



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
SC CC NO. E031 OF 2025.

HOLINESS WALI MWACHIA.....
....CLAIMANT

-VERSUS-

TABNACHA ODOUR ADENY.....
RESPONDENT

JUDGEMENT.

INTRODUCTION.

- 1)** On or about the 4th day of December 2024 the claimant was a lawful pillion on motor cycle registration no. KMFW 610T TVS that she was riding on along Voi-Caltex(Kaloleni) road heading towards Caltex from Equity and as the said motor cycle approached New generation building the respondent's authorized agent, servant and/or driver so negligently drove and/or controlled motor vehicle registration number KBB 288F Subaru forester that was headed the same direction that while being driven carelessly and in high speed it lost control and rammed into the motorcycle carrying the claimant.
- 2)** That as a result of the accident which was caused by the negligence of the respondent's driver and/or agent which particulars have been pleaded, the claimant sustained injuries to which she wholly holds the respondent liable.
- 3)** The claimant further avers that she sustained a cut on the left leg and lacerations on the right foot on the lateral aspect and now pleads for compensation in terms of general and special damages of Kshs.3,550/=

- 4) The claim is opposed by a response dated 19th June 2025. I have considered the claim, the response as well as submissions filed by parties.

ISSUE FOR DETERMINATION.

- a) **Whether the court has jurisdiction to hear and determine this claim.**
- b) **Whether the Respondent is liable for the accident.**
- c) **What is the quantum of damages awardable if any.**
- d) **Who bears costs of the claim.**

ANALYSIS AND DETERMINATION.

- a) **Whether the court has jurisdiction to hear and determine this claim.**
- 5) The respondent in his submissions has placed reliance in the case of **Jerusha Auma Ogwari vs Ibrahim Aisha Heri (Civil Appeal 223 OF 2022)** where Justice Magare stated in paragraph 26 of the said Judgment, that jurisdiction and suitability of the Small Claims Court to handle personal injury claims arising from road traffic accidents and the court stated that such matters involving negligence and injuries arising from road traffic accidents should be filed in the Chief Magistrate's Court.
- 6) On the issue of jurisdiction of this court to hear and determine claims arising out of road traffic accidents, I am of the considered view that if the legislators wanted to exclude road traffic accident from the broad category of personal injuries, nothing would have stopped them from expressly stating so. Consequently, I agree with all those decisions that state that the SCC has jurisdiction to hear and determine personal injuries arising out of road traffic accidents.
- 7) Such cases include but not limited to **Jane Zighe vs Danson Bongoli Runga (Civil Appeal E034 of 2024) [2024] KEHC 11036 (KLR) (18 September 2024) (Judgment)** as relied upon by the claimant and also the case of **Kimimji & another v Onuko (Civil Appeal E500 of 2024) [2025] KEHC 6268 (KLR) (Civ) (15 May 2025) (Judgment)** the learned Justice A.C.Mrima at paragraphs 21,22 and 23 observed as follows;

“21. On the flipside, Section 12[d] of the Act specifically grants jurisdiction to the Court in respect of claims on ‘compensation for personal injuries.’ Therefore, had it been the intention of the Legislature to exclude claims on compensation for personal injuries from the ambit of the Small Claims Court, nothing would have restrained the law makers from doing so. In this case, it is apparently clear that the law intended and indeed granted the Small Claims Court the powers to adjudicate over claims on compensation for personal injuries. Even in doing so, the law makers were well aware that claims on compensation for personal injuries would attract assessment of damages and were, hence, damages at large, but nevertheless, asserted their intention.

22. Having said as much, this Court further asserts that just like the correct position taken by the Court of Appeal in Orange Democratic Movement v Yusuf Ali Mohamed & 5 others case [supra] that ‘... a party cannot through its pleadings confer jurisdiction to a court when none exists. Jurisdiction is conferred by law not through pleading and legal draftsmanship....’ equally a Court cannot decline

jurisdiction through legal craftsmanship especially in instances where Parliament expressly vests jurisdiction in a Court unless that law is declared unconstitutional or is duly amended. With the said caveat at hand and in upholding the constitutional imperative of separation of powers, Courts ought to resist the temptation of usurping the role of Parliament in law-making.

