



**Oduor v Mucheru (Civil Appeal E416 of 2023)  
[2025] KEHC 15775 (KLR) (Civ) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15775 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E416 OF 2023**

**WM MUSYOKA, J**

**NOVEMBER 3, 2025**

**BETWEEN**

**WHITNEY AKOTH ODUOR ..... APPELLANT**

**AND**

**ALEX MWANGI MUCHERU ..... RESPONDENT**

*(Appeal from judgement and decree by Hon. Okwengu Godfrey Geno Lui, Senior Resident Magistrate, SRM, of 4th May 2023, in Milimani MCCC No. 1349 of 2022)*

**JUDGMENT**

1. The suit, at the primary court, was by the appellant, against the respondent. The appellant sought compensation in general and special damages, with respect to pain and loss that she suffered on account of a road traffic accident, that happened on 2<sup>nd</sup> October 2020, involving motor vehicles registrations marks and numbers KBQ 667L and KCF 277E. The appellant was a passenger in KBQ 667L, while the respondent was the owner or driver of KCF 277E. She alleged that KCF 277E was negligently driven, hence it hit KBQ 667L, occasioning injury to her.
2. The respondent resisted the claim; through a defence he filed, dated 30<sup>th</sup> August 2022. He denied everything pleaded in the plaint, and averred that the accident in question was caused by negligence on the part of the driver of KBQ 667L.
3. A trial was conducted. Both parties testified. Judgement was delivered on 4<sup>th</sup> May 2023. Liability was apportioned at the ratio of 80:20, in favour of the appellant, and against the respondent. General damages were assessed at Kshs. 300,000.00, Kshs. 36,008.00 special damages, and Kshs. 120,000.00 for future medical expenses, making a total of Kshs. 456,008.00



4. The appellant was dissatisfied by the terms of that judgement, and filed the instant appeal. The grounds are that there was no evidence to warrant attributing liability on the appellant at 20%; the decision on liability was contradictory, for it held the respondent solely responsible for the accident, while at the same time holding the appellant 20% liable; the general damages awarded were too low; and the future medical expenses should have been awarded at Kshs. 300,000.00
5. Directions were taken, before the Deputy Registrar, on 9<sup>th</sup> May 2024, for canvassing of the appeal by way of written submissions. I have seen and read written submissions by both sides.
6. The appellant submits on 3 issues: liability, future medical expenses and general damages.
7. On liability, she submits that it was wrong for her to be found liable in negligence for what befell her, ostensibly as she had not fastened her seat belt. She argues that the respondent presented no evidence to establish that she had not fastened her seat belt, or to contradict her own testimony, that she had in fact fastened her safety belt.
8. On future medical expenses, she submits that she had pleaded the figure of Kshs. 300,000.00, as what would be required for her future medical expenses. She argues that that was the figure stated in the medical report of Dr. Moses Kinuthia, put on the record. She asserts that the respondent did not present evidence to contradict or controvert the opinion of Dr. Kinuthia, as even Dr. Maina Ruga, who examined her, at the behest of the respondent, did not comment on the need for future medical expenses. She argues that the reduction of the future medical expenses, from the Kshs. 300,000.00 projected by the doctor, to Kshs. 120,000.00, was arbitrary. She cites *Truphena Awino Okello vs. Silas O. Agay Ombwayo* [2023] eKLR (Wananda, J).
9. On general damages, she submits that Kshs. 300,000.00 was on the lower side, arguing that Kshs. 600,000.00 would have been more realistic. She cites *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* [2004] eKLR, *Moiz Motors Limited & Another vs. Haron Ngethe Wanjiru* [2021] eKLR (Mwongo, J) and *Francis Njuge Karanu vs. Rose Ndida Kitema* [2027] eKLR (Ndung'u, J).
10. She also submits on a cross-petition filed by the respondent, arguing that the appellant did not prove negligence. She argues that section 79 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, and Order 42 of the Civil Procedure Rules, do not make provision for cross-appeals, and that a respondent, desirous of filing a cross-appeal, ought to file a separate appeal, which could be consolidated. She cites *George Kianda & Another vs. Judith Katumbi Kathenge & Another* [2018] eKLR (Odunga, J). She further argues that the cross-appeal lacked merit, as she had proved negligence, and the respondent had admitted that his car had knocked KBQ 667L.
11. On his part, the respondent submits on liability, general damages and future medical expenses.
12. On liability, he argues that he had established that the accident involved 3 motor vehicles, and the appellant should have produced police evidence, on how the accident happened, by availing a sketch plan of the accident scene. He cites *David Mwangi Kariuki & Another vs. Stephen Mwangi & Another* [2017] eKLR (J. Mulwa, J), *Karugi & Another vs. Kabiya & 3 Others* [1987] KLR 347 (Hancox JA, Chesoni & Platt, JJA), *ZOS & CAO (Suing as the Legal Representatives in the Estate of SAO (Deceased) vs. Stephen Amollo* [2019] eKLR [2019] KEHC 9268 (KLR) (Aburili, J). He submits that the testimony of the appellant on how the accident was mere hearsay. He cites *Kennedy Nyangoya vs. Bash Hauliers* [2016] eKLR [2016] KEHC 2616 (KLR) (N. Mwangi, J) and *Kenital (K) Ltd vs. Charles Mutua Mulu & 4 Others* [2006] eKLR [2006] KEHC 2276 (KLR) (Ibrahim, J) and *Sally Kibii & Another vs. Francis Ogaro* [2012] eKLR [2012] KEHC 1874 (KLR) (Ibrahim, J).



