Compliant International Security Limited & another v Muli (Civil Appeal 133 of 2018) [2025] KEHC 19005 (KLR) (18 December 2025) (Judgment)

Neutral citation: [2025] KEHC 19005 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL APPEAL 133 OF 2018

RC RUTTO, J

DECEMBER 18, 2025

BETWEEN

COMPLIANT INTERNATIONAL SECURITY LIMITED ..... 1ST APPELLANT

JOSEPH GACHERU ..... 2ND APPELLANT

AND

NICHODEMUS MULWA MULI ..... RESPONDENT

(Being an appeal from the Judgment of Hon. D. Orimba (Mr.) Senior Principal Magistrate in Kangundo SPMC No. 47 of 2015, delivered on 20th June, 2018)

JUDGMENT

1. This is an appeal on liability and quantum arising from a judgment and decree in Kangundo Senior Principal Magistrate's Civil Suit No. 47 of 2015. In that suit, the Respondent sued the Appellant who was the rider of Motor Cycle Registration Number KMCM 971M LA-AMIN seeking special damages of Kshs 12, 650/=, general damages for pain, suffering, loss of amenities and reduced earning capacity arising from a road traffic accident where the Respondent sustained serious bodily injuries.

2. The brief facts are that on 7th February 2015 at about 8:00 p.m., along the Machakos–Kangundo Road at the Kenol Junction area, Motor Vehicle Registration No. KCA 076W, an Isuzu lorry, was being driven negligently when it veered off the road and rammed into the rear of Motor Cycle Registration No. KMCM 971M, a LA-AMIN. After hearing the evidence and submissions of the parties, the trial court found the appellant 100% liable for the accident. The court awarded general damages of Kshs 2,600,000/=, special damages of Kshs 29,650/=, interest on general damages at court rates from the date of judgment until payment in full, and costs of the suit.

3. Aggrieved by the judgment, the appellant lodged this appeal raising several grounds. The appellant contends that the Learned Trial Magistrate erred in law and in fact by; failing to consider the evidence presented, and disregarding the evidence before the court in finding the appellants 100% liable; failing

to take into account the testimony of the police officer on the events leading to the accident which failed to blame the appellants herein; failing to take into account the weight of the 1st appellant regarding the circumstances of the accident thus failing to find negligence had not been proved to the required standard as against the Appellant; awarding a manifestly high award of general damages of Kshs 2, 600, 000/= which was incommensurate to the proven injuries sustained by the Respondent; quantum of damages is excessive and erroneous estimate of the damages that may be awarded to the Respondent with due regard to the circumstance of the case before the subordinate court and the weight of precedents in similar circumstances; court took into account irrelevant considerations and evidence disregarding the laid down principles in law with regards to a claim for general damages specifically the loss of earning capacity; failed to consider the demeanor of the Plaintiff in awarding general damages considering he was incarcerated; by not properly addressing his mind to the submissions dated 30th April 2018 on the part of counsel for the Appellants together with the authorities relied on by the Appellants and arrived at a judgment that was manifestly erroneous; misdirected himself in the application of the principles of law applicable in all the circumstances of the case and thereby failed to exercise his discretion judiciously; failed to consider the totality of the evidence adduced and consequently arrived at an erroneous decision.

4. The Appeal was canvassed by way of written submissions. Appellant's submissions were dated 22nd September 2023, while the Respondent's submissions are dated 18th October 2023.

Appellant's Submissions

5. The Appellant set out the background of the case and addressed two key issues: whether the Respondent had proved negligence against the Appellant (liability) and whether the damages awarded were manifestly excessive in the circumstances (quantum).

6. On liability, the Appellant relied on the evidence of the police officer to argue that the Respondent had failed to prove his case. Specifically, the Appellant noted that no sketch plan was produced to assist the court in determining who was to blame for the accident. In addition, neither the occurrence book nor the police file was tendered in evidence. The police officer himself was unable to establish the exact point of impact, and therefore, in the Appellant's view, the Respondent failed to discharge the pleaded particulars of negligence. The Appellant further submitted that the police abstract relied upon by the Respondent was inconclusive. In support of this position, reference was made to Sally Kibii & Another v Francis Ogaro (2012) eKLR.