23. It is on the foregoing basis that this Court, respectfully so, break ranks with the decisions excluding the Small Claims Courts from entertaining claims on compensation for personal injuries. In saying so, this Court remains alive to the truism that indeed there are multiple challenges facing the Small Claims Courts as well as the parties in adjudicating the claims on compensation for personal injuries. To this Court, the most ideal intervention would instead be law reform.”

8) I should point out however, that the aforementioned case was an appeal against my own decision in [Milimani] Small Claims Court Case No. E4200 of 2023 delivered on 14th March 2024 that I had relied on the case of Jerusha Auma Ogwari vs Ibrahim Aisha

Heri(Civil Appeal 223 OF 2022) in dismissing the claim for want of jurisdiction. Other than agreeing wholly with the reasoning of the judge, the same is binding on me and moreso that its over my own decision.

- 9) The upshot is that the preliminary objection is not without merit and it is dismissed *in limine* and this paves way for the determination of the claim.

b) Whether the respondent is to be blamed for the accident.

- 10) As I was considering the evidence and the documents in this matter, it came to my attention that I had delivered a judgment in a different matter to wit **VOI SCCC NO. E017 OF 2025 FRIDAH WAKESHO MWAROMBO VS TABNACHA ODUOR ODENY** and the judgement blamed the respondent at 100% for the accident.

- 11) The accident herein is similar to that accident in all aspects save for the injuries sustained by the claimant and consequently I adopt judgment on liability in this case and I thus find the respondent 100% liable.

- 12) It suffices to note that in that particular file, the matter proceeded by way of *viva voce* evidence and the respondent was represented by counsel.

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

- 13) It is the claimant's case that she sustained a cut on the left leg and lacerations on the right foot on the lateral aspect.

- 14) In support of this, she produced treatments notes from Moi Hospital Voi, a P3 and a medical report dated 14/1/2025 all of which confirm the injuries sustained by the claimant and which as per the medical report indicate that as at the time of the examination she had fully recovered.

- 15) It is trite law that comparable injuries should attract comparable awards see the case of **Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR.**
- 16) The claimant in his submissions has relied on the case of **Lake Naivasha Growers vs Muigai Thuka [2020] eKLR** where an award of Kshs.250,000/= was made for multiple soft tissue injuries.
- 17) The claimant proposed an award of Kshs.350,000/= as sufficient compensation for pain and suffering while considering the issue of inflation.
- 18) The respondent on quantum in relying on 7 authorities as quoted in the submissions made a proposal that the respondent be compensated Kshs.80,000/=. A variety of the authorities relied upon awards were between Kshs.60,000/= to Kshs.130,000/= although the injuries in majority of those cases were soft tissue injuries and slightly distinguishable from this case as the claimant herein suffered a cut on the left leg as well as lacerations on the right foot on the lateral aspect.
- 19) Courts have taken the position that there can be no uniformity in the assessment of damages and that such assessment falls within the trial court's discretion. In **Livingstone Rawyards Coal Co. [1880] 5 App Cas 25** the court stated that:
- “I do not think there is any difference of opinion as to its (sic) being a general rule that where any injury is to be compensated by damages, in settling the sum of money to be given for reparation or damages, you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong”.**
- 20) In **Cornilliac v St Louis [1965] 7 W.L.R 491** the court highlighted the factors that should be considered in making an award of damages as follows: -
- a) **The nature and extent of the injuries sustained**
 - b) **The nature and gravity of the resulting physical disability**
 - c) **The pain and suffering hence had to be endured**
 - d) **The loss of amenities suffered.**

General damages	Kshs.180,000/=
Physiotherapy costs	Kshs.3,550/=
<u>TOTAL</u>	<u>Kshs.183,550/=</u>

b) The claimant is awarded costs and interests from the date of judgment until payment in full.

c) Let the file be closed forthwith.

28) Orders accordingly.

**DATED, SIGNED AND DELIVERED AT VOI SMALL CLAIMS COURT
THIS....16thDAY OF ...July...2025.**

**F.M. MULAMA
ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Fathiya Loo.

Mr. Kiwinga for the Claimant

Mr. Ndolo for the Respondent.