13. On general damages, he submits that the injuries sustained by the appellant were largely to the soft tissues, and the award by the trial court was fair in the circumstances. He cites Ephraim Wafula Muthui & 2 Others vs. Toyota Kenya Limited & 2 Others [2019] eKLR, Ndung'u Dennis vs. Ann Wangari Ndirangu & Another [2018] eKLR, Maimuna Kilingwa vs. Motrex Transporters Ltd [2019] eKLR and John Wambua vs. Mathew Makau Mwololo & Another [2020] eKLR.
14. On the future medical expenses, he submits that the need for the same was not sufficiently proved. He pointed at the report by Dr. Ruga, which opined that the appellant had healed completely, and that the pain she was suffering was to eventually go away with time.
15. On liability, there are two aspects. One, is the issue as to whether the appellant had her safety belt on, and the other is as to whether the appellant had established negligence on the part of the respondent.
16. Let me start with the safety belt issue. The respondent made it an issue in his defence, when he alleged that the appellant contributed to her injuries by her negligence, particularised as the failure to wear the safety belt. Curiously, the respondent did not mention the matter of the safety belt in his witness statement. At the trial he did not mention the matter of the safety belt. In fact, he didn't testify to seeing, the appellant at all during the episode, leave alone, seeing her with her safety belt undone. One of the documents that he relied on was the traffic proceedings, in Traffic Case No. 5538 of 2020, where he was the accused. In those proceedings, he did not mention the appellant, and her safety belt, when he offered his defence to the charge.
17. The appellant testified in the traffic proceedings, where she stated that she was wearing a safety belt. At the trial, in the civil proceedings, the appellant did not testify on the safety belt, and she was not cross-examined on it.
18. The trial court, in the judgment, in the civil proceedings, stated that the appellant "flew out of the motor vehicle KBQ 667L and yet she was strapped by a seatbelt." I do not understand where the trial court based that conclusion on, given that neither the appellant nor the respondent, mentioned the safety belt in their testimonies. I note that the appellant told the court that she found herself outside the vehicle, but she never said that she flew out of the vehicle. Indeed, she did not explain how she got out of it. It was not open, to the trial court, to speculate on how she got out, if she did not state it in certain terms. The trial court literally put words into her mouth, by making that conclusion.
19. The duty was on the respondent, to prove his allegation, in the defence statement, that she was not wearing a safety belt. He did not mention that in his witness statement, which was put in evidence. He did not talk about it in his testimony. There was no evidence on the fact, and the trial court ought not have gone out of its way, to draw conclusions, on matters that neither the appellant nor the respondent had led evidence on.
20. On the second aspect, as to whether the appellant had proved negligence on the part of the respondent, as she had alleged in her plaint, I note that the appellant, in her sworn testimony in court, stated that she was seated on the front of KBQ 667L, and she did not see what happened. That was the same story that she had told the traffic court, where she was a witness. She was recorded as saying that she did not see the accident happen. The events played out behind her. So, if she did not witness the accident, she could not possibly attribute liability or negligence on anyone.
21. According to the material placed on record by the respondent, the accident involved multiple vehicles. There was KBQ 667L, there was KCF 277E, there was KBF 131E, and there was also mention of a boda boda motorcycle. The evidence that emerged, from the appellant, the respondent and the material on record, was that KBQ 667L slowed down, for some reason. The appellant talked of bumps, while the respondent talked of construction debris. Whatever the reason, KCF 277E bumped into KBQ 667L



