve[see 0:00:07 of the video].
17. Given the speed at which he was driving at and given how clear the road was in my view it could be possible for the respondent's driver to effectively apply brakes to avoid hitting the claimant. Had he been keen enough he would have seen the complainant because as the video shows, the claimant was seen making a run onto the road and at that time it was expected that the respondent's driver would start applying brakes and/or in any manner alert the claimant of the oncoming vehicle. Essentially that is the purpose of the horn or the purpose for hooting. To alert while at a distance.
18. From the video starting at 0:00:03 it is clear that the claimant is already on the road and the respondent's driver is having a clear view of him and at that point he should have started hooting while slowing down but this was not what happened.
19. I agree with the claimant in his submission that the respondent driver had the obligation of checking out for anything or anybody who would dash onto the road even if on its right full lane but at the same vein the claimant also ought to have looked out for his safety as already stated.
20. In the case of *Abson Motors & 2 others v Sinema Kitsao & another [administrators of the estate of the late Kitsao Kajefwa Kitunga [Deceased]]* [2016] eKLR the court held that:

" The mere fact that the accident driver was on his correct lane does not entitle him to knock anything on his way."
21. The driver tried all his best to avoid the accident but save for the observations I have made in the preceding paragraphs. This in the circumstances both the claimant and the respondent shall bear some liability towards the accident.
22. Accordingly, and based on the evidence, the video and the analysis above, I do find that it is only fair in the circumstances that each of them bears equal liability for the accident and I apportion liability at 50:50.



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

23. It is the claimant's case that as a result of the accident he suffered right colles fracture [wrist fracture], head injury with loss of consciousness, lacerations to both knees, lower back and left wrist.
24. A perusal of the medical documents filed herewith opine and confirm the injuries that were sustained by the claimant. Dr. Hanif in his report dated 4/12/2024 indicates that at the time of the examination other than the injuries listed, the claimant had pain in the right arm, head and lower back but concluded that he was still undergoing treatment and that he will require physiotherapy for his wrist after the cast is removed for a period of 1 month and at a cost of Kshs.20,000/= and that full recovery is expected thereafter.
25. The plaintiff has proposed what in his view is a proper compensation for the injuries and has proposed Kshs.800,000/= 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 since the more serious injury suffered by the claimant herein is the fracture to his wrist and the rest are lacerations whereas in those cases, some have multiple fractures and deep cut wounds.
26. 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.
27. I have on my part considered the following authorities which in my view have similar injuries as those suffered by the claimant.
28. In the case of *Patrisia Adhiambo Omollo v Emily Mandala* [2020] eKLR the trial court made an award of Kshs.180,000/= for fracture of the left forearm radius and ulna, colles fracture of the left forearm, swollen deformed distal aspect of the left forearm, multiple bodily injuries and injuries to the left forearm with swelling.
29. Aggrieved by the said judgment the plaintiff appealed citing that the amount was inordinately too low as compensation among other grounds.
30. Colles fracture is defined in medical terms to be a fracture occurring as a result of falling onto wrists in extension. It is a term used for all distal radius fractures. In other words, it is a type of fracture of the distal forearm in which the broken end of the radius is bent backwards.
31. In the said case, the high court on appeal dismissed the appeal after it made a finding that the trial court made a proper finding that the colles fracture was the only injury sustained by the appellant
32. However, in as much as the authority gives guidance with regards to the amount of compensation commensurate with the exact injury, the said decision although a good guide, it is slightly distinguishable in this case as further to the colles fracture, the claimant sustained a head injury with loss of consciousness and lacerations to both knees, lower back and left wrist all of which Dr. Hanif was able to see at the time of the examination with the head still having a 2cm x 2cm bulging left occipital swelling.
33. Therefore, considering that the Patrisia case was delivered in 2020 and considering the passage of time, rate of inflation, the award made therein and the injuries sustained herein, I award the claimant Kshs.500,000/=



34. On the costs of physiotherapy, the respondent has not availed any alternative figure by way of a second opinion and given the fact that the doctor has opined that the sessions are necessary so as to regain normal mobility, it is only fair that he be compensated for that. I therefore allow the claim for physiotherapy at Kshs.20,000/=
35. 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 and treatment expenses. I have perused the record and I have confirmed that only the receipt for the copy of records for Kshs.550/= was attached and to that extent only that amount is allowed. The claim for Kshs.3,000/= is dismissed for want of proof.

c. Who bears costs of the claim?

36. 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.
37. The claimant having been successful in the matter and that costs follow events she is awarded costs of the claim.

Conclusion and Disposition.

38. The upshot of the foregoing I make the following final orders;
- a. The claim contained in the amended statement of claim dated 10th December 2025 is allowed in the following terms.
- Liability 50:50
- General damages Kshs.500,000/=
- Less 50% contribution Kshs.250,000/=
- Sub total Kshs.250,000/=
- Add Special damages Kshs.550/=
- Grand Total Kshs.250,550/=
- b. The claimant is awarded costs and interests from the date of judgment until payment in full.
- c. Let the file be closed forthwith.
39. It is so ordered.

DATED, SIGNED AND DELIVERED AT VOI SMALL CLAIMS COURT THIS 21TH DAY OF MAY 2025.

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Fathiya Loo.

Mr. Kiwinga for the Claimant

Mr.Ndambuki for the Respondent.

