



**Premier Kenya Limited & another v Ongera (Civil Appeal E148 of 2023)
[2025] KEHC 16089 (KLR) (Civ) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16089 (KLR)

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

**CIVIL
CIVIL APPEAL E148 OF 2023**

**FR OLEL, J
NOVEMBER 3, 2025**

BETWEEN

PREMIER KENYA LIMITED 1ST APPELLANT

KARANJA KAMAU ROBERT 2ND APPELLANT

AND

DANIEL OT'WORI ONGERA RESPONDENT

***(BEING AN APPEAL FROM THE JUDGMENT/DECREE ISSUED
BY HON M.W. MURAGE (SRM) DATED 9th FEBRUARY 2022 IN
NAIROBI MILLIMANI COMMERCIAL CMCC NO 10361 OF 2018)***

JUDGMENT

A. Introduction

1. The Appellants were the defendants in the primary suit, where they had been sued for compensation based on a tort of negligence arising from a Road Traffic Accident which occurred on 16.03.2018. The respondent averred that on the material day, he was lawfully walking off outering road, when the respondent's motor vehicle registration number KBD 056N -Toyota Prado (hereinafter referred to as the suit motor vehicle) was carelessly and negligently driven, and ended up knocking him down, occasioning him severe bodily injury, and he had since suffered loss and damage.
2. During the trial, PW1 Dr. C.O. Okere testified and confirmed that he had examined the respondent, who, as a result of the said accident, had sustained a comminuted fracture of the left lower leg, leading to his suffering 30% permanent incapacity. The respondent also took the stand, reiterating the contents of his pleadings, and adopted his witness statement as his evidence. PW3 PC Jodan Naeko Ogonga confirmed that the said accident occurred on 16.03.2018 at about 10.00hrs along Outering Road near



Kobil petrol station, and it was reported at Embakasi police station. Upon investigations, the driver of the said motor vehicle was blamed for causing the said accident. He produced the police abstract into evidence.

3. The Appellants did not call any witness, but by consent of the parties, produced the second medical report to support their case. The trial court did consider the pleadings filed and evidence led and did find that the appellant's driver was 100% liable for the accident and proceeded to award the appellant a sum of Kshs.1,200,000/= as general damages and Kshs.93,350/= as special damages pleaded and proved. She also awarded the respondent costs and interest of the primary suit.
4. The Appellants, being dissatisfied with the said award, filed their memorandum of Appeal on 28th February, 2023, raising nine (9) grounds of appeal, namely: -
 - a. That the learned trial magistrate erred in law and misdirected herself when she failed to consider the Appellants submissions on both points of law and fact
 - b. That the learned magistrate's decision was unjust against the weight of evidence and was based on misguided points of fact and wrong principles of law, which occasioned a miscarriage of justice.
 - c. The learned Magistrate erred in law and in fact in awarding an award on liability inconsistent with the facts pleaded and proved.
 - d. The learned Magistrate erred in law and in fact in finding the Appellants 100% liable, as she disregarded the evidence submitted by the Appellants.
 - e. The learned Magistrate erred in law and in fact in awarding quantum of damages inconsistent with particulars of loss pleaded and proved to have been sustained by the plaintiff.
 - f. The learned Magistrate, having misapprehended and misunderstood the points of fact and points of law, erred in relying on authorities which were irrelevant and thus arrived at an award so manifestly high as to be erroneous.
 - g. The learned Magistrate erred in assessing an award hereunder which was inordinately high and wholly erroneous estimate of the liability, loss, and damages suffered by the plaintiff, the same based on wrong principles of law, thus excessively high and unjust/illogical.
 - h. The learned Magistrate erred in awarding an excessive sum on the injuries suffered in the face of the evidence adduced and appellant's submissions made on quantum.
 - i. The learned Magistrate erred in awarding costs of the suit and interest to the claimant.
5. The Appellant thus did pray that this Appeal be allowed, the judgment of the trial court be set aside both on quantum and liability, and the same be re-assessed and be re-apportioned appropriately. They also sought to be awarded the costs of this Appeal.

