



REPUBLIC OF KENYA



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**Mghosi v Majala & another (Civil Appeal E049 of 2024)
[2025] KEHC 19107 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E049 OF 2024
AN ONGERI, J
DECEMBER 19, 2025**

BETWEEN

RUEL MDAWIDA MGHOSI APPELLANT

AND

ROSE MAJALA 1ST RESPONDENT

JOHN MGHANGHA MWANYAMBU 2ND RESPONDENT

*(Being an appeal from the Judgment of Hon. D. Wangeci (SPM) in
Wundanyi SPMCC No. 37 of 2019 delivered on 10th June 2024)*

JUDGMENT

1. The Appellant Ruel Mdawida Mghosi was sued in Wundanyi SPMCC No. 37 of 2019 by the Respondent Rose Majala.
2. The Respondent was seeking general damages for pain and suffering and special damages of Kshs. 2,550/= together with costs of the suit and interest for injuries the Respondent sustained in a road traffic accident that occurred on 24th June 2017 at Mwatunge Hills along Voi – Mwatate road.
3. The Respondent was travelling aboard motor vehicle registration number KBA 339C, Nissan Caravan as a fare paying passenger when the motor vehicle which was negligently driven by the driver, servant, agent and/or employee at a high speed lost control and veered off the road and collided with motor vehicle registration No. KBY 876U.
4. The Respondent sustained the following injuries;-
 - i. Blunt injury to the abdomen, head, neck, upper and lower limbs.
 - ii. Multiple bruises on the head, neck and upper and lower limbs.



5. The Respondent relied on the provisions of the Highway Code as well as the doctrine of res ipsa loquitor.
6. The Appellant filed a defence dated 14th June 2023 denying the Respondent's claim.
7. The Respondent said in her evidence that she heard a loud bang and lost consciousness and later found herself in hospital.
8. The Appellant's evidence was that motor vehicle registration KBY 876U a Toyota Vanguard lost control after a tyre burst and rammmed into motor vehicle registration number KBA 339C.
9. The driver of motor vehicle registration KBA 339C testified as DW1 said it was motor vehicle registration No. KBY 876U which rammmed into his motor vehicle.
10. The trial court found that the Defendant did not enjoin motor vehicle registration No. KBY 876U and held motor vehicle registration No. KBA 339C to blame for the accident.
11. The trial court assessed damages as follows:-
 - Liability 100%
 - General damages Kshs. 250,000/=
 - Special damages Kshs. 2,550/=
 - Total Kshs. 252,550/=
12. The Appellant has appealed against the said judgment on the following grounds:-
 - i. That the learned trial Magistrate erred in law and in fact in his award arriving at unjust decision, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - ii. That the learned trial Magistrate erred in fact and in law reaching a decision that was thus unjust, against the weight of evidence and was misguided to condemning the Appellant liable for the accident for which no evidence was led to show his negligence.
 - iii. That the learned trial Magistrate erred in law and in fact disregarding the defendant's submissions on the issue of liability thus condemning the Appellants liable for the accident.
 - iv. That the learned trial Magistrate erred in law and in fact disregarding the defendant's submissions on the issue of quantum thus awarding a high and excessive award.
13. The parties filed written submissions as follows; The Appellant in this appeal challenges the judgment of the Wundanyi Magistrates' Court delivered on 10th June 2024, which found the Appellant fully liable for a road traffic accident and awarded the Respondent damages totaling Kshs. 252,500/-.
14. The Appellant contends that the trial court erred both on the issue of liability and on the quantum of damages awarded.
15. On the question of liability, the Appellant submits that the Respondent failed to discharge the legal burden of proving negligence against him.
16. The evidence on record, including testimony from police officers and witnesses, consistently attributed the cause of the accident to the driver of motor vehicle registration number KBY 876G (the Toyota Vanguard), which suffered a tyre burst, veered from its lane, and collided with the matatu (KBA 339C) in which the Respondent was a passenger.



