



Nyakoe v JMN (Minor Suing Through His Mother and Next Friend WM) (Civil Appeal E103 of 2024) [2025] KEHC 15853 (KLR) (5 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E103 OF 2024
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

SEREBINA BOSIBORI NYAKOE APPELLANT

AND

**TM (MINOR SUING THROUGH THE NEXT FRIEND AND GUARDIAN
TON) RESPONDENT**

(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Kisii (B.O. Omwansa, SPM) delivered on 14th May 2024 in CMCC No. E565 of 2021)

JUDGMENT

JUDGEMENT

1. Vide a plaint dated 23rd April 2021, the respondent sued the appellant as the registered and beneficial owner of motor vehicle registration number KBB 495T Toyota matatu. The respondent averred that on 14th February 2021, the minor was a lawful passenger aboard the said vehicle. On approaching Iyabe bridge area, the appellant negligently collided with motor vehicle registration number KBG 969F Toyota matatu.
2. Following the accident, the minor suffered a chest contusion, bruises on the right elbow region and multiple lacerations to both lower limbs. For those reasons, the respondent prayed for general damages, special damages of Kshs. 9,150.00, costs and interest of the suit. By judgment of the trial court dated 14th May 2024, the appellant was found 100% liable. The respondent was awarded Kshs. 280,000.00 in general damages, Kshs. 9,150.00 in special damages, costs and interest.
3. The appellant is aggrieved by those findings. She filed her memorandum of appeal dated 12th June 2024. The appellant raised three grounds disputing the findings of the trial court. Those grounds are summarized as follows: the award of Kshs. 280,000.00 was excessive and an erroneous estimate of the damages awardable and the trial court disregarded and failed to consider the appellant's submissions



and supporting authorities. For those reasons, the appellant prayed that the appeal be allowed, the award on quantum be set aside and be substituted with an award assessed by this court, costs of the appeal and those at trial.

4. The appeal was canvassed by way of written submissions. The appellant filed her written submissions dated 11th September 2025. She submitted that the decisions relied on by the respondent at trial were not comparable to the injuries the minor sustained. Citing several decisions, she opined that the award of damages ought to be interfered by this court. Praying that her appeal be allowed, she urged this court to re-assess general damages to Kshs. 90,000.00.
5. The respondent opposed the appeal. The respondent filed written submissions dated 8th September 2025 to argue that no reasons had been advanced to interfere with the findings of the trial court. That the award of general damages was commensurate to the injuries the minor had sustained and took into account the market inflation. Thus, the respondent prayed that the appeal be dismissed with costs.
6. I have considered the submissions, examined the record of appeal and analyzed the law. As a first appellate court, the duty of this court is to re-assess, re-analyze and re-examine the evidence afresh while bearing in mind that it did not have the advantage of seeing or hearing the witnesses testify and should give due allowance for that. [See *Wilson Kazungu Katana & 101 others vs. Salim Abdalla Bakshwein & another* [2015] KECA 728 (KLR)].
7. The record before me shows that the respondent is the only party that called witnesses. PW1 Daniel Nyamieno, a senior clinician at Kenyatta Teaching and Referral Hospital testified that he examined Trufferras Maruru who was involved in a road traffic accident on 14th February 2021. His findings were that the victim sustained contusion bruises on the right elbow and multiple lacerations on both lower limbs. He classified the degree of her injuries as harm having suffered multiple soft tissue injuries. He confirmed that she was treated at Iyabe Sub County Hospital on 14th February 2021. He produced his medical report dated 3rd March 2021 and receipt for Kshs. 6,500.00.
8. PW2 a police officer testified in the proceedings captured in Civil Suit No. 566 of 2022. The evidence captured from the lower court judgment was that the accident was reported at the police station. At the time of issuance of the police abstract, the matter was pending under investigation.
9. PW3 TON testified that on 14th February 2021, he was traveling with his minor daughter aboard motor vehicle registration number KBB 495T Toyota matatu. It was travelling along the Kisii – Migori road. On approaching Iyabe bridge area, the driver of the vehicle drove the vehicle so negligently and carelessly that he collided with motor vehicle registration number KBG 969F Toyota matatu. As a result of the accident, the minor suffered injuries and was rushed to Iyabe Sub-County hospital. The minor received treatment and was discharged.
10. PW3 continued that the minor sustained injuries on the chest, bruises on the right elbow region and multiple lacerations to both lower limbs. PW3 later went to Gesonso Police Station where he recorded a statement on behalf of the minor. He was issued with a P3 form that was duly filled by the doctor. He later instructed his firm of advocates who wrote a letter of demand. He blamed the driver of motor vehicle registration number KBB 495T for causing the accident.
11. PW4 Dr. Diana Mwangi Ratemo, a medical officer at Iyabe Sub-County hospital produced the treatment card dated 15th February 2021 for the minor. Her evidence was that the minor was treated for STIs following a road traffic accident. The treatment card was adduced in evidence.
12. From the above captured evidence, it is my finding that an accident occurred on 14th February 2021 involving motor vehicle registration number KBB 495T Toyota matatu and motor vehicle registration



number KBG 969F Toyota matatu. The minor was a passenger aboard motor vehicle registration number KBB 495T. The accident occurred when both vehicles collided. According to PW3, an eye witness, it was the appellant's vehicle that caused the accident.

13. The evidence of the respondent was not rebutted. Withal, I find that on a balance of probabilities, the appellant was the one culpable for the accident. For those reasons, I agree with the findings of the trial court that the appellant was 100% liable. I will therefore not interfere with those findings.
14. Turning to quantum, the trial court awarded a sum of Kshs. 280,000.00 in general damages. The court considered the injuries the minor had sustained, which fact was not in dispute as well as the submissions and authorities adduced by the parties. It is therefor untrue as alleged by the appellant that his submissions were not considered.
15. The Court of Appeal in Butt vs. Khan [1981] KLR 349 cautioned a first appellate court not to interfere with an award of general damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that a judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.
16. In this appeal, it has not been demonstrated how the trial magistrate proceeded on wrong principles or misapprehended the evidence in some material respect. The minor sustained several soft tissue injuries that were classified as harm. Had the accident not occurred, the minor would not have been injured. I also find that the award on special damages was pleaded and proved.
17. The upshot of the above is that the present appeal lacks merit. It is hereby dismissed with costs to the respondent.

It is so ordered.

JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5TH DAY OF NOVEMBER, 2025.

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J.K.NG'ARNG'AR

JUDGE

Siele (Court Assistant).

Judgement delivered in the absence of parties via CTS having been duly notified.

