



**Liyosei v Koros & another (Civil Appeal E029 of 2024)
[2025] KEHC 18244 (KLR) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E029 OF 2024
PJO OTIENO, J
DECEMBER 5, 2025**

BETWEEN

WILLIAM SEARS LIYOSEI APPELLANT

AND

SIMON CHERUIYOT KOROS 1ST RESPONDENT

PUSIA DARIUS NGURIANGURO 2ND RESPONDENT

*(Being an Appeal against the Judgment and Decree of Hon. T. O. Omono (RM)
dated 6th May 2024, in Kitale Chief Magistrate Court, CMCC No. 0343 of 2022)*

JUDGMENT

Background

1. Before this court is an Appeal challenging the Judgment and Decree issued by the Honourable T.O. Omono (RM) in Kitale CMCC Case No. E0343 of 2022 delivered on May 6, 2024.
2. The suit arose from a road traffic accident alleged to have occurred on September 28, 2021 at Maili Saba area, along the Kitale-Kapenguria road. The accident involved motor vehicle registration number KCP 344B, driven by the Appellant, and motor vehicle registration number KBE 731U, owned by the 1st Respondent and driven by the 2nd Respondent.
3. The claim was predicated on the alleged negligence of the 2nd Respondent and the driver of the motor-vehicle KBE 731U owned by the 1st Respondent. The 1st Respondent was vicariously sued for the actions of the 2nd Respondent as his employer and to whom the said motor vehicle was registered under.
4. In the alternative the Respondents denied liability in their statement of defence claiming that if the accident was inevitable and was solely, wholly, overwhelmingly and substantially caused by the negligence of the Appellant thus denying the applicability of the doctrine of Res Ipsa Loquitur.



Trial Court's Proceedings

5. The matter proceeded to full trial with the Appellant. It was the Appellant's case that on September 28, 2021, he was carefully driving motor vehicle KCP 344B on his left lane along the Kitale-Kapenguria road when while negotiating a bend, the on-coming motor vehicle KBE 731U driven by the 2nd Respondent at a high speed lost control and without any warning or indication veered into his lane, and rammed into his front driver's door thereby inflicting to him serious personal injuries. He maintained that the road was wide enough, had a yellow line, and the weather was clear.
6. Regarding injuries, the Appellant produced evidence through medical reports from Dr. Joseph Sokobe (PW4) and discharge summary records from Kitale County Hospital (PW5). The injuries confirmed were blunt soft tissue injuries affecting six distinct areas: the neck, chest, back, right shoulder, left arm, and right ankle. PW4 classified the injuries as harm, confirming they were fully healed with no permanent incapacity. The Appellant was admitted for observation from September 28 to September 29, 2021. Special damages proved by way of receipts included Kshs. 6,000/= for the medical report and Kshs. 550/= for a motor vehicle records search, totalling Kshs. 6,550/=
7. In response, the 2nd Respondent (DW1) presented a counter-narrative, blaming the Appellant entirely for the accident. He testified that he was driving KBE 731U and saw the Appellant's vehicle approaching in the middle of the road with full headlights, which blinded him. He claimed to have signalled and hooted but while attempting to avoid the vehicle, swerved off the road where the shoulder was narrow and steep, putting him at risk of overturning. He stated that he immediately turned the vehicle back to the right side (his lane), which is when the collision occurred, hitting his driver's door.
8. After full trial, the trial court delivered its judgment wherein liability was apportioned equally at 50%:50% between the Appellant and the Respondents. The court's reasoning behind the 50:50 apportionment was the lack of concrete evidence distinguish the fault between two drivers. The court held that given the absence of objective evidence, particularly the police sketch map which would have settled the question of the point of impact, the evidence constituted one word against the other.
9. The court assessed General Damages for pain and suffering and loss of amenities at Kshs. 100,000/= and proved Special Damages at Kshs. 6,550/=. The Appellant was ultimately awarded a net sum of Kshs. 53,275/= after the application of the 50% contributory negligence finding.

The Appeal

10. The Appellant, being aggrieved and dissatisfied with the trial court's judgment, filed a Memorandum of Appeal dated June 4, 2024, raising eight grounds of appeal. The court has considered the grounds raised therein and do condense the same into two logically main categories of liability and quantum.