B. Analysis And Determination

6. I have considered this appeal, submissions, and the impugned judgment. I have also considered the decisions relied on and perused the trial court's record. This being a first appeal, it is by way of a retrial, and this court, as the first appellate court, must re-evaluate, re-analyze, and re-consider the evidence afresh and draw its conclusions on it. The court should, however, bear in mind that it did not see the witnesses as they testified and give due allowance for that. (see *Selle v Associated Motor Boat Co Ltd & Others* [1968] EA 123) & *Peters Vs Sunday Post Limited*(1968) EA 123



7. A first appellate court is also the final court of fact, and litigants are entitled to full, fair, independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of section 78 of the *Civil Procedure Act*, a court of first appeal can appreciate the entire evidence and come to a different conclusion. See *Kurian Chacko Vs Varkey Ouseph* AIR 1969 Kerala 316
8. In this Appeal, the Appellants are challenging both liability and the quantum of damages awarded by the trial court. On liability, the Appellants did not call any witness to rebut the respondents' evidence as to how the accident occurred, and thus, on a balance of probability, the respondent did prove their case. The trial court's finding on liability cannot be faulted. See Justice G.V. Odunga's finding in *Linus Nganga Kiongo & 3 others V Town Council of Kikuyu* (2012) Eklr.
9. On quantum, the Court of Appeal in *Catholic Diocese of Kisumu vs Sophia Achieng Tete* Civil Appeal No. 284 of 2001[2004] eKLR 55 set out circumstances under which an appellate court can interfere with an award of damages in the following terms:-

“It is trite law that the assessment of general damages is at the discretion of the trial court, and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have awarded a different figure if it had tried the case in the first instance. The appellate court can justifiably interfere with quantum of damage's awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factors or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate”.
10. Similarly, in *Jane Chelagat Bor vs Andrew Otieno Oduor* [1988] – 92] eKLR 288[1990-1994] EA47 the Court of Appeal held that:-

“In effect, the court, before it interferes with an award of damages, should be satisfied that the judge acted on a wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damages suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked, if the Appellate Court is to interfere, whether on the ground of excess or insufficiency.”
11. I have carefully considered all the pleadings filed and evidence tendered in court, especially on the issue of injuries sustained by the appellant. The Appellant suffered a comminuted fracture of the left lower 1/3 tibia and fibula, causing him to suffer a 30% permanent incapacity. The Appellant provided medical documents to prove the said injuries, and his doctor (PW1) also testified and produced his medical report confirming the injuries suffered. The respondent was further examined by the Appellants' doctor, and he, too, confirmed the injuries sustained.
12. Indeed, based on the evidence tabled, it was proved that as a result of this accident, the respondent sustained serious injuries and was therefore entitled to adequate compensation. The question that then arises is whether the award of damages of Kshs.1,200,000/= was adequate. In *West(H) and Sons Limited vs Shepherd* [1964] AC 326 at 345, it was appreciated that;-

“The purpose of compensation is not to remedy or recompense every injury, but must be a reasonable compensation in line with comparable. In order to interfere with the award of



the lower Court, this court must be satisfied that the trial court did not exercise its discretion judiciously”.

13. The Appellants' residual disability was assessed at 30% and comparable injury awards range between Kshs 1,000,000/= to Kshs.1,500,000/=. See Joash M Nyabincha Vs Kenya Tea Development Authority & 2 others (2013) Eklr, Robert Mwaniki Ndigwa Vs Agatha Kaugi Riunga (2018) Eklr, and James Gathirwa Ndungi Vs Multiple Hauliers (EA) Ltd & Another (2015) eKLR
14. Having considered comparable awards and inflationary trends, I do find and hold that the trial court award was not unreasonable and nor was it inordinately high. The trial magistrate obviously exercised her discretion judiciously and cannot be faulted for arriving at her finding.

C. Disposition

15. This Appeal therefore has no merit and the same is dismissed with costs, which I hereby assess at Kshs.150,000/= all inclusive.
16. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 3RD DAY OF NOVEMBER, 2025.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 3rd day of NOVEMBER,2025.

In the presence of: -

N/AAppellant

N/A Respondent

Mr. Jarso.....Court Assistant

