

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
CIVIL APPEAL NO. E003 OF 2024

TITUS CHERUIYOT APPELLANT

VERSUS

STEPHEN MONGARE ORANGI

RESPONDENT

(Being an Appeal from the Judgment of Resident Magistrate, Michuki M. at the Magistrate's Court at Bomet, Civil Suit Number E134 of 2022)

JUDGEMENT

1. The Appellant (then Plaintiff) sued the Respondent (then Defendant) for general and special damages that arose from a road traffic accident on 18th April 2022. The trial court conducted a hearing where the Appellant called two witnesses and the Respondent called one witness in aid of his defence.

2. In its Judgement delivered on 13th March 2024, the trial court dismissed the suit.

3. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 16th march 2024 appealing against the apportionment of liability and the award on damages.

4. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.

5. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

The Plaintiff's/Appellant's case.

6. Through his Complaint dated 4th August 2022, the Appellant stated that he was riding motorcycle registration number

KMFQ 895U along Bomet-Kaplong Road when he was hit by motor vehicle registration number KAR 823F that belonged to the Respondent.

7. It was the Appellant's case that the Respondent was negligent in causing the accident. The particulars of the negligence were stated in paragraph 6 of the Plaint. That as a result of the accident, the Appellant suffered the following injuries: -

- i. Bruises and deep cut wounds on the face.
- ii. Bruises on both upper limbs.
- iii. Bruises on the lower limb.

8. The Appellant prayed for special and general Damages against the Respondent.

9. Through his written submissions dated 6th October 2025, the Appellant submitted that the Respondent was 100% liable for causing the accident and relied on **Rural Electrification**

Authority vs Shason Ole Leuka (2017) eKLR. That he presented evidence that the Respondent's motor vehicle entered the junction without a proper look out. The Appellant further submitted that the driver of the motor vehicle did not stay in his lane to avoid hitting oncoming motor vehicles.

10. It was the Appellant's submission that he pleaded and proved special damages. On general damages, he proposed an award of Kshs 200,000/= and relied on **Emmanuel Ithau Nyamal vs Paul Kipsang Samoei (2021) eKLR**

The Defendant's/Respondent's case.

11. Through his statement of defence dated 24th November 2022, the Respondent denied the occurrence of the accident on 18th April 2022 and further denied being the registered owner of motor vehicle registration number KAR 823F.

12. It was the Respondent's case that if the accident occurred then it was caused by the negligence of the Appellant. The

particulars of negligence were contained in paragraph 8 of the Defence.

13. Through his written submissions dated 15th July 2025, the Respondent submitted that it was incumbent on the Appellant to prove negligence against him and he failed. He relied on **Kiema Mutuku vs Kenya Cargo Handling Services Ltd (1991) KAR 464** and **sections 107 and 108 of the Evidence Act**. The Respondent further submitted that the authenticity of the Appellant's oral evidence as to the circumstances of the accident could not be guaranteed. Further, that the Police Officer did not produce the Occurrence Book and the original court file in court as evidence. He relied on **Lochab Brothers Ltd vs Johana Kipkosgei Yegon (2017) eKLR**.

14. It was the Respondent's submission that the Appeal lacked merit as the Appellant failed to discharge his burden of proof and that the trial court was correct in dismissing the suit. It was the Respondent's further submission that if the court

was inclined to find in favour of the Appellant, then liability ought to be rationed at 70:30 in favour of the Respondent. On general damages, the Respondent proposed an award of Kshs 100,000/= and he relied on **Eva Karemi & 5 others v Koskei Kieng & another (2020) eKLR, Losagi Insurance Brokers Limited & another v Josephat Achesa Chumbali (2022) eKLR et.al.**

15.I have gone through and carefully considered the Record of Appeal dated 7th February 2025, the Appellants' written submissions dated 6th October 2025 and the Respondent's written submissions dated 15th July 2025. The only issue that I have sieved for my determination was whether the trial court erred in its findings on liability and quantum.

Liability

16.The Appellant (PW1) testified that on the material day, he was riding his motorcycle along Bomet-Kaplong road when he was hit by the Respondent's motor vehicle which was

being driven in a careless manners. When PW1 was cross examined, he testified that the accident happened at a junction of the main and feeder road. He further testified that he was on the main road and the Respondent was on the feeder road when the accident happened. PW1 further testified upon cross examination that he was not at the scene when the police arrived as he had been taken to hospital.

17.No. 85540 PC Mathias Chacha (PW2) testified that he was the Investigating Officer in this case. PW2 testified that the motor cycle was on the highway and the motor vehicle was joining the highway from the feeder road when the two collided at the junction. He presented a Police Abstract as **P. Exh 6**. When PW2 was cross examined, he testified that the Police Abstract indicated that the accident was a hit and run and that at the conclusion of his investigations, the matter was referred to the Insurance Company.