17. The Appellant submitted that significantly, the Respondent herself admitted she did not properly witness the accident.
18. The Appellant argues that since the Respondent chose to sue the owner of the matatu but then adduced evidence solely blaming a different, unsued vehicle, she failed to substantiate her pleadings against the Appellant.
19. The principle that a plaintiff must prove their case on a balance of probabilities was not met, and thus the suit ought to have been dismissed outright.
20. Regarding quantum, the Appellant argues that the award of Kshs. 250,000/- in general damages was inordinately high and disproportionate to the injuries sustained.
21. The Respondent suffered soft tissue injuries consisting of bruises and blunt trauma to the abdomen, chest, head, neck, and limbs which were documented as healing without any permanent disability.
22. Citing recent and comparable authorities from the High Court, where awards for similar soft tissue injuries range between Kshs. 80,000/- and Kshs. 150,000/-, the Appellant submits that a fair and compensatory award in this instance would be Kshs. 100,000/-.
23. The trial court's award, therefore, represents an erroneous estimate that this appellate court should correct.
24. Consequently, the Appellant prays for the appeal to be allowed, the judgment of the lower court set aside, and the Respondent's suit dismissed with costs.
25. In the alternative, should the court uphold liability, it urges a substantial reduction of the general damages to Kshs. 100,000/-. The Appellant also seeks the costs of this appeal.
26. The Respondent on their part submitted that the Appeal lacks merit and should be dismissed with costs.
27. The Appeal challenges the Trial Magistrate's finding on both liability and quantum, but fails to substantiate its claims.
28. On liability, the Trial Court correctly evaluated the evidence and found that the Respondent, a passenger in Motor Vehicle KBA 339C, established on a balance of probabilities that the accident was caused by the negligence of the Appellant's driver.
29. The Respondent provided direct, consistent testimony that the driver was speeding and lost control.
30. In contrast, the Appellant's evidence, including that of police officers who neither witnessed nor investigated the accident, was unreliable and unsupported by proof for the allegation of a tire burst on the other vehicle.
31. The Appellant bore the burden of proving this assertion and failed to discharge it.
32. Regarding quantum, the award of Kshs. 250,000 in general damages was appropriate and not excessive.
33. The award was based on the severe soft tissue injuries documented in the medical report and was in line with comparable recent authorities.
34. The Trial Magistrate considered the submissions and authorities from both parties, and the Appellant has not demonstrated any error in principle or that the award was inordinately high.



35. Consequently, the Judgment and Decree of the lower court were sound in both fact and law, and the instant Appeal should be dismissed.
36. This appeal is anchored upon two primary grounds, being the trial court's finding on liability and its subsequent award of general damages.
37. The duty of this court as a first appellate court is to re-evaluate the evidence on record, subject it to a fresh and exhaustive examination, and draw its own conclusions while bearing in mind that it neither saw nor heard the witnesses testify.
38. I have carefully considered the pleadings, the evidence adduced before the trial court, the judgment appealed against, the grounds of appeal, and the rival submissions filed by the parties.
39. The principles upon which an appellate court will interfere with a trial court's exercise of discretion in assessing damages are well settled in our jurisprudence.
40. An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate, or unless the court proceeded on wrong principles or misapprehended the evidence in some material respect.
41. On the issue of liability, the Appellant contends that the Respondent failed to discharge the legal burden of proving negligence against him, as the evidence overwhelmingly pointed to motor vehicle KBY 876U as the cause of the accident.
42. The legal principle is trite that he who alleges must prove, as stipulated in Section 107 of the [Evidence Act](#).
43. In a claim grounded in negligence, a plaintiff must establish, on a balance of probabilities, a duty of care, a breach of that duty, and damage resulting from that breach.
44. In this instance, the Respondent, as a fare-paying passenger, was owed the highest duty of care by the Appellant's driver.
45. Her pleaded case was that the driver of motor vehicle KBA 339C was negligent by driving at an excessive speed, losing control, and causing a collision.
46. Her testimony in court was that she heard a loud bang and lost consciousness, finding herself in hospital thereafter.
47. The driver of the Appellant's vehicle, DW1, testified that it was motor vehicle KBY 876U that rammed into his vehicle.
48. The Appellant's case was that a tyre burst on KBY 876U caused it to veer into the path of his vehicle.
49. The trial magistrate, in apportioning 100% liability against the Appellant, held that the Appellant had failed to enjoin the owner of motor vehicle KBY 876U as a third party.
50. With respect, the failure to enjoin a third party is not, in and of itself, a basis for fixing liability.
51. The question for determination was whether, on the evidence before her, the Respondent had proved negligence against the driver of KBA 339C.
52. The evidence of DW1, the Appellant's own driver, was crucial. He stated that the other vehicle "rammed into" his matatu.



