



**Kamau & another v Kariu & another (Civil Appeal E178 & E149 of 2024
(Consolidated)) [2025] KEHC 15944 (KLR) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E178 & E149 OF 2024 (CONSOLIDATED)
BM MUSYOKI, J
NOVEMBER 7, 2025**

BETWEEN

GEORGE KUNGU KAMAU APPELLANT

AND

SARAH NYAMBURA KARIU RESPONDENT

**AS CONSOLIDATED WITH
CIVIL APPEAL E149 OF 2024**

BETWEEN

SARAH NYAMBURA KARIU APPELLANT

AND

GEORGE KUNGU KAMAU RESPONDENT

*(Being appeals from judgment and decree of Honourable Joan Wambilyanga SPM,
dated 24-06-2024 in Thika Chief Magistrate's Court civil case number E117 of 2022)*

JUDGMENT

1. George Kungu Kamau (for purposes of this judgment hereinafter referred to as 'the appellant') was the defendant in the lower court where Sarah Nyambura Kariu (hereinafter and for purposes of this judgment referred to as 'the respondent') had sued him for compensation in form of general and special damages arising from an accident that occurred on 18-12-2020 involving motor vehicle registration number KBR 600F and the respondent. The trial court found each party liable at 50% and awarded the respondent Kshs 1,500,000.00 in general damages and Kshs 82,735.00 in special damages plus costs of the suit and interest.



2. Both parties were dissatisfied with the court's findings and each filed their appeals. The respondent filed appeal number E149 of 2024 while the appellant filed E178 of 2024. This court consolidated the two appeals on 8-09-2025 hence this consolidated judgment.
3. I have gone through the memorandums of appeal and the submissions of the parties and formed opinion that the issues in contention are liability and quantum. The occurrence of the accident, injuries to the respondent and the ownership of the motor vehicle are not in dispute. Although the respondent has mentioned in his submissions that there was no proof of ownership, he has acknowledged that evidence to that effect was produced.
4. This being a first appeal, the duty of this court is to conduct it as a re-hearing where it should re-evaluate, re-analyse and re-assess the evidence produced in the trial court and come to its own independent conclusion but always bearing in mind that it did not hear the witnesses first hand neither did it observe their demeanour. This is the position in law as it was held in *Pestony Limited & another v Samuel Itonye Kagoko* (2022) KEHC 1146 (KLR) thus;

‘The court has considered the evidence and submissions at the trial and the submissions made by the respective parties on this appeal. The duty of this court as a first appellate court is to re-evaluate the evidence and draw its own conclusions, but always bearing in mind that it did not have the opportunity to see or hear the witnesses testify.’

Respondent's case

5. The respondent told the court that on 18-12-2020 at around 11 hours, she was a pedestrian along Thika-Garissa Road at Neno Evangelism Centre, when the driver of motor vehicle registration number KBR 600F lost control, veered off the road and violently knocked her down. She added that although there was no zebra crossing, the place was a common crossing area for pedestrians. She claimed to have seen the vehicle 50 to 60 metres away before she started crossing.
6. As a result, she was injured and taken to St. Matia Mulumba hospital where she was admitted from the said date to 25-12-2020. The respondent claimed that she later attended Kenia Spine where she was undergoing treatment as an outpatient for a period she did not mention. She added that she had not healed well as she was having back pains and could not perform heavy duties or walk for long a distance.
7. It was her further testimony that before the accident, she was a business woman earning approximately 800/- per day but after the accident, she could not engage in any profitable economic activity and her ability to compete in the labour market had been diminished. She produced a total of 15 exhibits.
8. In cross-examination, the respondent maintained that she was hit after she finished crossing the road and that the motor vehicle was at a high speed. She added that by the time the police came to the scene, she had been taken to hospital. She admitted that no one was blamed for the accident. She also stated that she last went to hospital in 2022.
9. The respondent's witness was one PC Simon Muchira who stated that he was appearing in court to produce police abstract in respect of the accident in question. He confirmed occurrence of the accident and that the appellant was the driver. He added that at the time the abstract was issued, the case was pending under investigations. He stated further that there was no zebra crossing at the scene of the accident. In short cross-examination, the witness told the court that the circumstances of the accident were contained in the occurrence book entry which he did not have. He was also not able to tell the point of impact.



