



**NWM v Guardian Coach Company Limited (Civil Appeal E099 of 2023)
[2025] KEHC 18239 (KLR) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E099 OF 2023
PJO OTIENO, J
DECEMBER 5, 2025**

BETWEEN

NWM APPELLANT

AND

THE GUARDIAN COACH COMPANY LIMITED RESPONDENT

*(Being an Appeal from the Judgment of the Hon. J. Ndengeri (PM)
delivered on 17th October 2023 in Naivasha CMCC No. 546 of 2018)*

JUDGMENT

Background

1. This is an appeal against the judgement of Hon. J. Ndeng’eri, PM, in Naivasha CMCC No. 546 of 2018 delivered on 17th October 2023. The Appellant (minor), through her next friend and father, instituted a suit seeking general and special damages arising from a road traffic accident.
2. The facts of the suit as pleaded before the trial court were that on or about the 20/8/2017, while the Plaintiff was travelling in motor vehicle registration number KCD 139J along Naivasha – Nakuru road, at Mwaura area of thereabout, the defendant, its driver, agent, servant and or employee so negligently drove, controlled and/or managed motor vehicle registration number KCM 788A that the same lost control and got involved in an accident with motor vehicle registration number KCD 139J, in which the plaintiff was travelling as a passenger, as a consequence of which the plaintiff sustained very serious injuries. The particulars of negligence were particularised just as those of special damages.
3. The Respondent, then defendant, filed a Statement of Defence denying liability generally, denying ownership of KCM 788A, and the occurrence of the accident as pleaded. The Defence asserted that if the accident ever occurred, it was solely or substantially caused by the negligence of the driver of KCD 139J or the Appellant’s own negligence of failing to heed to safety instructions.



4. The matter proceeded to full trial where Appellant gave testimony as PW1 adopting her written statement. She confirmed sustaining soft tissue injuries to the forehead and the left lumbar spine.
5. In support of her claim, she produced documents including a demand letter, a treatment card, hospital receipts, a P3 form, a police abstract, and a medical report prepared by Dr. Omuyoma. The police abstract confirmed the occurrence of the accident and blamed motor vehicle KCM 788A. she was the only witness to give evidence and her case was thus closed.
6. After the plaintiff's case was closed, the Respondent instead of calling witnesses announced the closure of its case, did not call any witnesses, and when directed to file submissions, omitted to do so.
7. The trial court in its judgement acknowledged the police abstract which confirmed the accident and blamed KCM 788A. However, the court found insurmountable inconsistencies concerning the identity of the Plaintiff, noting that the P3 form was incomplete, referred to a minor named DW, and contained unsigned alterations. The court observed that hospital receipts and the medical report by Dr. Omuyoma referenced DW or DW.
8. The court concluded that the Appellant, NW, was not listed as a claimant in the demand letter. The judgment concluded that these issues amounted to glaring inconsistencies, omissions and fabrications, deeming the claim grossly incompetent and dismissing it with costs.
9. The Appellant was aggrieved by the decision of the trial court in its entirety and lodged the instant appeal seeking to have the trial judgment set aside and judgment entered in her favour.
10. The appeal is predicated upon six grounds set out in the Memorandum of Appeal dated 7th November 2023 by which the appellant faults the trial court to have misdirected herself by failing to appreciate that the Appellant had successfully proved her case on a balance of probabilities thus meriting the award and assessment adequate damages that would have provided reasonable compensation. She thus prays that the Judgment in the lower Court be set aside and Judgment be entered for her against the Respondent with awards on special and general damages as well as costs of both the appeal and the suit.
11. After the court directed that the appeal be heard by way of written submissions, both parties filed the rival submission. The court has read both and only highlights what each said without rehashing the same.
12. For the appellant, it is underscored that only its evidence was availed to court and that the same remained uncontroverted. It is however, conceded that there exist contradictions in both plaint and the documents produced on the names of the appellant, but deems such a blunder that should not be employed to drive the litigant away from the seat of justice. For that proposition, the decision in Phillip Chemwolo vs Augustine Kubende (1986) eKLR is cited with a submission that the blunder isn't fatal to the case.
13. The appellant further submitted that the evidence including the documents having been adduced on oath and without objection by the respondent ought to have been given the deserved weight and not discounted without corresponding evidence on oath. For that proposition and that the evidence stood unchallenged, the decision in Ngugi vs Karanja (2023) KEHC 2368 was cited.
14. The decision in Rentco East Africa Ltd Dominic Mutua Ngozi (2021) eKLR, and Oluoch Eric Gogo were cited for the proposition that the first appellate court has a duty to proceed by way of a rehearing but can only interfere with the finding on liability by the trial court when an error of principle is demonstrated.



