



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
SC CC NO. E081 OF 2025.

**STEPHEN NERA
 OTIENO.....CLAIMANT**

-VERSUS-

**RAMADHAN HASSAN.....1ST
 RESPONDENT**

**DREAMLINE EXPRESS LTD.....2ND
 RESPONDENT**

**SAS FREIGHTWAYS LTD.....3RD
 RESPONDENT**

JUDGEMENT.

INTRODUCTION.

- 1)** By a statement of claim dated 9th October 2025 the claimant seeks for;
 - a) General damages.**
 - b) Special damages of Kshs.329,550/=**
 - c) Costs and interests**

- 2)** The claim is opposed by the 1st and 2nd respondents and who has also pleaded particulars of fraud on the part of the claimant.

- 3)** It is the claimant’s averment that the 3rd respondent is the registered and/or beneficial owner of motor vehicle registration number KCJ 890E Zhong Tong and that he was a lawful passenger aboard the said motor vehicle on the material date of the accident.

- 4) The claimant states that on 5/8/2025 at Kanga area along the Mombasa-Nairobi while on board the suit motor vehicle to wit KCJ 890E heading towards Mtwapa when the 1st respondent negligently and/or otherwise without due care and while being the driver of KCJ 890E violently rammed into motor vehicle registration number KCW 124E/ZF2269 causing the claimant extensive injuries and damage to his properties.
- 5) The claimant further stated that he was on his way to Mombasa for work as a DJ when the accident happened and his work equipment to wit pioneer DDJ 1000RST serial no. SGMP003165CC and macbook pro A1278 serial no. CIMQX2GEDTY3 were extensively damaged.
- 6) The claimant has pleaded particulars of negligence on the part of the 1st respondent that in his view led to the occurrence of the accident.
- 7) The claimant asserts that as a result of the accident he sustained fracture of the mid shaft ulna with minimal displacement, blunt trauma on the left jaw, left knee, left ankle as well as bruises/abrasion to the right knee and left leg.
- 8) As stated the claim is opposed by the 1st and 2nd respondents who other than merely denying the accident state that if the accident occurred then the same was outside the scope and control of the 1st and 2nd respondents and they cannot be held accountable.
- 9) They further plead contributory negligence on the part of the claimant because he failed to take adequate precaution for his safety, he failed to put on his safety belt and voluntarily assuming the risk on an accident by boarding the said motor vehicle.
- 10) I have perused and considered the documents and pleadings as filed as well as the submissions filed by the claimant.

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.**

- 11)** It is not in dispute that an accident occurred on the material date and time between motor vehicle registration numbers KCJ 890E and KCW 124E/ZF 2269. The respondents did not file any witness statements in support of their defences or to explain to the court in their own point of view as to how the accident happened so that as a court am able to appreciate their respective positions in the matter.
- 12)** 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. Since there is no evidence to show how the accident happened other than the way the claimant has explained, the circumstances of the accident are such that the respondent driver rammed into the rear of motor vehicle registration number KCW 124E/ZF 2269.
- 13)** In ordinary circumstances, it is expected that the respondent driver once he saw motor vehicle registration number KCW 124E/ZF 2269 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 driver that he tried to brake or swerve or in any way avoid ramming into the rear of the motor vehicle registration number KCW 124E/ZF 2269.
- 14)** 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)."

15) It is this court's observation that since the respondent driver and motor vehicle registration number KCW 124E/ZF 2269 were going the same direction then the Respondent driver who was behind ought to have been more alert and had he applied brakes or swerved in any way to avoid ramming into motor vehicle registration number KCW 124E/ZF 2269, he would have avoided the accident.

16) 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.

17) The respondent is further blamed by the police in the police abstract. On the other hand the claimant cannot be blamed for the accident either in contribution or in whole as the respondents purport to. 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.."

18) 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..."

- 19)** 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.”

- 20)** I therefore make a finding and I so hold that the driver of the motor vehicle KCJ 890E; the 1st Respondent is wholly liable for the occurrence of the accident herein at 100%. The other respondents are vicariously liable jointly and severally.

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

21) It is the claimant's case that as a result of the accident he sustained fracture of the mid shaft ulna with minimal displacement, blunt trauma on the left jaw, left knee, left ankle as well as bruises/abrasion to the right knee and left leg. All these injuries have been confirmed by the treatment notes, X-ray films as well as the medical report dated 10/09/2025. The P3 form classifies the injuries sustained as grievous harm

22) The claimant has proposed Kshs.600,000/= as general damages and has placed reliance on the cases of **Daniel Otieno Owino & another v Elizabeth Atieno Owuor [2020] eKLR** where Lady Justice R. E. Aburili reduced an award of Kshs. 600,000 to Kshs. 400,000/= for compound fractures of the tibia/fibula bones on the right leg, deep cut wound and tissue damage on the right leg, head injury with cut wound on the nose and blunt chest. In **Kamande v Inyanga & 2 others (Civil Appeal 12 of 2022) [2025] KEHC 688 (KLR)** the Court awarded Kshs. 600,000/= for a cut wound to the left pinna, soft tissue injuries to the chest, and fracture of the left tibia lateral condyle and blunt injury to the back and lastly reference was made to the case of **Ndung'u & another v Njora [2025] KEHC 3135 (KLR)** where the court awarded Kshs 600,000/- as general damages for comparable injuries as the one herein..

23) 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".

24) 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.

25) 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

26) 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.

27) In 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.

28) 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 in terms of the fracture injury which is the main injury sustained and I proceed to award the claimant Kshs. 600,000/= as compensation for pain and suffering as a result of the accident this is in consideration that the claimant suffered 7% disability.

29) 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. I thus allow special damages of

Kshs.326,550/= as special damages inclusive of Kshs.6,000/= meant for physiotherapy sessions at coast general hospital as well as the estimated cost for purchase of pain killers and joint and bone care medication.

c) Who bears costs of the claim?

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

CONCLUSION AND DISPOSITION.

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

a) The claim contained in the statement of claim dated 9th October 2025 as against the respondents is allowed in the following terms as against the respondent;

Liability	100%
General damages	Kshs.600,000/=
Special damages	Kshs. 329,550/=
<u>TOTAL</u>	<u>Kshs.929,550/=</u>

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

c) Let the file be closed forthwith.

32) 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. Otieno for the Claimant.