



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
SC CC NO. E083 OF 2025.

**STEPHEN ALPHONSE
MUTHAMA.....CLAIMANT**

-VERSUS-

**MARTIN MWITI MAERIA.....
.....RESPONDENT**

AND

**ADIL TRANSPORTERS LIMITED.....
.....3RD PARTY**

JUDGEMENT.

INTRODUCTION.

- 1) By a statement of claim dated 6th October 2025 the claimant seeks for;**
 - a) General damages.**
 - b) Special damages of Kshs.53,550/=**
 - c) Future medical expenses of Kshs.323,000/=**
 - d) Costs and interests**

- 2) The claim is opposed by the respondent and who has joined a 3rd party who despite entering appearance, he did not file any response to the claim as against it and there is interlocutory judgment as against it for that failure.**

- 3) The claimant avers that on the 23/08/2025 at around 0030 hours the claimant was a lawful passenger on board motor vehicle registration number KDT 936G which at all material times relevant to this suit the**

same was owned by the respondent either by way of registration, insurance or benefit-wise and that the same was being driven along the Nairobi-Mombasa highway but within Taita Taveta county and as the vehicle approached Kanga area on the Nairobi-Mombasa road, the respondent's agent, servant and/or driver so negligently drove, managed and/or controlled the said motor vehicle that he failed to keep a safe distance with the vehicle in front of him when it was not safe to do so and causing it to lose control and rammed into the rear of the truck.

- 4) That as a consequence of the accident the claimant sustained serious injuries to wit multiple bruises on both hands and closed fracture of the left mid shaft femur. The claimant blames the respondent driver for causing the said accident and has pleaded particulars of negligence that in his view led to the accident.
- 5) The respondent admits that the accident indeed occurred on or about 23/08/2025 between motor vehicle registration number KDT 936G and KBS 720Vs/ZC 4146 but denies all the allegations of negligence as contained in the claim and asserts that the accident was solely caused by the negligent, reckless and unlawful actions of the driver of motor vehicle registration number KBS 720Vs
- 6) I have perused and considered the documents and pleadings as filed as well as the submissions filed by parties.

ISSUE FOR DETERMINATION.

- a) **Whether the Respondents are liable for the accident.**
- b) **What is the quantum of damages awardable if any.**
- c) **Who bears costs of the claim.**

ANALYSIS AND DETERMINATION.

- a) **Whether the respondents are liable for the accident.**

- 7) It is not in dispute that an accident occurred on the material date and time between KDT 936G and KBS 720Vs. The respondent blames motor vehicle registration number KBS 720Vs for the accident and as stated he has joined a 3rd party. Both the respondent and the 3rd party never filed any witness statements to explain in their view how the accident happened.

- 8) I am only left with the narration as given by the claimant. It is his testimony that the vehicle he was a passenger in rammed into another truck which is now evident as admitted by the respondent it was motor vehicle registration number KBS 720Vs(third party). Since there is no evidence to show what the 3rd party did that led to the accident, the circumstances of the accident are such that the respondent rammed into the rear of the 3rd party's motor vehicle.
- 9) In ordinary circumstances, it is expected that the respondent once he saw he 3rd party motor vehicle he ought to have braked and/or kept a safe distance and overtake it when it was safe to do so and not to negligently ram into it. There is no evidence on record by the respondent that he tried to brake or swerve or in any way avoid ramming into the rear of the 3rd party motor vehicle.
- 10) In the case of **Masembe vs. Sugar Corporation and Another (2002) 2 EA. 434** as was quoted with approval by Justice Chemitei in Civil Appeal No.54 of 2018 Alex Kipruto Malel & Anor (supra) where it was held that:

"When a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his course at any time to avoid anything he sees after he has seen it...There is no act or omission that has static blameworthiness and therefore each case must be assessed on its own circumstances and the apportionment ought to be a result of comparing the negligent conduct of the tortfeasors, to determine the degree to which each one was in fault, both in regard to causation of the wrong and unreasonableness of conduct...Whereas a driver is not to foresee every extremity of folly which occurs on the road, equally he is not certainly, entitled to drive on the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, that is to say anything which the experience of the road users teaches them that people do albeit negligently."(Emphasis mine)."

- 11)** It is this court's observation that since the respondent and the 3rd party were going the same direction then the Respondent who was behind ought to have been more alert and had he applied brakes or swerved in any way to avoid ramming into the 3rd party motor vehicle, he would have avoided the accident.
- 12)** As a matter of practice, it is always right and indeed it's a traffic norm that every driver must ensure to keep a reasonable safe distance between it and the vehicle ahead. Clearly, the Respondent's vehicle did not keep safe distance and must have been over speeding at the time of the accident that it was unable to brake to avoid the accident.
- 13)** I have no reason to blame the 3rd party for the accident when there is no evidence linking him to the occurrence of the accident. The respondent is further blamed by the police in the police abstract still the 3rd party is not blamed by the police. On the other hand the claimant cannot be blamed for the accident either in contribution or in whole. The court in the case of Boniface Waiti and another vs Michael Kairuki Kamau(2007) where justice Nambuye observed;

“it is now law that passengers have not control over the manner of driving of a vehicle in which they are conveyed and cannot be penalized for the poor workmanship of the control of the vehicle. The explanation on causation of the accident in such circumstances lies with the driver..”

- 14)** On the question of proof of liability, the Court of Appeal in **Micheal Hubert Kloss & Another vs. David Seroney & 5 Others [2009] eKLR** did succinctly proffered that;
- “The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in Stapley vs. Gypsum Mines Ltd (2) (1953) A.C. 663 at p. 681 as follows: “To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident**

would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...”

