



**Odongo v Ayoti Distributors (Civil Case E013 of 2025)
[2025] SCC 1 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] SCC 1 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT SIAYA
CIVIL CASE E013 OF 2025
JP MKALA, RM
MAY 23, 2025**

BETWEEN

DAVID ONYANGO ODONGO CLAIMANT

AND

AYOTI DISTRIBUTORS RESPONDENT

JUDGMENT

1. The Claimant claims that on or about 28th day of December, 2024 while he was riding a Motorcycle Registration Number KMEG 383U at Kipasi Junction along the Bondo-Misori Road on his side of the road/lane when the Respondent's Motor Vehicle Registration Number KBN 100N that was being driven by the Respondent and or the Respondent's authorized driver, employee, servant and/or agent knocked the motorcycle he was riding resulting him to sustain severe and serious bodily injuries and he has suffered immense loss and damages.
2. The Claimant claims that he sustained injury on the neck, injury on the chest, injury on the elbow joint, injury on the right leg, injury on the right knee joint and fracture of the right tibia/fibula bones (revealed on X-ray report and film).
3. The Respondent on the other hand denies the averments contained in the Claimant's statement of claim and instead blames the claimant.

Analysis and determination

4. I have carefully considered the pleadings, witness statements, documents and submissions by both parties.
5. The Claimant blames the driver of the motor vehicle registration number KBN 100N for driving carelessly and recklessly hitting motorcycle KMEG 383U thus causing him serious injuries. On the



other hand, the Respondent denies the Claim and blames the Claimant for being negligent and reckless.

Liability

6. The police abstract is proof that following the accident the same was reported to the issuing police station. It also indicates the particulars of the vehicle and persons involved. As per the police abstract tendered into evidence by the Claimant the accident is still pending under investigation.
7. It is trite that he who alleges existence of particular facts must prove. In *Kipkebe Limited v Peterson Ondieki Tai* [2016] eKLR
8. It is trite law in evidence that he who asserts must prove his case. No evidence was adduced by the plaintiff. In such cases, the burden of proof lies with whoever would want the court to find in his favour in support of what he claims.
9. Section 107 of [evidence Act](#) succinctly states: “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
10. Further, in the case of *M’Bita Ntiro v Mbae Mwirichia & another* [2018] eKLR
11. Obviously, in civil cases, the onus is on the plaintiff or any other claimant to prove the position he or she postulates on a balance of probabilities. This position is anchored in law. I reproduce herebelow sections 107,108 and 109 of the [Evidence Act](#) which provide erudite guidance in this area.
12. The Respondent on the other hand avers that the Claimant joined the junction without checking and rammed into his motor vehicle fuel tank. That he did not see the Claimant coming, he only had the impact on his motor vehicle that’s when he noticed the Claimant.
13. The Claimant during the hearing he conceded that he was joining the main road in a junction, all of a sudden, the Respondent came over speeding and hit his motorcycle. He further stated that he was hit from the front and the fuel tank dislodged from the motorcycle. Paragraph 114 of the Highway Code states: -

“Right turn: well before you turn right at a junction, take full account of the position and movements of the flowing traffic.”When safe to do so, signal your intention and take up a position in the middle of the road Wait until there is a safe distance between you and any approaching vehicle before you complete your turn.
14. It is clear from the evidence on record that the Claimant did not wait until the road was clear for him to join the junction. The Respondent was also under duty to slow down while approaching the junction since anyone who was not careful might choose to join the road. He would have been able to avoid the accident had he been careful.
15. Further, the Claimant testified that he was carrying two pillion passengers. Traffic laws provides that a motorcycle shall only carry one pillion passenger at a time, therefore the claimant was in breach of the traffic laws. It is possible that the Claimant could not control the motorcycle having carried more passengers beyond what is prescribed. Had the Claimant ben careful enough he could perhaps have avoided the said accident.



Section 109 of the Evidence Act Provides: -

“The Respondent on the other hand states “On reaching Nzoia river at Ugunja area, there was a motor vehicle Registration No. KCT 865 J that was plying the Kisumu - Busia road headed towards the opposite direction when suddenly without care or precaution of other road user, left its lane and joined my rightful left lane in a bid to overtake at a corner, a vehicle that was ahead of it.”

109.	Proof of particular fact.
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16. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
17. No evidence has been produced to show clearly who is to blame for the accident. No sketch maps of the accident and the abstract produced states that the accident is pending under investigation. It is hard from the evidence produced herein to determine who is to blame for causing the accident.
18. In *Ndatho v Chebet (Civil Appeal 8 of 2020)* [2022] KEHC 346 (KLR) (16 March 2022) (Judgment)
19. Where it is difficult to determine who is to blame liability must be apportioned equally.
20. Based on the above, liability is hereby apportioned 50/50 between the Claimant and the Respondent.