7. The Appellant also argued that the Respondent did not provide a detailed description of the circumstances surrounding the accident in his testimony. Moreover, the particulars of negligence were not pleaded in the plaint, and the evidence adduced contradicted the averments contained in the witness statement.

8. It was the Appellant's submission that he had exercised reasonable care in all the circumstances, and therefore the doctrine of res ipsa loquitur was inapplicable. On this basis, the Appellant urged the court to set aside the trial court's judgment, contending that the Respondent had failed to discharge the burden of proof on a balance of probabilities.

9. In the alternative, should the court decline to dismiss the suit in favour of the Appellant, it was urged that liability be apportioned equally at 50:50. To reinforce this argument, reliance was placed on the decision in Hussein Omar Farah v Lento Agencies, Civil Appeal No. 34 of 2005 (2006) eKLR.

10. On the issue of quantum, the Appellant submitted that the award of general damages was manifestly excessive and not proportionate to the injuries proven to have been sustained by the Respondent. It

was argued that the trial court failed to indicate the degree of permanent disability, and no estimate was provided for future medical expenses.

11. The Appellant contended that, in the circumstances, the court ought to have awarded Kshs. 800,000/= as general damages. To support this position, reliance was placed on several authorities, including; Daneva Heavy Trucks & Another v Chrispine Otieno (2022)eKLR; Godfrey Wamalwa Wamba & another vs Kyalo Wambua (2018)eKLR and David Mutembei v Maurice Ochieng Odoyo (2019)eKLR

Respondent's Submissions

12. The Respondent submitted in response to the grounds of appeal. In reply to Grounds 1, 2 and 3 of the appeal, the Respondent submitted that the court did not err in making a finding that the Appellants were 100% liable for the occurrence of the accident. Counsel argued that the 1st Defendant was wholly to blame, as the Respondent was lawfully riding his motor cycle when he was struck from behind. It was further submitted that the defence failed to call any witness to rebut the plaintiff's evidence, which therefore remained uncontroverted.

13. In response to grounds 4, 5, 7 and 9 of the appeal, counsel for the respondent submitted that the award granted by the trial court was reasonable and commensurate with the prevailing awards for similar injuries. He emphasized that the award was supported by case law cited in the respondent's submissions before the trial court as well as by the evidence tendered in court.

14. Addressing Grounds 6, 8 and 10 of the appeal that the Learned Magistrate had duly considered the Appellant's submissions, conventional awards and the seriousness of the Respondent's injuries in arriving at its award. He submitted that the injuries sustained were a fracture of the right clavicle, fracture of the right tibia fibula, comminuted fracture of the right temporal bone and right temporal subdural hematoma. Counsel further noted that the medical report by Dr. Muoki highlighted the severity of these injuries and the defence did not call any medical expert to challenge or rebut the findings.

15. In support of the award, the respondent cited several authorities namely the case of Guardial Singn Ghataurhae versus Parminder Sighn Manku & 3 others HCCA No. 611 of 2007, HCCA No. 9 of 2017 Marsabit Hussein Ali Sharrif alias Hussein Ali versus ALL (Minor Suing through FTL, HCCA No. 150 of 2019 Weddy Kendi Kabira alias Wendy Kendy Kabira & Another versus VM Alias VM) A minor suing through next friend and mother IKH, Kakamega HCCA No. 189 of 2010 Samwel Kebati Osoro versus Mohamed Antuly & Another.

16. The Respondent submitted that these are comparable authorities where the party had similar injuries and confirm that the award of Kshs 2, 600, 000/= awarded as general damages is reasonable given the seriousness of the injuries sustained.

17. In conclusion, the Respondent urged this court to find that the appeal lacks merit and the same be dismissed with costs.

