



**Crown Bus Services & another v SH (Minor suing through her father and next friend Elmi Salah Hussein) (Civil Appeal E003 of 2022) [2025] KEHC 15684 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15684 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E003 OF 2022**

**KW KIARIE, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**CROWN BUS SERVICES ..... 1<sup>ST</sup> APPELLANT**

**RODGERS LEZENI ISAMA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SH (MINOR SUING THROUGH HER FATHER AND NEXT FRIEND ELMI SALAH HUSSEIN) ..... RESPONDENT**

*(Being an appeal from the judgment and decree in the Kilungu Principal Magistrate's Court, PMCC No. 122 of 2020 by Hon. C.A. Mayamba (Principal Magistrate))*

**JUDGMENT**

1. Crown Bus Services and Rodgers Lezeni Isama were the defendants in Kilungu Principal Magistrate's PMCC No. 122 of 2022. They were sued for a claim of general and special damages following a road traffic accident involving their motor vehicle, with registration number KBX 126T, in which the respondent was travelling. As a result of the accident, the respondent sustained injuries. The appellants were held 100% liable. The respondent was awarded Kshs. 3550/= in special damages and Kshs. 700,000/= general damages.
2. The appellants were dissatisfied with the judgment and filed this appeal through Kimondo Gachoka & Company Advocates. They raised the following grounds for appeal:
  - a. The learned magistrate erred in law and fact by disregarding established legal precedents submitted by the defence counsel on the plaintiff's failure to produce the initial treatment notes and thereby erroneously arriving at a wrong conclusion on quantum submissions.
  - b. The learned trial magistrate erred in law and fact in awarding judgment on general damages of Ksh.700,000/= and special damages of Kshs, 3,550/=for tibia/fibula fractures without



showing how he arrived at that figure and in total disregard of the submissions of the defendants on the issue of quantum.

- c. The learned trial magistrate erred in law and fact in awarding a 100% liability to the defendants in favour of the plaintiffs.
  - d. The learned trial magistrate erred in law and in fact in not making an award which was within the limits of already decided cases of a similar nature.
3. The respondent opposed the appeals through Waiganjo Wachira & Company Advocates. He argued that the appeal lacked merit.
  4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
  5. The respondent was a passenger in the respondent's bus. He was travelling with his father, who testified to an accident around the Sultan Hamud area. He blamed the bus driver for the accident. The respondent did not testify. In *Baker vs Market Harborough Industrial Co-Operative Society Ltd* [1953] 1 WLR 1472 at 1476, Denning L.J. (as he then was) observed inter alia as follows:

Every day, proof of collision is held to be sufficient to call on the defendant for an answer. Never do they both escape liability. One or the other is held to blame, and sometimes both. If each of the drivers were alive and neither chose to give evidence, the court would unhesitatingly hold that both were to blame. They would not escape liability simply because the court had nothing by which to draw any distinction between them...
  6. The appellants did not tender evidence. The learned magistrate did not have any other version for consideration. They cannot be heard to claim that the liability was incorrectly determined. The appeal on liability is dismissed.
  7. The appellant argued that the learned magistrate made an error in awarding excessive general damages. Before an appellate court can intervene in an award of damages, it must be satisfied that a wrong principle of law was applied, irrelevant factors were considered, relevant factors were omitted, or the award is inordinately low or high. These principles were established by the Privy Council in *Nance vs British Columbia Electric Railways Co. Ltd.* [1951] AC 601 on page 613, where it stated:

The principles applicable under this head are not in doubt. Whether the assessment of damages is made by a judge or jury, the appellate court is not justified in replacing the awarded figure with another simply because it would have provided a different amount if it had initially tried the case. Even if the tribunal of first instance was a judge sitting alone, the appellate court must be satisfied that the judge, in determining the damages, applied an incorrect principle of law (such as considering irrelevant factors or omitting relevant ones); or, failing this, that the amount awarded is so inordinately low or high that it constitutes a wholly erroneous estimate of damages (*Flint vs Lovell* [1935] 1KB 354), as affirmed by the House of Lords in *Davis vs Powell Duffryn Associated Collieries Ltd.* [1941] AC 601.
  8. Dr Mwaura examined the respondent on the 13<sup>th</sup> day of April 2020. His findings were that he sustained fracture of the right femur and swollen tender right thigh. At the time of the examination, he had not completely healed his opinion however was that he was expected to heal in the next 6 months. He was



also examined for a second opinion by Dr Ichamwenge Ruth on the 15<sup>th</sup> day of September 2020. She also found that he sustained a fracture of the right tibia and fibula. The two findings agreed except that when he was examined for a second opinion, he had healed.

9. In the trial court, the appellant proposed general damages of Kshs. 250,000/=, whereas the respondent proposed Kshs.1.8 million.
10. The appellant cited authorities where there were comparable injuries, but most of them were old decisions. The respondent, while urging his case, relied on the decision in L.G. Transporters Ltd & another vs Moses Theuri Ndumia [2018] eKLR. The respondent in this case sustained the following injuries:
  - a. Compression fracture of the head of the right femur;
  - b. Fracture of the right acetabulum;
  - c. Severe blunt injury of the right knee leading to the tear of the medial collateral ligament;
  - d. Head injury associated with a 4cm laceration above the left eyebrow,
  - e. 2cm cut wound on the dorsum of the right foot; and
  - f. 3x4 cm cut wound on the right shin.

The doctor's medical opinion was that the Respondent was expected to heal with 45% permanent disability and would never work again as a driver. The doctor further noted that the hip joint replacement prosthesis that he had to be fitted with has a life span of ten (10) years and requires replacement every ten years at a cost of Kshs500,000/=.

11. It is evident that the respondent cited a decision where the injuries suffered were more severe. I am persuaded to set aside the award by the learned trial magistrate. The same is substituted with an award of Kshs. 450 000 general damages.
12. The conclusion of the foregoing analysis of the evidence is that the appeal has partially succeeded, with half the costs.

**DELIVERED AND SIGNED AT MAKUENI, THIS 4<sup>TH</sup> DAY OF NOVEMBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

