



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL NO. 31 OF 2023

BETWEEN

TABITHA WARINGA NDUNGU..... APPELLANT

AND

GEDE ENTERPRISES LIMITED.....1ST RESPONDENT

MICHAEL CHEGE KARUMBA..... 2ND RESPONDENT

(Being an appeal from the judgment and decree in the Engineer Senior Principal Magistrate's Court, SPMCC No. E017 of 2022 by Hon. Daffline Sure (Resident Magistrate)).

JUDGMENT

1. Tabitha Waringa Ndungu, the appellant, was the plaintiff in the Engineer Senior Principal Magistrate's SPMCC No. E017 of 2022. She had sued the respondents for a claim of general and special damages following a road traffic accident involving motor vehicle KCV 633J and the motorcycle on which was riding as a pillion passenger. As a result of the accident, she sustained injuries. The learned trial magistrate held the appellant 15% liable and the respondents 85% liable. The appellant was awarded Kshs. 8,550.00 in special damages and Kshs. 80,000.00 in general damages.
2. The appellant was dissatisfied with the judgment and submitted this appeal through Munene Chege & Company Advocates. She raised the following grounds for appeal:
3. The respondents were represented by Kimondo Gachoka & Company Advocates. They argued that the award was not excessive and should not be disturbed.
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 appellant testified that the respondents' motor vehicle hit the motorcycle she was riding from behind. CPL. Thomas Musoti's (PW2) evidence was that the collision happened when the motorcycle was merging onto the main road from the feeder road. Therefore, he was unable to determine who was at fault. In the circumstances, the apportionment of liability cannot be deemed incorrect. My only concern is the reasoning. The motorcyclist could have accepted this apportionment if he had been sued. Since the appellant chose not to, it remains her responsibility.
6. Dr Obed Omuyoma examined the appellant on the 1st day of April 2021 and filed a report which showed the injuries sustained as follows:
 - a) Severe soft tissue injuries on the right elbow joint;
 - b) Soft tissue injuries of the right knee joint;
 - c) Soft tissue injuries of the left ear lobe; and
 - d) Blunt injury to the right shoulder joint leading to soft tissue injuries.

The doctor assessed the degree of these injuries as harm.

7. 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. The respondent proposed an award of Kshs. 80,000 and cited several decisions in support of his proposal.
9. Apparently, the appellant did not submit any contrary arguments in the trial court. The same is absent from the record of appeal as well as from the original record. The learned trial magistrate had no other decisions for comparison. Her decision on the quantum, therefore, cannot be criticized.
10. Consequently, the appeal is dismissed with costs.

Delivered and signed at Nyandarua, this 18th day of November 2025

KIARIE WAWERU KIARIE

JUDGE