Analysis and Determination

18. Section 78(2) of *Civil procedure Act*, provides that the appellate court shall have the same powers and shall perform nearly the same duties as are conferred and imposed by the Act on courts of original jurisdiction in respect of suits instituted herein. Therefore, my duty as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions. This principle was espoused by the Court of Appeal in Gitobu Imanyara & 2 others v Attorney General (2016) eKLR and in Selle & Anor –Vs- Associate Motor Boat Co. Ltd 1968 EA 123.

19. Having considered the record of appeal and the Respondent's submissions, this court discerns the following issues for determination;

    a. Whether the trial court erred in determining that the Respondent was 100% liable for the claim

    b. Whether the award on general damages was excessively high.

Whether the trial court erred in determining that the Respondent was 100% liable for the claim

20. In Ephantus Mwangi & Another v Duncan Mwangi, Civil Appeal No 77 of 1982 [1982-1988] 1KAR 278 the Court of Appeal stated as follows regarding the finding of liability by the trial court:

> " A member of an appellate court is not bound to accept the learned Judge's findings of fact if it appears either that (a) he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or (b) if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."

21. The burden of proof in this matter, as provided under Section 107 of the *Evidence Act*, lies with the person alleging. In addition, the evidential burden of proof is captured under Sections 109 and 112 of the same Act as follows:

> " 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.
>
> 112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him."

22. The principles governing liability in negligence are well settled. In the cases of Nandwa v Kenya Kazi Ltd [1988] KLR 488 and Regina Wangechi v Eldoret Express Co. Ltd [2008] eKLR the Court held that:

> " In an action for negligence, the burden is always on the plaintiff to prove that the accident was caused by the negligence of the defendant. However, if in the course of the trial there is proved a set of facts which raises a prima facie case inference that the accident was caused by negligence on the part of the defendant, the issue will be decided in the plaintiff's favour unless the defendant provides some answer adequate to displace that inference."

23. From the record, it is undisputed that on 7th February 2015, an accident occurred involving the Respondent's Motor Cycle and the appellant's Motor vehicle.

24. The Respondent called three witnesses to support its case. The Appellants however, closed their case without calling any witness other than the 2nd Appellant, who in their defence, blamed the Respondent for the accident.

25. In Evans Nyakwana vs. Cleophas Bwana Ongaro (2015) eKLR the court in setting out the legal burden of proof in civil cases stated;

> " As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section

107(i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden ... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side."

26. Further in William Kabogo Gitau vs. George Thuo & 2 Others [2010] 1 KLR 526 Kimaru J as he then was) stated that:

> "In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred."

27. In the present case, the evidence before the court on how the accident occurred, was narrated by PW3, Nichodemus Mulwa Muli. He testified that he and the 2nd appellant were travelling in the same direction when the 2nd appellant's motor vehicle struck him from behind. He further stated that the road was straight and that he was able to see the 2nd appellant through his side mirrors.

28. PW1, who read the report prepared by the Investigating Officer, PC Osoro, confirmed that an accident had indeed occurred. He noted, however, that the Investigating Officer did not visit the scene and that the point of impact was not recorded. According to the report, Motor Vehicle Registration No. KCA 076W, an Isuzu lorry, was being driven towards Machakos from Komarock. Upon reaching Koma Shrine Junction, it collided with an oncoming motorcycle Registration No. KMCM 971M, which was being ridden by Nichodemus on his lawful lane. As a result, the rider sustained injuries and was rushed to hospital. PW1 further testified that the police later visited the scene and both the lorry and motorcycle were towed to the station pending inspection. On cross-examination, he stated that the driver of the motor vehicle was to blame for the accident, though the matter was still pending investigation. Other than the police abstract and a petty cash voucher showing Kshs 5,000/= paid for his court attendance, PW1 did not provide additional evidence to support his assertions.

29. DW1, on the other hand, testified that he was driving from Koma towards Kenol when, upon reaching a corner, he encountered PW3 riding a motorcycle from the opposite direction. He claimed that he was on his proper lane when PW3 struck the vehicle's left side mirror. DW1 further alleged that PW3 did not have lights, a reflector, or a helmet at the time. He maintained that he was not overtaking, was driving at approximately 40 km/h, and that the road had bends. He testified that, given the time of 8:00 p.m. and the nature of the road, DW1 insisted that he could not avoid the accident. He also stated that the police only visited the hospital and not the scene.