The appellant's case

10. The appellant testified that there was heavy traffic jam at the place and time of the accident and he was driving at a speed of 50 kilometers per hour. He added that there was a matatu ahead of him whose crew was calling for passengers and as he neared it, someone just ran onto the road and he heard a bang. He insisted that the accident was on the road and there was no zebra crossing. He claimed that the police blamed the pedestrian who was running to get to the matatu. He added that he tried to swerve in order to avoid the accident in vain due to the short distance.
11. In cross-examination, he stated that the pedestrian was from the right and that he saw her when she ran onto the road. He did not see her when she started crossing but he saw her on top of his vehicle's bonnet. He also stated that the pedestrian hit the left side of his vehicle's bonnet. He also stated that it was sunny and the road was straight and that the police blamed the pedestrian.
12. DW2 was one PC Paul Mutungi from Thika police station who attended court under witness summons. What he told the court was not much different from what the PW2 stated save that the pedestrian was blamed for crossing the road without due care and proceeded to produce another police abstract as an exhibit.
13. When he was put on cross examination, DW2 stated that he did not visit the scene neither was he involved in investigations of the accident. He did not have the sketch map and added that the occurrence book only indicated that officers visited the scene. He stated that the pedestrian was blamed in the primary investigations and confirmed that primary investigations can change after statements are recorded from witnesses. He also confirmed that the abstract which he produced was issued six months after the accident and it showed that the case was pending under investigations.

Analysis and determination

14. On liability, each party submits that the other was wholly to blame. The appellant insists that the point of impact was on the road as the respondent suddenly ran across the road when he was driving at 50 kilometers per hour. On the other hand, the respondent avers that the point of impact was on the side of the road as she was finishing crossing the road.
15. I note that each party called a police officer from the same station to testify in support of their case. The police officers differed when it came to who was to blame for the accident. While PW2 maintained that the investigations did not blame either party, DW2 stated that the respondent was blamed in what he called primary investigations. It is also notable that DW2 stated that primary investigations can change after statements are recorded from the witnesses.
16. In this case, the police found the appellant at the scene of the accident while the respondent was not there. Obviously, the primary investigations if at all were in tandem with what the appellant told the police. There was no indication whether the statement of the respondent was taken as she had already been taken to hospital where she was admitted for seven days. I have looked at the police abstract produced by the defence and the same is clear that the investigations were still pending meaning that there was no conclusive finding on the circumstances of the accident. The bit of evidence that blamed the respondent was the entry in the occurrence book which in my view does not constitute results of investigations.
17. The respondent argues that fact that the respondent was hit by the left side of the vehicle's bonnet, is indicative that she was hit after she had finished crossing the road. I do not think that the part of the vehicle coming into contact with a victim can be conclusive of the point of impact although it can be



one of factors of consideration in establishing the circumstances of an accident. A sketch map of the scene made by the investigations officer if any, would have helped unravel the controversy yet none of the parties found it fit to produce it.

18. Having said the above, I form the opinion that the evidence produced before the court was not conclusive on who was to blame. Findings of the police are simply opinions and do not bind the court. The court is at liberty to analyse the testimony produced before it and make its independent conclusion which does not have to go by the opinion of the witnesses. It is an established principle that where the evidence produced in an accident case leaves the court in doubt on who was to blame, the fairest the court should do is to apportion liability equally. In that regard I do not see any reason to upset the Honourable Magistrate's finding on liability.
19. Award of damages is in the discretion of the trial court and unless it is shown that the trial court applied wrong principles in arriving at the award of general damages or that the damages were too high or too low compared to other decided cases of similar nature such that they amount to erroneous estimates or that the trial court considered an irrelevant factor or failed to consider a relevant factor, an appellate court should not interfere with the awards. In *Morris Miriti v Nahashon Muriuki & another* (2018) KEHC 6552 (KLR), it was held that;

