



Mwamboji v Omar (Civil Case E021 of 2025) [2025] SCC 11 (KLR) (11 July 2025) (Judgment)

Neutral citation: [2025] SCC 11 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E021 OF 2025
FM MULAMA, RM
JULY 11, 2025**

BETWEEN

KENNEDY MOSHE MWAMBOJI CLAIMANT

AND

ABDISALAM QUMANE OMAR RESPONDENT

JUDGMENT

1. It is the claimant's averment that on 6/4/2025 the claimant was a pillion passenger on board motorcycle registration number KMFP XXX along Nairobi-Mombasa and particularly at Kasarani area of Voi town the claimant was hit by an oncoming motor vehicle registration number KAY XXX driven by the respondent's driver and who did so carelessly and negligently and that as a result of the accident he sustained injuries to the left shoulder with tenderness, blunt injuries on the right knee with laceration, tenderness and reduced joint movement and blunt injury to the left foot.
2. The respondent despite admitting ownership of the motor vehicle was quick to deny any accident concerning the said motor vehicle on the said date and seeks to have the claim dismissed with costs.
3. By consent parties agreed to proceed by way of Section 30 of the SCC Act. I have considered the pleadings and submissions in 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.

4. 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 *Rabab 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.
5. 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 hit them from behind as it tried to overtake some other motor vehicle and as a result occasioning them injuries and they were rushed to Moi county referral hospital. It is a rule and/or traffic code that one vehicle should keep at least 50 meters from the other and it is expected the respondent would observe this and keep his distance.
6. Furthermore, it is expected that the respondent driver would only overtake when it was safe for him to do so as he owes a duty of care to other road users such as the claimant herein.
7. Had the respondent, his driver and/or servant kept the distance between himself and the motor cycle the claimant was riding on, he would have avoided the accident. It is not in his place just to and/or ram into the rear of the motor cycle simply because the driver in front of him was on the wrong assuming that was the situation herein. Even if that was to be the case the court 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.’
8. The respondent's driver was just careless in the manner in which he controlled the vehicle and no wonder even the police blamed him for the accident and have intended to charge him with the offence of careless driving contrary to section 49(1) of the *Traffic Act*.
9. The claimant who was a lawful pillion passenger and cannot be blamed for the accident and no evidence has been presented demonstrating how the claimant caused the accident or contributed to it.
10. 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.

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

11. It is the claimant's case that as a result of the accident he suffered the following injuries; blunt injuries to the left shoulders with tenderness, blunt injuries on the right knee with laceration, tenderness and reduced joint movement and blunt injury to the left foot
12. A perusal of the medical documents filed herewith opine that the nature of injuries were assessed as harm. Dr. Titus Ndeti Nzina in his report dated 08/05/2025 confirm the injuries sustained and further confirmed that as at the time of examination the claimant was in fair general condition, tenderness on both shoulders and right knee with reduced joint movements.



13. It was further the opinion of the said doctor that the claimant would incur an additional Kshs.20,000/= in terms of future expenses for attending clinics, physiotherapy, further consultations and medicines. For his report he charged Kshs.5,000/= for the report.
14. It is trite law that no two 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.
15. From the documents filed, the nature of injuries as sustained by the claimant can be regarded as soft tissue injuries as there are no fractures or cut wounds.
16. In the case of *Kenya Power & lighting co.ltd v Mary Akinyi* HCCA NO. 72 of 2007 cited with approval in the case of *Marube & another v Nyamboga*(Civil appeal E011 OF 2023)[2024] KEHC 3395(KLR) (12 March 2024)(judgment) where the court on appeal awarded Kshs.350,000/= as general damages for the following injuries; deep cut wound on the calf muscles of the left leg, laceration on the right knee and right shoulder and contusion of the chest.
17. Upon evaluating the pleadings, the medical report and other documents in support of the claim I am inclined to award the claimant Kshs.200,000/= which in my view is adequate compensation for the injuries sustained.
18. In addition to general damages, the claimant has made a claim for future medical expenses at Kshs.20,000/= in the circumstances I will adopt what Dr. Titus Ndeti Nzina has proposed and I award Kshs.20,000/= as prayed.
19. Furthermore, in terms special damages the claimant has made a further prayer for Kshs.5,550/= for the medical report and the copy of records respectively. These expenses have been proved to the required standards and are allowed.

c. Who bears costs of the claim?

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

Conclusion and Disposition.

21. The upshot of the foregoing I make the following final orders;
 - a. The claim contained in the statement of claim dated 20th May 2025 is allowed in the following terms.
 - Liability 100%
 - General damages Kshs.200,000/=
 - Future medical expenses Kshs.20,000/=
 - Special damages Kshs. 5,550/=
 - Total Kshs.225,550/=
 - b. The claimant is awarded costs and interests from the date of judgment until payment in full.
 - c. Let the file be closed forthwith.
22. Orders accordingly.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT THIS
11th DAY OF July 2025**

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Fathiya Loo.

Mr. Mahero H/B for Muriuki for the Claimant

Mr. Ibrahim for the respondent.

