

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J)

CIVIL APPEAL NO. E012 OF 2025 CONSOLIDATED WITH E010 OF 2025 AND E011 OF 2025

KELVIN MACHARIA NJIRU.....1ST APPELLANT
BONIFACE NJERU NDWIGA.....2ND APPELLANT
PETER THATHI NDWIGA.....3RD APPELLANT

-VERSUS-

PAUL NJOKA.....1ST RESPONDENT
PATRICK NJIRU.....2ND RESPONDENT
NEW PALEAH WHOLESALERS LTD.....3RD RESPONDENT

(Appeal arising from the decision of Hon. D. Endoo, Adjudicator in Embu SCCC No. E062 of 2024, Embu SCCC No. E061 of 2024 and Embu SCCC No. E063 of 2024 delivered on 23rd December 2024)

JUDGMENT

The Appeal

1. The appeal herein arises from a suit filed in the Small Claims Court, wherein the appellants are aggrieved by the Hon. Adjudicator's determination. In their memoranda of appeal dated 12th February 2025, the appellants seek the following orders:

- 1) The appeals be allowed;
- 2) The Honourable court do set aside and vacate the orders of the Small Claims Adjudicator issued on 23rd December 2024 on the award of general damages;
- 3) That the Honourable court be pleased to reevaluate the evidence and make its own judgment on general damages; and
- 4) Costs of the appeals be borne by the respondents.

2. The appeals are premised on the grounds that:

- 1) The learned trial magistrate erred and misdirected herself in law and fact in her assessment of general damages awardable to the claimants by awarding damages of Kshs.80,000/= in the case of the 1st appellant, Kshs.60,000/= in the case of the 2nd appellant and Kshs.80,000/= in the case of the 3rd

appellant, that were manifestly and so inordinately low and not commensurate with the appellants' injuries, therefore arriving at a wrong conclusion as relates general damages; and

- 2) The learned trial magistrate erred in law and in fact by disregarding and failing to appreciate the facts, documentary evidence, written submissions and the binding authorities made on behalf of the appellant in arriving at an award on general damages that is unreasonably low in the circumstances and connotes an erroneous estimate of the award on general damages in view of the injuries sustained by the appellant thus leading to a miscarriage of justice.

Background

3. Through separate claims, the appellants each sought judgment against the respondents for special damages of Kshs.5,850/=, compensation and costs of the suits. It was the appellants' claim that the 1st appellant was lawfully riding motor cycle registration number KMCJ 395N along Embu-Meru Road while carrying the 2nd and 3rd appellants as pillion passengers. That upon reaching Nembure, the respondents' driver, employee or agent drove motor vehicle registration number KDB 189S so negligently that it lost control and knocked down the 1st appellant's motor cycle causing an accident. As a result, the appellants suffered serious bodily injuries.
4. The 1st and 3rd respondents filed a response to denying the claims. They stated that any negligence claimed was caused by the appellants who failed to control the motor cycle they were aboard. They urged the court to dismiss the claims.
5. The parties proceeded by way of documents under section 30 of the Small Claims Court Act and they filed their written submissions. The Adjudicator found liability against the respondents in the ratio of 70%:30%. In Embu SCCC No. E061 of 2024 (the 2nd appellant's case) the Adjudicator awarded Kshs.60,000/= as general damages. In Embu SCCC No. E062 of 2024 (the 1st appellant's case), the court awarded general damages of Kshs.80,000/=. In Embu SCCC No. E063 of 2024 the 3rd appellant was awarded Kshs.90,000/= as general damages. In each of the cases special damages were awarded as prayed and costs of the suit were awarded to the appellants.