Summary of the Appellant's Submissions

11. The Appellant argued that the 2nd Respondent's testimony, even if read as a whole, demonstrated clear negligence, especially the admission of turning back into the lane of traffic to avoid tipping over, which resulted in the collision. The Appellant emphasized the duty of a driver to keep a proper lookout and maintain a speed that allows for stopping or deflecting course to avoid reasonably foreseeable dangers.
12. The Appellant cited several authorities emphasizing the high standard of care required of a driver including the case of *Amani Kazungu Karema v Jackmash Auto Ltd & another eKLR*, where the court held that where a person drives too fast and fails to keep a proper look out, running into another's lane, that kind of behaviour would very unlikely attract contributory negligence. This citation was intended



to demonstrate that the Appellant, driving lawfully in his lane, should not be penalized merely because he could not anticipate such reckless conduct.

13. Further reference was made to *Mondo V. Jessa* (1969) EAR 156 and *Masembe vs. Sugar Corporation and Another* 2 EA 434, which underscore the legal duty of every driver to anticipate potential hazards and drive at a speed that permits safe stopping or deflection of course upon sighting danger. By the 2nd Respondent's own admission of being blinded and losing control, he failed this fundamental duty. The Appellant contended that the inability of the police to determine the exact point of impact should not negate the clear sequence of events admitted by DW1 that led to the collision in the Appellant's lawful path.
14. On quantum, the Appellant submitted that the award of Kshs. 100,000/= for multiple blunt soft tissue injuries was manifestly low, arguing that it represented an entirely erroneous estimate of damages. Relying on the principle articulated in *Butt vs. Khan* KLR 349, the Appellant argued that the award warranted interference. The Appellant proposed a substituted award of Kshs. 350,000/= citing authorities where awards ranging from Kshs. 250,000/= to Kshs. 350,000/= were confirmed for multiple soft tissue injuries. It was argued that the trial court ignored the Appellant's comparable authorities, thereby overlooking the principle of *stare decisis* and undermining the need for comparable awards for comparable injuries.

Summary of the Respondents' Submissions

15. The Respondents defended the trial court's liability finding, asserting that an appellate court should not substitute its own apportionment unless the trial court committed an error in principle or the finding was manifestly erroneous, citing *Khambi & anor vs. Mahithi & anor* (1968) 70.
16. The central argument maintained by the Respondents was that the evidence presented at trial created an unresolvable conflict. Both drivers claimed the accident occurred in their respective lanes, and both vehicles were damaged on the driver's side. Given that PW1, the police officer, confirmed the police investigation was incomplete and could not establish the point of impact, the Trial Magistrate was correct in resorting to the legal principle established in *Hussein Omar Farah v. Lento Agencies* eKLR. This authority holds that where concrete evidence is lacking to determine who is to blame between two drivers, both should be held equally responsible. The Respondents concluded that the 50:50 apportionment was justified by the factual impasse.
17. Regarding general damages, the Respondents argued that the award of Kshs. 100,000/= was reasonable and should be upheld. They emphasized the established legal principle that interference is warranted only if the award is so high or so low as to constitute an outright error in assessment, or if irrelevant matters were considered or relevant matters disregarded. This principle was underlined by citing the Court of Appeal decision in *Ken Odondi & two others vs James Okoth Omburah t/a Okoth Omburah & Company Advocates* eKLR.
18. The Respondents highlighted that the Trial Court followed the correct principle of compensating comparable injuries with comparable awards. The Trial Magistrate reviewed various superior court awards which ranged between Kshs. 80,000/= and Kshs. 150,000/= for soft tissue injuries. Specifically, the court noted the recent 2023 authority of *Mukami v. Obong'o* (Civil Appeal E062 of 2021) KEHC 922(KLR), where Kshs. 80,000/= was awarded for soft tissue injuries. Given this range, the Respondents asserted that the award of Kshs. 100,000/= was firmly within judicial discretion and should not be disturbed merely because an appellate court might have preferred a different figure.