Quantum

21. Had the Claimant proven that the Respondent was liable, I would have awarded the following amounts.

General damages for pain, suffering.

22. The Claimant claims that he sustained injury on the neck, injury on the chest, injury on the elbow joint, injury on the right leg, injury on the right knee joint and fracture of the right tibia/fibula bones (revealed on X-ray report and film). The discharge summary from Bondo Sub-County hospital confirms the injuries as those indicated in the statement of claim. They are further confirmed by the medical examination form and the medical report from Rabuor Sub county hospital.
23. The Claimant submits that an award of Kshs. 1,000,000 under this head would suffice while the Respondent submits that an award of 350,000 would suffice.
24. I have considered the submissions and authorities relied upon by the Claimant whereas it is impossible to find authorities with exact injuries. The authorities cited do not present injuries closely comparable to those sustained by the Claimant herein.
25. In *Civicon Limited v Richard Njomo Omwanja & 2 others* [2019] eKLR where the court on appeal reduced damages for 2nd Respondent who suffered deep cut wound on the left ear lobe, tender left lateral chest wall, swollen and tender left arm, bruises on the left hand, swollen and tender left elbow, bruises on the left elbow, cut wound on the left foreleg, fracture of the left tibia and fibula and dislocation on the left hip joint to Kshs. 450,000/.
26. In *Aloise Mwangi Kahari v Martin Muitya & another* [2020] KEHC 5516 (KLR) where an award of Ksh.500,000/= as general damages was granted for the following injuries:
 - a. Compound fracture of the right tibia and fibula,



- b. Severe soft tissue injuries on the face,
 - c. Soft tissue injury on the left shoulder joint.
27. In the case of Dennis Matagaro v NKO (Minor suing through next friend and father WOO) [2021] KEHC 7524 (KLR) Kshs. 700,000 was awarded where the Plaintiff suffered mild head injury, tenderness on the neck, dislocation of the left shoulder, tenderness on the back, deep lacerated cut wounds on the forearms and a fracture of the left tibia and fibula.
28. The Court must consider the current value of the shilling and the economy, inflation and time passed since the compared awards were granted. Although astronomical awards must be avoided, the court must ensure that awards make sense and result in fair compensation (see Ugenya Bus Service v Gachoki NKU CA Civil Appeal No. 66 of 1981 [1982]eKLR and Jabane v Olenja [1986] KLR 661).
29. In light of the above analysis I find that an award of Kshs 700,000/- in general damages for pain and suffering would suffice.

Future medical expenses

30. Future medical expenses are in the category of special damages. They must specifically pleaded and proven. In Oracle Engineering Limited & another v Muliro (Civil Appeal E006 of 2024) [2025] KEHC 5409 (KLR) (2 May 2025) (Judgment) D. K. Kemei J stated as follows:-

“ This brings me to the claim of future medical expenses. It is trite that such kind of expenses are in the form of special damages which must be specifically pleaded and proved. It is noted from the Respondent’s statement of claim that the prayers sought were in respect of special damages, general damages, cost of the suit and interest. There is no prayer for future medical expenses. It was incumbent upon the Respondent to specifically plead the claim in order to justify an award in that regard.”

31. The Claimant submits that the medical report has provided that he will need future medical expenses and since the Respondent did not object then this court should award the same. however, upon perusal of the Claimant’s Statement of Claim there is no mention of future medical expense. Parties are bound by their pleadings. This court is inclined to dismiss the claim for future medical expense.

Special damages.

32. The Plaintiff has produced receipt for the following.
- The Claimant has pleaded for Kshs. 59,800, however, a perusal of the Claimants documents, he only produced three receipts totalling Kshs. 39,535/- therefore, this court will award this amount.

Disposition

- a. General damages Kshs. 700,000 less 50%= Kshs. 350,000/-
- b. Special damages 39,535/-
- c. Costs assessed at Kshs. 40,000/-
- d. Interest on A, B, and C from the date of judgement until payment in full.
- e. Stay of execution 30 days.



**SIGNED, DATED AND DELIVERED VIRTUALLY AT SIAYA COURT THIS 23RD DAY OF MAY,
2025**

HON. J. P. MKALA

RESIDENT MAGISTRATE/ADJUDICATOR

Judgment Delivered in the presence of;

Plaintiff's/Counsel -

Defendant's/Counsel -

Court Assistant - Kevin Akwany