53. This testimony, while blaming the other vehicle, did not absolve him of the possibility of contributory negligence.
54. It was incumbent upon the court to examine whether, in the circumstances, the driver of KBA 339C could have taken any evasive action or was otherwise driving with due care.
55. The mere occurrence of an accident is not proof of negligence. However, the doctrine of *res ipsa loquitur*, which the Respondent invoked, can apply in circumstances where the accident is of such a nature that, in the ordinary course of things, it would not have occurred without negligence on the part of the defendant, and the thing that caused the injury was under the defendant's management.
56. A vehicle veering off the road and colliding with another is often a classic scenario where this doctrine is invoked.
57. The trial magistrate did not make a clear finding on the application of this doctrine or conduct a detailed analysis of the evidence of negligence.
58. Having re-evaluated the record, I find that the evidence on the precise mechanism of the accident was conflicting and inconclusive.
59. The police abstract, a public document, was not produced to corroborate either version.
60. The Respondent did not witness the accident, and the Appellant's driver placed blame elsewhere.
61. In such a situation of evidential uncertainty, the court must determine where the balance of probability lies.
62. Considering that the Respondent was an innocent passenger in the Appellant's vehicle, and in the absence of clear and convincing evidence that the accident was solely and inexorably caused by the negligence of the driver of KBY 876U, a finding of equal liability would have been the more equitable and just conclusion.
63. This approach finds support in the principle that where the evidence does not clearly exonerate a defendant, and the cause of the accident remains unexplained, a court may apportion liability equally.
64. Consequently, I find that the trial magistrate erred in imposing 100% liability on the Appellant.
65. In the interests of justice, liability is hereby apportioned equally at 50:50 between the Appellant and the unidentified driver of motor vehicle KBY 876U.
66. On the issue of quantum, the injuries sustained by the Respondent were documented as blunt injuries and multiple bruises to the abdomen, head, neck, and limbs.
67. These are soft tissue injuries with no evidence of any permanent functional disability.
68. The Appellant has urged this court to reduce the award of Kshs. 250,000/- to Kshs. 100,000/-. The Respondent maintains that the award was reasonable.
69. The court must ensure that awards for comparable injuries are consistent to foster predictability and fairness in litigation.
70. In the present case, I find that the award of Kshs. 250,000/- was inordinately high and represented an erroneous estimate. A fair and reasonable compensation for the pain, suffering, and loss of amenities endured by the Respondent would be Kshs. 200,000/- in general damages.
71. The special damages of Kshs. 2,550/-, being specifically pleaded and proved, are upheld.



72. In the final analysis, this appeal partially succeeds. The judgment of the trial court delivered on 10th June 2024 is hereby set aside and substituted with an order that judgment be and is hereby entered in favour of the Respondent against the Appellant as follows;
- i. Liability is apportioned at 50:50.
 - ii. General Damages of Kshs. 200,000/-, and
 - iii. Special Damages of Kshs. 2,550/-, making a total of Kshs. 202,550/-.
 - iv. This sum shall be subject to the apportionment of liability, and therefore the Respondent shall recover 50% of Kshs. 202,550/= which is Kshs. 101,275/-.
 - v. The said amount shall attract interest at court rates from the date of the trial court's judgment until payment in full.
 - vi. Each party shall bear their own costs of this appeal,
73. The costs of the suit in the subordinate court are awarded to the Respondent, similarly subject to the 50% apportionment.
74. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF DECEMBER 2025 VIRTUALLY VIA MT TEAMS AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Appellant

..... for the Respondents