Issues, Analysis and Determination

19. Based on the grounds of appeal and the opposing submissions, this Court frames the issues for determination being; whether the trial court erred in apportioning liability equally at 50%:50% between the Appellant and the Respondents; and, whether the award by the trial court was inordinately low for the Appellant's.
20. This Court recognizes the established standard that an appellate court should not interfere with the apportionment of liability by a trial court unless it is shown that the trial judge acted upon a wrong principle of law, or that the apportionment is manifestly erroneous.¹ The court then proceeds to discern and determine the identified issues for determination. On liability, the gravamen of the Appellant's challenge is that the evidence, particularly the 2nd Respondent's admission of losing control and crossing lanes, overwhelmingly pointed to the 2nd Respondent's sole negligence.
21. This Court's re-evaluation must commence by examining the factual findings underpinning the trial court's difficulty. From the records, the evidence presented consisted of two diametrically opposed accounts: the Appellant claiming he was driving lawfully when the 2nd Respondent veered into his lane while speeding, and the 2nd Respondent claiming the Appellant was driving dangerously, blinding him, forcing him off-road, and that the collision occurred as he was struggling to regain control in his own lane.
22. The court notes in the instance, the physical evidence that would typically resolves this conflicts, the police sketch plan showing the final resting positions of the vehicles and the point of impact, was unavailable. The police witness confirmed the matter was PUI and she could not assign blame hence the determination of the point of impact became an impossible exercise for the trial court.
23. The trial court thus faced a classic legal impasse: two self-serving narratives, both claiming 100% entitlement to their version of events, but neither being able to demonstrate the credibility of their claim over the other by independent or physical evidence. The Appellant's argument hinged on the duty of care regarding anticipating foreseeable danger and controlling speed compatible with visibility fails to overcome the 2nd Respondent's counter-allegation concerning the Appellant's alleged use of blinding full lights. If the Appellant was indeed negligent in handling his vehicle's lights, that failure constituted causative negligence, complicating the strict imposition of sole liability on the 2nd Respondent. Its submissions neither on the argument of sole negligence, did not articulate how the trial court's application of the Farah doctrine constituted an error in principle nor manifest error of fact, given the undisputed evidential vacuum.
24. Now that the occurrence of the accident is a fact, with the impossibility of deciding on the evidence tendered by the parties on who is to blame for the accident, the court seeks reliance in the holding in *Baker vs Market Harborough Industrial Co-operative Society Ltd* [1953] 1 WLR 1472 at 1476 where the court held that:-

“Every day, proof of collision is held to be sufficient to call on the defendant for an answer. Never do they both escape liability. One or the other is held to blame, and sometimes both. If each of the drivers were alive and neither chose to give evidence, the court would unhesitatingly hold that both were to blame. They would not escape liability simply because the court had nothing by which to draw any distinction between them.....”

¹ Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR



25. Further, in the cited case of Hussein Omar Farah v Lento Agencies [2006] KECA 388 (KLR), the court held as follows in line with the foregoing:

“It cannot be doubted that both drivers are to blame. In the ultimate analysis of the evidence in the instant case, the circumstances are such that there is no concrete evidence of distinguishing between the two drivers. The drivers should therefore be held equally to blame.....

The trial court, as we have said, had two conflicting versions of how the accident occurred. Both parties insisted that the fault lay with the other side. As no side could establish the fault of the opposite party we would think that liability for the accident could be equally on both the drivers. We therefore hold each driver equally to blame.”

26. By the foregoing, this Court finds and holds that the Trial Magistrate correctly applied the settled doctrine concerning unproven conflicting versions of accident causation. The finding that both drivers were equally to blame for the accident is hereby affirmed.

27. The second issue requires this Court to consider whether the award of Kshs. 100,000/= for General Damages was so low as to constitute an entirely erroneous estimate, warranting appellate interference. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court’s discretion unless certain conditions are met. These conditions were outlined in the case of Catholic Diocese of Kisumu vs Tete [2004] eKLR where the Court held that:

“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 difference figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles.”

28. The injuries sustained by the Appellant were multiple blunt soft tissue injuries to the neck, chest, back, right shoulder, left arm, and right ankle. These were classified as ‘Harm’ and, critically, were fully healed requiring minimal medication. The court reviewed relevant authorities and concluded that awards for moderate soft tissue injuries ranged between Kshs. 80,000/= and Kshs. 150,000/=: specifically referencing the recent 2023 case of Mukami v. Obong’o, where Kshs. 80,000/= was awarded for soft tissue injuries treated as an outpatient.

29. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards. This position finds support in the case of Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR where the Court of Appeal held: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

30. It is not in dispute that the appellant sustained soft tissue injuries. It is equally common place that the extent of such injuries is not contested. The court finds that the trial court did not go outside the bounds of award recently made to warrant being upset. In any event there has not been demonstration that the award is so low as to take the face of a misery. The award of Kshs. 100,000/= by the trial court is upheld for being within the ranges of awards for comparable injuries.



31. In upshot, the court finds that appeal to wholly lack any merit and orders it dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER, 2025

PATRICK J O OTIENO

JUDGE

In the presence of;

Ms. Langat for Respondents

No appearance for the Appellant.

Ms. Hannah – Court Assistant.