‘For an appellate court to interfere with an award of damages, it must be shown that the trial court, in awarding damages, took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied.’
20. According to the medical reports by Dr Okere and Dr Wokabi produced in evidence, the respondent sustained a fracture of the pelvis at the left ischial ramus, fracture of the right transverse of L4 and L5 and fracture of the left femur. She was admitted in hospital for one week. Dr. Okere opined that the respondent was suffering pain in the upper leg, difficult in walking, backaches and pains on the pelvis. However, this was as at the time of examination which was on 9-09-2021.
21. There was no evidence to show that the respondent was at the time of the hearing still attending hospital other than a mere statement that she was. The respondent is on record saying that the last time she went to hospital was in 2022. The respondent's claim that she is unable to engage in profitable economic activities is not supported by evidence. I also reject the argument that the respondent's ability to compete in the labour market had been diminished as a result of the accident. Instead, I agree with the opinion of Dr. Wambugu in his medical report dated 9-11-2021 that the respondent had healed from the injuries.
22. I have considered the proposals by the parties on quantum. The appellant had proposed a sum of Kshs 700,000.00 in general damages while the respondent had proposed Kshs 3,000,000.00. I have also considered the following authorities which to me are comparable to this case.
 - a. *Kennedy Ooko Ouma Dachi v Joseph Maina Kamau & another* (2018) KEHC 7839 (KLR). In this matter the appellant was awarded a sum of Kshs 1,400,000.00 for a fracture of acetabulum with other minor injuries.
 - b. *Shiro v Mini Bakeries (NBI) Limited* (2024) KEHC 16642 (KLR) in which Honourable Justice Grace Nzioka awarded a sum of Kshs 1,300,000.00 to the appellant who had sustained comminuted fracture mid shaft right femur, fracture posterior wall and column right acetabulum, deep cut wound on the head leading to soft tissue injuries, deep cut wound on the chest leading to soft tissue injuries and a permanent disability at 30%.



23. In the case before me, I do not find the award by the trial court on general damages of pain and suffering was too low or too high. The parties have also not convinced me that the trial court applied wrong principles in arriving at the award
24. Finally, I proceed to consider the plea by the appellant for award of damages for future medial expences. An award under this head is meant to compensate a party for the estimated costs of treatment which is a direct consequence of the accident in question. The same damages need not be proved in form of production of receipts or invoices, as they are futuristic. Where a party produces evidence in form of an expert opinion or from reliable sources that it shall need to spend money in treatment of the injuries, they should be entitled to an award that would restore them to the condition and status they were in before the accident . In CK v Kenya Power & Lighting Ltd (2021) KEHC 9462 (KLR), Honourable Justice S. Riechi held that;

‘A claim of future medical expense or costs are costs arising from the tort which the plaintiff will continue incurring even into the future. It is not expenses already incurred. It is expenses which from the medical examination will be incurred by the plaintiff either to alleviate suffering or treat complications arising from the injuries sustained. It is based on estimates by experts in this case doctors. It will be absurd for a court to tell the plaintiff to wait to pay for the medical treatment in a complication that will occur in future and then come back to re-open the suit and claim the same as damages. With present medical knowledge, the medical personnel are capable of estimating future costs of medical treatment on a plaintiff who has sustained serious injuries. I therefore set aside the order of dismissal under this head.’

25. The damages must however be established with some degree of certainty. The party claiming the same should not create an impression that they have picked some figures from the air. The medical report by Dr. Okere dated 9-09-2021 states that the respondent would need between Kshs 80,000.00 and Kshs 200,000.00 for removal of implants. I believe that this opinion was the basis of the prayer in the respondent’s plaint dated 11th February 2022. The range given by the doctor, in my view does not make sense as the gap is too high and no justification for the same has been given.
26. I am more inclined to accept the report by and Dr. Wokabi dated 9-11-2021 which gives the cost at Kshs 80,000.00. The report was produced by the plaintiff as her exhibit 10. The appellant did not counter this evidence. Reconciling the two reports, I will adopt the amount given by Dr. Wokabi as the fair estimate for future medial expences.
27. Consequently, I find appeal number E178 of 2024 lacking merits while appeal number E149 of 2024 succeeds on the aspect of future medical expences and I proceed to make the following final orders;
1. Civil appeal number E178 of 2024 is dismissed in its entirety.
 2. The judgment of the Honorable Magistrate in Thika Cmcc number E117 of 2022 is upheld save that the plaintiff therein is awarded an additional Kshs 80,000.00 for future medical expences. The rest of the claim in civil appeal number E149 of 2024 is dismissed.
 3. There shall be no orders as to costs in both appeals.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.



Judgment delivered in presence of Ndungu holding brief for Mr. Mutua for the appellants and Miss Jeptoo for the respondent.