30. The court is therefore required to weigh this evidence on a balance of probabilities to determine who was responsible for the accident. The respondent has urged the court not to interfere with the trial court's finding on liability. In Khambi & Another vs Mahithi & Another [1968] EA 70 it was held that:-

> "It is well settled that where a trial Judge has apportioned liability according to the fault of the parties, his apportionment should not be interfered with on appeal, save in exceptional circumstances, as where there is some error in principle or the apportionment

is manifestly erroneous and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge."

31. After analyzing the evidence of the parties, the trial court held that both parties were to blame for the accident. The trial court in its judgment observed;

> " .....The 1st Defendant driver of the accident motor vehicle was under a duty to ensure the safety of other road users by driving carefully or by being on proper look out. He was negligent on that he drove carelessly and did not take due regard to other road users more so when approaching a bend as he himself stated that the accident was at a corner. The evidence of the plaintiff on how the accident occurred has not been controverted properly. I therefore find the 1st Defendant liable in negligence for the accident which caused the plaintiff serious pain, injuries and suffering. I also find the 2nd Defendant owner of the accident motor vehicle registration KCA 076W vicariously liable for acts, omission of the driver/agent/servant the 1st Defendant.
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> The Plaintiff produced a search certificate to prove ownership of the accident motor vehicle as belonging to the 2nd Defendant. The accident was reported to police who issued him with a P3 form and a police abstract. There is also evidence that the owner of motor vehicle and the insurance were issued with notice. I find the Defendant liable and the liability at 100%."

32. The 1st Appellant, having testified but failed to call any witnesses, or produced evidence to disprove the Respondent's case, left the court to rely on logic and the available evidence regarding how the accident occurred. This court should therefore examine whether the trial court committed an error in principle when apportioning liability.

33. It is undisputed that the accident occurred and that the respondent sustained injured as a result. The central issue is the mechanism of the collision and whether the trial court properly held the appellants wholly liable. The respondent's account remained consistent, he testified that he was riding ahead of the lorry, in the same direction, when it struck him from behind. Such evidence, if accepted, prima facie points to negligence on the part of the driver, since a rear-end collision ordinarily implies failure to keep proper lookout, failure to maintain a safe distance or failure to slow down. PW1 similarly confirmed the occurrence of the accident and produced the relevant police documents, although he did not visit the scene and was therefore unable to assist the court in determining the precise point of impact.

34. The defence, through DW1, presented a different version of events. He claimed that the motorcycle was approaching from the opposite direction, struck the vehicle's side mirror, and that the rider was partly to blame because he allegedly lacked a helmet, reflector, or light, particularly given the cornered stretch of road and reduced visibility at 8:00 p.m. However, during cross-examination PW3 expressly stated that he was wearing a helmet and had a reflector at the time of the accident.

35. The appellants did not call any independent witness, produce a scene sketch, photographic documentation, lighting analysis, or police officer testimony to rebut PW3's clarification or establish that the reflector or helmet was absent or inadequate. The defence position therefore remained a bare allegation unsupported by objective evidence. That said, the evidence does not conclusively resolve how the accident occurred. There was no scene visit, no road layout documentation, and no indication of skid marks, braking distance or exact point of impact. The police abstract also did not attribute blame. In light of these gaps, the competing narratives, viewed against an absence of neutral scene evidence, leave room for inference that both parties may have contributed to the occurrence of the accident. It must be emphasized that Motorcyclists, like all road users, owe a duty to maintain proper control, anticipate corners, and observe prevailing road conditions.

36. In circumstances where both parties advance plausible but incomplete accounts, the law permits the court to apportion responsibility reasonably on the balance of probabilities. The trial court, in the reasons quoted, rightly considered that th driver was duty-bound to exercise care and found negligence on his part. At the same time, the trial court acknowledge that the evidence of the motorcycle rider was not entirely controverted and that some certain matters remained unresolved and unrebutted. The trial court therefore erred not in finding the appellants liable. That finding is well supported by the evidence but in imposing 100% liability despite acknowledging factors that suggested shared fault. The court did not adequately interrogate the driver's testimony nor did it reconcile the conflicting narratives with the absence of objective scene evidence. In these circumstances an appellate interference is warranted.