15. In summing up, the appellant faulted the court for its failure to assess damages even in the event of failure of the suit by citing the decisions in *Joseph Kamau Vs Health Service Board PCEA, Kikuyu Hospital (2019) eKLR* and *Ceaser Karanja Justin vs Joseph Ndungu Karimi (2017) eKLR* on the duty of the trial court to assess damages even in the event of failure of the suit. It was then proposed that this court in allowing the appeal should assess General damages at Kshs 500,000 with special damages of Kshs 10,100.
16. For the respondent, the submissions were very brief, stressed on the contradictory evidence from pleadings, stressed the duty of the appellant under section 107 *Evidence Act* and cited *Bwire Vs Wayo (2022) KEHC* but without pointing out on what point that decision was relevant to its case.
17. For damages, it is conceded that was awarded for which the respondent proposes an award of Kshs 80,000 but the court is urged to dismiss the appeal in its entirety.

Issues, Analysis and Determination

18. Based on the Record of Appeal, the trial court's judgment, and the submissions of both parties, the court isolates the issues pertinent for its determination to be; (a) whether the Appellant established the Respondent's liability for the accident on a balance of probabilities, and (b) if the appeal succeeds on issue (a) above, what was the appropriate quantum of general and special damages payable to the Appellant.
19. From the onset, this court sitting as the first appellate court, is mandated to re-evaluate the entire evidence presented before the trial court, subject the trial Magistrate's findings to fresh scrutiny, and draw its own conclusions. In executing that very wide mandate, the court keeps in mind the fact that it did not have the opportunity to hear and observe the demeanour of the witnesses as they testified.¹
20. The primary reason for the dismissal of the suit was the trial court's conclusion that the Appellant failed to prove her identity due to the interchangeable use of the names NWM and DWM in the documents. These discrepancies, the court viewed as fatal defects amounting to fabrication.
21. While it is an established principle that the civil justice system prioritizes deciding cases on their merits rather than imposing discipline for technical blunders², where like here there are contradictions or discrepancies, the same should be minor or trivial and not so substantial as to leave the court unsatisfied as to whether the witness is actually telling the truth. The evidence that a court of law relies upon to enter a judgment, even in civil proceedings, should be of the kind that is forthright, credible and cogent. It is only when the evidence strikes as credible and trustworthy that the onus of proof on a balance of probabilities can be safely determined to have been met.
22. The court notes that the appellant amended the plain primarily to remove the disability of the initial plaintiff named as DWM and described as a minor, to plead the plaintiff as NWM, but never worried to file documents that corresponded with the introduced changes. The documents produced in evidence to prove the claim remained in the name of the DW save for the police abstract and the P3 form which was altered but without being initialled. That state of evidence failed to marry with the plaint as to suffice as the proof of it. It creates in this court's mind the impression that documents were being imposed on a plaintiff or that the plaintiff had no documents of her own. The court is thus unable to agree with the fault on the trial court when it held that the plaintiff was not the same person named in

¹ See *Selle & Another v Associated Motor Boat Co. Ltd & Another (1968) EA 123*.

² *Philip Keipto Chemwolo & another v Augustine Kubende [1986] KECA 87 (KLR)*



the documents produced and that it was difficult to justify why a doctor who examined the plaintiff 9 months after the accident could fail to capture her names properly.

23. To the court the contradictions were material and negated any proof on a preponderance that the appellant was indeed involved in the accident sued upon.
24. With such contradictions, it was moot to endeavour to in delving to establish the liability of the respondent when the plaintiff was unable to satisfy the court that she was injured in the accident. The appeal thus fails and is dismissed with costs.
25. Having found that the dismissal of the suit cannot be faulted and while not in doubt that the trial court had an obligation to assess damages in all events,³ the court considers it not to serve any efficacious purpose in this appeal to assess damages. This however, is not an approval of the failure to conduct an assessment by the trial court. In that failure the court was plainly in error.
26. In conclusion, the Appeal fails entirely and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF DECEMBER, 2025.

PATRICK J. O. OTIENO

JUDGE

In the presence of;

Ms. Hanna – Court Assistant

No appearance for parties.

³ See Ceasar Karanja Justin v Joseph Ndungu Karimi [2019] eKLR.