- in the process, occasioning the injury that the appellant suffered. The appellant appears to blame the respondent for that hit, for he should have kept a proper look out.
22. However, the respondent stated that he had in fact kept proper look out, and had maintained some distance, but KBF 131E hit his vehicle from behind and pushed it, so that it hit KBQ 667L, causing the pain and loss to the appellant. He asserted that, if he had not been hit from behind, there would have been no accident. He was subjected to traffic proceedings, on accusations of causing death by dangerous driving and driving without due care and attention. The prosecution called 8 witnesses, including the appellant. The respondent was acquitted. The investigating officer had not visited the scene. The driver of KBF 131E was never arrested, and the sequence of events was not clearly brought out.
  23. The available material disclosed that the crash involved multiple vehicles. The appellant sat in a vehicle that was ahead of the rest. She never saw what happened. She only heard a bang. She alleged negligence against the respondent. She was obliged to lead evidence to establish the negligence she was alleging. She did not witness what happened, that caused the bang or hit from behind. She should have called persons who actually saw the smash-up, and who could detail what had happened, immediately prior to and during the hit. There could have been on-lookers or pedestrians around. She could have called the police, who investigated the matter, who could have thrown some light. She did not call any evidence to establish that negligence. The burden was on her, to establish negligence, and it could only have shifted, to the respondent, upon her availing evidence on negligence to the required threshold. She did not lead any such evidence. She only managed to establish that there was an accident, but she did not establish who was to blame for it, in view of all the material that was placed on record.
  24. In view of the above, the trial court ought not have found the respondent liable in negligence for the crash. Negligence was not established against him.
  25. On the future medical expenses, I note that only 1 medical report was produced, that of Dr. Kinuthia. I have not seen the report by Dr. Ruga in the records before me. It was Dr. Kinuthia who recommended future medical treatment, at Kshs. 300,000.00. The need for future medical treatment, and the expenses to go with that, should be looked at against the injuries sustained by the appellant. According to Dr. Kinuthia, the injuries were to the tissues, described as blunt trauma to the back, right shoulder and right thigh. There were some bruises on the right shoulder. X-rays and ultrasound scans showed nothing abnormal. The treatment notes, from Kenyatta National Hospital, showed that she had no external injuries, except for the bruises on the lumbar region, and tenderness on the back of the right femur and right shoulder. Blood count was normal. Kidney biochemistry was normal. The chest was normal. X-rays on the pelvis recorded no fractures. The right shoulder had no fractures. The right femur had no dislocation.
  26. The conclusion to draw, from the medical records, was that the injuries suffered were not serious. That meant that there was no justification for future medical expenses at all, leave alone expenses to the tune of Kshs. 300,000.00. Looking at the injuries suffered, the figure of Kshs. 300,000.00 was suspect. It had little basis. It would explain why the trial court reduced it. Nothing should have even been allowed under that head.
  27. On general damages, it is argued that the award of Kshs. 300,000.00 was manifestly low, and the court should have awarded Kshs. 600,000.00. The appellant had sustained blunt trauma to the back, right shoulder and right thigh. I have looked up decisions on similar injuries for comparative purposes.
  28. In Riitho & another vs. Ngulutu [2025] KEHC 14664 (KLR) (Ouya, J), the claimant had sustained a blunt injury to the right hip and right ankle, recurrent pains on the right hip, Pascal vs. Ouko [2023] KEHC 24463 (KLR) (R. Korir, J), the injuries were chest contusion, blunt trauma to the back, blunt



trauma to the scalp, blunt trauma to the neck, blunt trauma to the upper limbs, blunt trauma to the lower limbs and lacerations on the right knee.

tender hip joint movements, and tender right ankle joint movements, and Kshs. 120,000.00 was awarded. In recurrent pains on the right ankle,

29. In *Anthony Nyamwaya vs. Jackline Moraa Nyandemo* [2022] KEHC 1801 (KLR) (F. Ochieng, J), the injuries were rugged cut wounds on the temporal region of the head, tenderness on the neck, tenderness on the anterior chest, tenderness on the lower back, tenderness on the shoulders, swelling and tenderness on the right hand, bruises on right index finger, and swelling, tenderness and bruises on both legs, and Kshs. 250,000.00 was awarded. In *Maina vs. Odak* [2022] KEHC 16771 (KLR) (Nyakundi, J), the claimant sustained a blunt injury to the back, blunt injury to the left elbow, blunt injury to the right elbow and blunt injury to the left thigh, and Kshs. 130,000.00.
30. In view of the comparative awards above, the award of Kshs 300,000.00 was a little exaggerated, and an award in the region of Kshs. 130,000.00 would have sufficed.
31. On the cross-appeal, I note that the respondent has not submitted on it, and I shall take it that he has abandoned the same. I shall not tax my mind on it. In any event, I have not even come across the alleged cross-appeal.
32. I agree with the respondent, negligence was not established, and he should not have been found liable. No damages should have been awarded in the circumstances. However, as the respondent did not appeal against the judgment of the trial court, I shall not interfere with the findings of the trial court. Instead, I shall find that the appeal herein has no merit, and I, accordingly, dismiss it, with no orders as to costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 3<sup>RD</sup> DAY OF NOVEMBER 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Amuga, instructed by Amuga & Company, Advocates for the appellant.

Mr. Kiringa, instructed by SM Righa & Company, Advocates for the respondent.