37. Having considered the totality of the evidence, including PW3's clarification that he had a helmet and reflector, I find that the driver of the appellants' motor vehicle bore the greater responsibility. The collision would likely have been avoided had he exercised greater caution, slowed down, anticipated the bend or maintained a safe driving distance behind the motorcycle. Nonetheless, the respondent also bears some degree of responsibility as it remains unknown on the actions taken to avert the accident as he did not provide full detail regarding his riding conduct, signaling, positioning, or speed along a cornered road at night. This therefore makes it difficult for the court to ascertain whether he took any measures to avoid the accident.

38. I am guided by the Court of Appeal decision in the case of Stephen Obure Onkanga v Njuca Consolidated Limited (2013) eKLR where the Court of Appeal when faced with similar situation held that;

> " Accordingly, in the instant appeal, as there was no concrete evidence to distinguish between the blameworthiness or otherwise of the Appellant or the Respondent, both should be held equally to blame."

39. To this end, upon weighing the probabilities and comparative blameworthiness, I find it fair to apportion liability between the parties at the rate of 70:30 in favour of the respondent as against the appellant.

Whether the award on general damages was excessively high

40. The appellants contend that the award of Kshs 2,600,000/= for pain, suffering and loss of amenities was manifestly excessive and inconsistent with comparable awards for similar injuries. The respondent, however, maintains that the award was fair, judicially reasoned, and supported by the nature, severity and long-term impact of the injuries sustained.

41. This court is guided by the Court of Appeal in Bashir Ahmed Butt vs. Uwais Ahmed Khan (1982-88) KAR as follows:

> " An appellate court will not disturb an award for general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low..."

42. The duty of an appellate court when invited to interfere with a trial court's assessment of damages is circumscribed. Interference will only be justified where the award is so inordinately high or low as to represent an erroneous estimate, or where the trial court applied the wrong principles, misapprehended the evidence, considered irrelevant factors, or ignored relevant ones. The discretion to assess damages

lies primarily with the trial court, and appellate intervention must be exercised cautiously, lest the appellate court substitutes its own view merely because it would have awarded a different sum.

43. The medical evidence placed before the trial court disclosed the following injuries, a right temporal subdural haematoma, comminuted fracture of the right temporal bone, fractures of the right clavicle, right tibia and fibula and associated soft tissue injuries. The respondent was admitted in hospital for 22 days, underwent prolonged treatment and experienced significant pain and functional limitation.

44. In its judgment, the trial court awarded the Respondent herein the sum of Kshs.2, 400,000/= as general damages for pain, suffering and loss of amenities. In arriving at this figure, the court considered comparative awards for comparable injuries including the case of Simon Taveta versus Mercy Mulitu Njeri [2014] eKLR and the case of Florence Have Mkaha versus Tawakal Muni Coach and Another [2012] eKLR.

45. In the court's considered view therefore the trial court's award of Kshs.2,400,000/= was fair in the circumstances of the case. No basis has been laid for interference with the trial court's discretion in assessing the damages.

46. It is therefore upheld, subject only to the 30% contributory negligence deduction arising from this court's earlier finding on liability.

47. In conclusion, the appeal succeeds only to the extent of liability. Having weighed the evidence liability is apportioned between the parties. The appellants shall bear 70percent of the responsibility while the respondent bears 30percent. The award on general damages pain and suffering is upheld at kshs 2,400,000/- subject to the contributory negligence deduction. Thus; general damages pain and suffering kshs 2,400,000/- less 30per cent kshs 720,000/- total kshs 1,680,000

48. Given that the appeal partially succeeds, each party shall bear its own costs of the appeal.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 18TH DAY OF DECEMBER 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Appellants

.....for Respondent

Selina Court Assistant