Parties' submissions on the appeal

6. The appeal was canvassed by way of written submissions.
7. The appellants urged the court to reevaluate the evidence adduced before the Small Claims Court and they relied on the case of **Selle & Another v Associated Motor Boat Co. Ltd. & Others [1968] EA 123 at 126**. They relied on the case of **Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2) [1985] KECA 137 (KLR)** and stated that the awards were inordinately low and that they should be reviewed.
8. They urged the court to look at the medical evidence adduced through which the injuries suffered by each of the appellants were detailed. Further reliance was placed on the cases of **Poa Link Services Co. Ltd & another v Sindani Boaz Bonzemo [2021] KEELRC 2012 (KLR)**, **National Industrial Credit Ltd & 2 others v MNO (Minor Suing Thro’ Next of Friend and Mother FNM) [2024] KEHC 3824 (KLR)** and **Mbacho & another v Kamba [2022] KEHC 209 (KLR)**.
9. The 1st and 3rd respondents submitted that according to section 38 of the Small Claims Court Act, appeals to the High Court are limited to only issues of law, and the decision on appeal shall be final. They relied on the cases of **Wanjiru v Kiilu [2024] KEHC 8881 (KLR)** and **Butt v Khan [1978] KECA 24 (KLR)** and argued that it would be untenable to ask this Court to reevaluate the evidence and reach its own finding, yet it is bound to consider only questions of law.
10. They submit that the award of damages was correctly reached and there is no error in the findings that can be reviewed. They argue that they have already made good the judgment entered against them and therefore that the appeals lack basis. They urged the court to exercise the principle of finality of a case. They relied on the case and of **Dr. Sunny Samuel v Simon M. Mbwika & another [1998] KECA 224 (KLR)** and **Idris Abdi Abdullahi v Ahmed Bashane & 2 others [2018] KECA 455 (KLR)**.

Issue for Determination

11. The issue for determination is whether the appeal has merit.

Analysis and Determination

12. From the Small Claims Court, an appeal to the High Court can only be founded on issues of law. Section 38 of the Small Claims Court Act provides as follows:

“(1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.”

13. In **Directline Assurance Co. Ltd v Nyawa [2023] KEHC 20201 (KLR)**, the court stated thus regarding this provision:

“I am alive to the fact that this is a final Appeal. Therefore, the duty on the court is enormous. This is because, whichever, this court decides, the parties have to find a way of living with it. Appeals from Small Claims court to this court are on points of law only. However, what constitutes a point of law is not defined. Nevertheless, this court is bound by antecedent findings to settle what a point of law is. It also needs to settle what a point of law is not... This then takes the same turn as an appeal to the court of appeal, where the court gives deference to finding of fact. Only when the findings of fact are based on no evidence will that be seen as a point of law.”

14. A matter of law or issue of law is a question of law as defined in the 9th Edition Black’s Law Dictionary as follows:

- 1. “An issue to be decided by the judge, concerning the application or interpretation of the law; or***
- 2. A question that the law itself has authoritatively answered, so that the court may not answer it as a matter of discretion; or***
- 3. An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide, what the true rule of law is.” [Emphasis added]***

15. Conversely, a question of fact is defined in the same dictionary as follows:

- “1. An issue that has not been predetermined and authoritatively answered by the law; or***
- 2. An issue that does not involve what the law is on a given point; or***

3. A disputed issue to be resolved by the jury in a jury trial or by the judge in a bench trial" [Emphasis added].

16. The appellants herein have challenged the findings of the Small Claims Court Adjudicator as to assessment of damages based on the evidence adduced. From the foregoing definitions, in the context of a road traffic accident, liability remains a matter of fact which can only be determined by the trial court through the evidence adduced. The same can be said of assessment of quantum, upon which, equally, the trial court is called to exercise its discretion in the matter. Where such a trial court is expected to exercise its discretion judiciously, weighing the rights of different parties, considering the rules of natural justice and very importantly, the evidence adduced before it. The exercise of its discretion, on liability or damages cannot willy-nilly be interfered with unless in judicious exercise is shown.
17. In either case, I think that this Court can only interfere with aspects of evidence or fact where the trial Court's assessment thereof is so unreasonable, ridiculous or ludicrous as to negate or be so inconsistent with any known principles of law. In such cases, the party alleging the unreasonableness must so clearly and specifically highlight the unreasonableness or ludicrousity, so as to pre-empt this Court, an arbiter on issues only of law, from entering into the factual mine-field.

Conclusions and Disposition

18. What the appellants are in fact challenging before this court are purely matters of fact or evidence. In fact, they have called upon this appellate court to re-examine the evidence adduced before the trial court so as to make different conclusions thereon on the quantum. As clearly stated under section 38 of the Small Claims Court Act, an appeal of this nature must raise points of law only. There must be specificity and particularization of such points of law. These questions of law are conspicuously missing from the grounds of appeal and the submissions.
19. For the foregoing reasons, the appeals cannot be entertained as drawn and presented. Accordingly, I hereby dismiss the appeals with costs.
20. Orders accordingly.

Delivered electronically, dated and signed at Embu High Court this 19th day of November, 2025, pursuant to notices issued on 10th November and 12th November, 2025 as to electronic delivery.

**R. MWONGO
JUDGE**