18. On the other hand, the Respondent (DW1) testified that on the material day, he stopped at Kapkwen to fuel. DW1 testified that he indicated with the intention of joining the highway and when he saw the road was clear, he joined the road. DW1 further testified that suddenly, a motor cycle appeared at a high speed and rammed into his front bumper. DW1 blamed the Appellant for causing the accident. When DW1 was cross examined, he reiterated his testimony.

19. In analyzing the above evidence, the only people who could describe the circumstances of the accident was either the Appellant or the Respondent. No. 85540 PC Mathias Chacha (PW2) did not witness the accident and arrived at the scene after the accident had occurred. What was not in dispute was the occurrence of the accident.

20. The Appellant and the Respondent blamed each other for causing the accident. Each testified to their own version of the circumstances that led to the accident. It is therefore

difficult for this court to determine the circumstances that led to the accident. This court is at a loss on whom to blame for causing the accident. In **Hussein Omar Farah v Lento Agencies [2006] KECA 388 (KLR)**, the Court of Appeal observed that: -

“In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame.....”

21. Flowing from the above, it is my finding that the Appellant and the Respondent were equally to blame for the accident and liability is thereby apportioned at 50:50.

Quantum

22. The Appellant pleaded the following injuries: -
- a) Bruises and deep cut wound on the face.
 - b) Bruises on both upper limbs.
 - c) Bruises on the lower limb.
23. PW1 produced a Medical Report dated 5th November 2022 and a P3 Form as **P. Exh 1** and **5** respectively. I have looked at the exhibits and I have confirmed that the Appellant suffered the injuries listed above which in their nature were soft tissue injuries.
24. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. **See Catholic Diocese of Kisumu vs Tete (2004) eKLR.**

25. In the present case, the Appellant proposed an award of Kshs 200,000/= while the Respondent proposed an award of Kshs 100,000/=. The trial court held that had the Appellant's claim been successful, it would have awarded Kshs 80,000/= as general damages.

26. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in **Stanley Maore vs Geoffrey Mwenda (2004) eKLR**, held: -

"...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in

mind the correct level of awards in similar cases.”

27. In addition to the authorities cited by the parties in their respective submissions, I have found the following cases quite helpful in terms of comparison: -

I. In **Buds and Bloom Ltd v Lawrence Emusugut Obwa [2016] KEHC 5392 (KLR)**, the lower court had awarded Kshs. 70,000/= for a deep cut wound on the left leg and soft tissue injuries on the leg. On appeal the High court reduced the award to Kshs. 50,000/=.

II. In **Kipkebe Limited v Peterson Ondieki Tai [2016] KEHC 5422 (KLR)**, the trial court awarded Kshs. 100,000/= for deep cut wound on the left leg, chest contusion and bruises on the left shoulder. On appeal the High Court substituted the award with Kshs. 30,000/=.

III. In **Michael Okello v Priscilla Atieno [2021] KEHC 7266 (KLR)**, the Respondent suffered injuries to the right shoulder, chest, back and to the left leg with hematoma. The court reduced the award of Kshs 500,000/= to Kshs 250,000/=.

IV. In **PF (Suing as next friend and father of SK (Minor) v Victor O Kamadi & another [2018] KEHC 142 (KLR)**, the Appellant had sustained:- cut wound on the forehead, multiple small abrasions to the face, blunt injury to the head leading to loss of consciousness for some time, abrasions to the back, abrasion wounds to the dorsum of the right hand and cut wound to the right leg. On appeal, High Court substituted the lower court's award of Kshs. 50,000/= with an award of Kshs. 100,00/= as general damages.

28. I have considered the authorities above alongside the parties' submissions and the nature of the injuries suffered by the Appellant. I have also considered the current inflation

rates and I hereby award of **Kshs 150,000/=** as general damages. This award in my view is commensurate to the injuries suffered by the Appellant.

29. In regards to the special damages, the Appellant pleaded Kshs 5,000/= for the Medical Report, Kshs 550/= for motor vehicle search, Kshs 3,000/= for transport and Kshs 420/= for postage fee. I have seen the receipt for the Medical Report (**P. Exh 2**), motor vehicle search receipt (**P. Exh 4**) and postage fee receipt (**P. Exh 9**). There was no evidence of transport expenses incurred. I hereby award **Kshs 5,970/=** as special damages.

30. In the final analysis, I have found that there is need for this court to interfere with the Judgement of the trial court. The final computation is as below: -

General Damages	Kshs 150,000/=
Special Damages	Kshs 5,970/=

Total	Kshs 155,970/=
Less 50% liability	Kshs 77,985/=
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Total	Kshs 77,985/=.

31. In the end, the Appeal dated 16th March 2024 is successful and the Appellant is awarded a net sum of Kshs 77,985/=.

Each party shall bear their own costs in this Appeal.

**Judgement delivered, dated and signed at Bomet
this 19th day of November, 2025.**

.....
HON. J.K.NG'ARNG'AR
JUDGE

**Judgement delivered in the presence of;
Siele and Susan (Court Assistants).
No appearance for the Appellant
M/s Karanja for the Respondent**