- 15) This position was further advanced and applied in the case of **Tijan Kisilu vs Bonfide Clearing and forwarding Company limited & 2 others (2018) eKLR** as cited by the claimant where the court held as follows;

“ On whether the plaintiff contributed to the material accident and in which way, the defendants and 3rd party were not able to show how the plaintiff could have contributed to the accident; the plaintiff was only a passenger in the subject accident motor-vehicle. Allowing oneself to be driven in a motor vehicle which is hit by another in the course of the journey in no way places liability on the passenger by dint of merely being present in the accident motor vehicle.”

- 16) I therefore make a finding and I so hold that the driver of the motor vehicle KDT 936G; the Respondent is wholly liable for the occurrence of the accident herein at 100%.

b) What is the quantum of damages awardable if any.

- 17) It is the claimant’s case that as a result of the accident he sustained multiple bruises on both hands and closed fracture of the left mid shaft femur. All these injuries have been confirmed by the treatment notes, X-ray films as well as the medical report dated 26/08/2025.

- 18) The claimant has proposed Kshs.1,000,000/= as general damages and has placed reliance on the case of **Charles Mathenge Wahome vs Mark Mboya Likanga & 2 others (2011) KEHC**

1383(KLR) where the court made an award of Kshs.1,500,000/= for among other injuries fracture of the right femur.

19) Reliance has also been placed on the case of **Gitau vs Mucheru (civil appeal E175 of 2020) [2022] KEHC 13872(KLR)(CIV) (12 October 2022) (judgment)** where Kshs.1,600,000/= was awarded for a fracture of the right femur, fracture of 2 ribs, lung contusion and blunt soft tissue injury to the chest.

20) Courts have taken the position that there can be no uniformity in the assessment of damages and that such assessment falls within the trial court's discretion. In **Livingstone Rawyards Coal Co. [1880] 5 App Cas 25** the court stated that:

“I do not think there is any difference of opinion as to its (sic) being a general rule that where any injury is to be compensated by damages, in settling the sum of money to be given for reparation or damages, you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong”.

21) In the case of [Nyatera v Nyakundi \[2023\] KEHC 24532 \(KLR\)](#) the high court reviewed an award of Kshs.1,400,000/= awarded by trial court to Ksh.900,000/= for the following injuries but with a 50% incapacity

- Fracture of upper end of tibia – tibial: condyles, head, proximal end, tuberosity with or without mention of fracture of fibula.
- Pertrochanteric fracture – intertrochanteric fracture, trochanteric fracture.
- Fracture of femur.

22) In [S A O \(Minor Suing Thro next Friend\) M O O v Registered Trustees, Anglican Church of Kenya Maseno North Parish \[2017\] KEHC 4905 \(KLR\)](#) the court made revised upwards an award of Kshs.200,000/= to Kshs.600,000/= for the following injuries;

- Head injury with brain concussion and damage of right lower mandible jaw and left cheek
- Blunt chest injury
- Multiple friction lacerations/bruises on right elbow joint
- Fracture of right tibia/fibula at midshaft region
- Compound fracture left tibia/fibula at distal metaphysic

- Multiple cut wounds on left lower limb involving thigh down to knee region
- Fracture left ankle joint involving malleolus bones
- Dislocation right ankle joint

23) In [Pestony Limited & another v Samuel Itonye Kagoko](#) [2022] eKLR (C Meoli J) reviewed an award of general damages from Ksh 1,400,000 to Ksh 800,000 for a single fracture to the femur which had since healed.

24) Since it is trite law that no two cases can be completely similar but it is a settled principle that comparable injuries should attract comparable awards see the case of **Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR**. I find the decision in Pestony case(supra) comparable to the circumstances obtaining herein and I proceed to award the claimant Kshs. 800,000/= as compensation for pain and suffering as a result of the accident.

25) On special damages, the same have to be specifically pleaded and proved. A look at the receipts in support, the same have been proved to the required standards save for the expense Kshs.3,500/=. I thus allow Kshs.50,550/= as special damages.

26) On the claim for future medical expenses, a claim for Kshs.323,000/= however, the estimation as given by Dr. Wisdom Njumwa in his report dated 26/8/2025, he has estimated that future medical expenses will cost the claimant Kshs.70,000/=. The said figure has been broken down in great detail and I find the same to be pleaded and proved with some degree of certainty and specificity and allow the expense of Kshs.70,000/=

c) Who bears costs of the claim?

27) The claimant having been successful in the matter and that costs follow events he is awarded costs of the claim.

CONCLUSION AND DISPOSITION.

28) The upshot of the foregoing I make the following final orders;

a) The case against the 3rd party is dismissed with no orders as to costs as the 3rd party did not defend the claim despite being joined.

b) The claim contained in the statement of claim dated 6th October 2025 as against the respondent is allowed in the following terms as against the respondent;

Liability	100%
General damages	Kshs.800,000/=
Special damages	Kshs. 50,550/=
Future medical expenses	Kshs.70,000/=
<u>TOTAL</u>	<u>Kshs.920,550/=</u>

c) The claimant is awarded costs and interests as against the respondent from the date of judgment until payment in full.

d) Let the file be closed forthwith.

29) Those shall be the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI SMALL CLAIMS COURT THIS....10thDAY OF ...December...2025

**F.M. MULAMA
ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Vivian Wambui.

Mr. Kiwinga for the Claimant.

Mr. Ng'ang'a for the Respondent.