



**Odhiambo v FW (Suing as the Next Friend and Mother of LJK - Minor & another (Civil Appeal E181 of 2025) [2025] KEHC 18342 (KLR) (Civ) (15 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E181 OF 2025  
JM CHIGITI, J  
DECEMBER 15, 2025**

**BETWEEN**

**FELIX ODHIAMBO ..... APPELLANT**

**AND**

**FW (SUING AS THE NEXT FRIEND AND MOTHER OF LJK -  
MINOR ..... 1<sup>ST</sup> RESPONDENT**

**CAR & GENERAL TRADING LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Brief Background**

1. On or about 14th January 2023 involving the minor was a pedestrian and motor cycle registration No. KMFZ 734J that was owned by the Appellant.
2. This triggered the filing of a suit to claim compensation. It is the Appellant's case that the trial Magistrate fell into error in law when determining the issue of liability and quantum of general damages. He maintains that the minor should shoulder part of the liability or in the alternative the suit should have been dismissed.
3. According to the Appellant, the Respondent did not prove the negligence.
4. After hearing the witnesses who appeared in court, and upon considering the police abstract and the medical report the trial court found the Respondent 100% liable and proceeded to award the Respondent Kshs. 1 million as general damages and special damages through the judgment that was delivered on 27<sup>th</sup> January 2025.



### **The Respondent's Case:**

5. Dissatisfied with the judgment, the Appellant filed the Memorandum of Appeal dated 19<sup>th</sup> February 2025. The Appellant is concerned that the amount awarded as General damages is excessively high. He submits that the general damages should be Kshs.250, 000.
6. He did not advance any arguments on the heading of special damages. According to the Respondent, the minor was a pedestrian who was hit by the Appellant's motor cycle which was being driven negligently.
7. The mother of the minor/pedestrian testified that the minor was involved in a road traffic accident which she learnt from a person who witnessed the accident.
8. The police officer who attended the accident produced police abstract in support of the minor's case. It is the Respondent's case that after the accident the Appellant drove off from the scene of the accident. The Respondent treatment notes to prove the case.
9. Having found that the Appellant was 100% liable, the trial court proceeded to award generals of Kshs.1million, special damages and costs. She submits that the appeal should be dismissed

### **Analysis and Determination;**

10. Being a first, appeal, this court can review relook at and analyze the evidence and the case that was before the trial court, and arrive at its own finding. This must however, be within the framework of the principles set out in the case of *Selle & Another vs. Associated Motor Boat Co Ltd & Others* [1968] EA where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
11. The court has looked at the record of appeal and formed the opinion that the issue for determination is whether or not the trial magistrate fell into error in determining liability and the quantum of general damages.
12. The Appellant relies on the Memorandum of Appeal and the ground set out there in which he consolidated into two.
13. In determining whether the trial court fell into error in determining the issue of liability, this court holds that every driver of a motor vehicle is under duty to protect all road users, including pedestrians and in particular minors so as not to harm them with the motor vehicles that they are driving.
14. In all motor cycle accident related suits, the person moving the court and in this case the Next Friend the Respondent herein has to prove the particulars of negligence as pleaded in the plaint. In the instant suit, the Respondent was under a duty to prove that the Appellant was negligent when the accident occurred. This has to be done within the threshold of the balance of probabilities.
15. The court has looked at the evidence as tendered by Next Friend of the minor and the police officer who confirmed that an accident occurred as set out in the police abstract. He also confirmed that the Appellant left the scene after the accident. This court is satisfied from the conduct of the Appellant that he was running away from liability.
16. Section 73 (1) of the *Traffic Act* stipulates that if, in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby injury or damage is caused to any person, vehicle, dog or cattle,



the driver of the motor vehicle shall stop, and if required to do so by any person having reasonable grounds for so requiring give his name and address, and also the name and address of the owner and the identification marks of the vehicle.

- (2) Any other person in the vehicle at the time of the accident shall also, if required to do so, give his name and address.
  - (3) If in the case of any such accident as aforesaid the driver of the motor vehicle for any reason does not give his name and address to any such person as aforesaid, or if any injury has been caused to any person, dog or cattle, the driver shall report the accident at a police station or to a police officer as soon as reasonably possible, and in any case within twenty- four hours of the occurrence thereof.
  - (4) The owner of a motor vehicle shall supply the police with all information necessary for the identification of a driver involved in an accident.
17. The Appellant acted contrary to Section 73 of the [Traffic Act](#) in that he did not report the accident. He moved on as if there was no accident that had occurred.
  18. From the fact that the pedestrian was a minor was at the scene of the accident when on the material day of the accident and given that the motor vehicle that caused the accident was placed at the scene of accident through the police abstract the only logical conclusion is that indeed the Appellant caused the accident.
  19. The Respondent did not deny that accident occurred. Further he did not deny that the child was involved in the accident. He did not tender any evidence to prove contributory negligence on the part of the minor.
  20. As such it is this court's holding that the trial court did not fall into error in determining the issue of liability. This court is satisfied that the Appellant owed duty of care to the minor and further the court is satisfied that the Appellant breached the duty of care causing the death.
  21. Having sorted out the issue of liability, the court now looks at the question of the quantum of general damages as awarded by the trial court. Ordinarily, the court will be reluctant to set aside the amount awarded as general damages, unless there is sufficient justification.
  22. From the medical report, P3 and the treatment notes the court confirms that the injuries that the minor sustained proven.
  23. From the authorities that were cited by parties, the court is satisfied that the amount awarded as general damages is commensurate and reasonable to compensate the Next Friend for the injuries sustained.

Costs:

- a. In *Joseph Oduor Anode v. Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed: "...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the [Civil Procedure Act](#)] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ..." [emphasis supplied].



b. In the instant appeal of the Appellant shall shoulder, the costs of the appeal and I so hold.

**Determination:**

24. The appeal lacks merit.

Order;

The appeal is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2025.**

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**J. CHIGITI (SC)**

**JUDGE**

