



**Wawire v Dass & 2 others (Civil Appeal E518 of 2024)
[2025] KEHC 18788 (KLR) (Civ) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E518 OF 2024**

**LP KASSAN, J
DECEMBER 18, 2025**

BETWEEN

WILFRED MASINDE WAWIRE APPELLANT

AND

ISAAC DASS 1ST RESPONDENT

FELIX OTERO REUBEN 2ND RESPONDENT

ELVIS MUGA 3RD RESPONDENT

(Being an appeal from the judgment/decree of the Small Claims Court at Milimani Honourable Opiyo Green Odera (RM) delivered on 20.04.2024 in Nairobi SCC No. E3932 of 2023)

JUDGMENT

1. The trial magistrate, following a statement of claim dated 04.08.2023 filed by the Appellant and the subsequent defence and a full hearing, entered the following judgment in favour of the Respondent:
 - a. Liability is entered 100% against the 3rd Respondent.
 - b. General damages for pain and suffering and loss of amenities at Kshs 280,000/=.
 - c. Loss of income for the month of Jan and February 2024 at Kshs 48,079/=
 - d. Special damages at Kshs 33,040/=.
 - e. Cost of this suit and interest at court rates.
2. A brief background of this matter is that on 01.01.2023 the Appellant was a Pedestrian along Redhill Waiyaki Way Link Road at Lower Kabete Junction when the 1st Respondent by himself or his



agent, driving motor vehicle registration number KAT 999E lost control and hit the Appellant. The Appellant sustained a traumatic brain injury with loss of consciousness for over two months, fracture of the scapulae, fracture of the right 1st rib, fracture of the left 1st rib, blunt chest injury, blunt injury to the left shoulder and blunt injury to the right shoulder. When the 1st Respondent entered an appearance, he filed an application to have him struck out and the 2nd Respondent be enjoined as he had sold the said vehicle through a sale agreement dated 01.03.2022. The 2nd Respondent upon service then entered an appearance and also indicated that he had sold the said vehicle to the 3rd Respondent vide a sale agreement dated 01.06.2022. The trial court suo motto enjoined the 3rd Respondent who then claimed he had sold the vehicle to one Captain Sigi. However, there was no sale agreement save the 3rd Respondent produced two mpesa payouts to support the same. In her judgment, the trial court found that the 3rd Respondent was the beneficial owner and was 100% liable for the accident.

3. The Appellants have now appealed against the decision of the subordinate court on liability and quantum on the following grounds as:
 1. That the Learned Trial Adjudicator erred in law in admitting third parties without there being third-party proceedings applications filed by the Respondents.
 2. That the Learned Trial Adjudicator erred in Law by allowing the 1st Respondent to file amended pleadings without leave of court.
 3. That the Learned Trial Adjudicator erred in law by allowing the 1st Respondent to file pleadings when pleadings had closed without prior seeking of the court's leave.
 4. That the Learned Trial Adjudicator erred in law sitting on its own appeal and dismissing orders it had made earlier without an appeal or review application by the Respondent.
 5. That the Learned Trial Adjudicator erred in law by failing to consider the legal provisions stating the period within which a transfer of a sold motor vehicle must take place and the consequences thereof.
 6. That the Learned Trial Adjudicator erred in law by misdirecting himself and holding that adverse mentioning of a party is a ground of inclusion of the mentioned party in ongoing proceedings.
 7. That the Learned Trial Adjudicator erred in law by failing to consider conventional awards and/or precedents for general damages in case of similar injuries and awarded general damages which are very low.
 8. That the Learned Trial Adjudicator erred in law in the assessment of quantum, thereby giving an award on quantum on general damages of Kshs 280,000/=, which was inordinately low in the circumstances of the claim.
 9. That the Learned Trial Adjudicator erred in law by misdirecting himself and citing wrong authorities in the award of the general damages in the claim.
 10. That the Learned Trial Adjudicator erred in law by failing to consider the Appellant's submissions, precedents and judicial authorities on quantum thereby arriving at an inordinately low amount on quantum in the circumstances of the claim.
4. The appellant seeks that:
 - i. That this appeal be allowed and the judgment of the trial court be set aside.



- ii. The costs of this appeal be borne by the Respondents.
- iii. Such further or other orders as this Honourable Court may deem just and fit to award.

Appellant's submissions

5. The Appellant's submitted that the appeal stems from a road traffic accident in which the Appellant, a pedestrian, sustained grievous injuries, including traumatic brain injury with prolonged memory loss, and fractures of the scapulae and both first ribs, by a vehicle driven carelessly and without active insurance cover. The Appellant argues that all Respondents should be held severally and jointly liable for compensation because the 1st Respondent, the registered owner, failed to fulfil his statutory duty to initiate the transfer of the vehicle to the 2nd Respondent. This failure constituted the primary mistake, leading to the subsequent transfer of the vehicle through the 2nd and 3rd Respondents, and allegedly a 4th party, without proper title documentation (log book), making it impossible for them to legally insure the vehicle and thereby severely jeopardizing the Appellant's ability to obtain compensation. Furthermore, the Appellant contends that the trial court awarded an inordinately low sum of KShs. 280,000 for General Damages, having erroneously classified the severe injuries as soft tissue injuries; based on the severity of the trauma and considering precedents and inflation, the Appellant submits that KShs. 1,500,000 would be an appropriate award.

1st Respondent's submission

6. The 1st Respondent opposes the appeal, seeking to affirm the trial court's judgment and have the appeal dismissed with costs, arguing first that the appeal is incompetent because the Appellant failed to file a certified copy of the decree or a complete record of appeal, which strips the High Court of jurisdiction to hear the matter. On the merits, the 1st Respondent asserts that he bears no liability for the accident because he had sold the motor vehicle and relinquished ownership, possession, and control to the 2nd Respondent long before the incident occurred, contending that the 3rd Respondent was, in fact, the beneficial owner and possessor at the material time. The Respondent also challenges the Appellant's attempt to re-evaluate the factual findings of ownership made by the trial court, arguing that the appellate jurisdiction is limited to matters of law. Lastly, regarding the quantum of damages, the 1st Respondent submits that the trial court correctly assessed the injuries and awarded an appropriate sum of KShs. 280,000, arguing that the award was not based on erroneous principles and therefore should not be interfered with by the appellate court.

2nd Respondent submissions

7. The 2nd Respondent's submissions seek the dismissal of the appeal with costs, fundamentally arguing that he was not the registered owner or the driver of the motor vehicle KAT 99E at the time of the accident and thus cannot be held jointly or severally liable, nor did he owe any duty of care to the Appellant. The 2nd Respondent maintains that he had sold the vehicle to the 3rd Respondent on 01.06.2022, which is supported by a sale agreement and motor vehicle search records, thereby successfully rebutting the presumption that the registered owner is the actual owner. Although the 2nd Respondent concedes that the Appellant may have suffered injuries and damages, he contends that the blame cannot be attributed to him and the Appellant failed to join the relevant parties to the case. Finally, concerning the quantum of damages, the 2nd Respondent submits that the trial court's award of KSh 280,000 for General Damages was rightfully assessed and should not be disturbed by the appellate court, as interference is only warranted if the trial court proceeded on wrong principles or the award was inordinately low.



8. The following issues arise for determination:
- a. Whether this appeal is incompetent for failure to annex a decree or for want of a complete record.
 - b. Whether the learned trial magistrate erred in law in relation to joinder of parties, amendment of pleadings and, ultimately, in holding the 3rd Respondent 100% liable while absolving the 1st and 2nd Respondents.
 - c. Whether the award of Kshs 280,000/= as general damages for pain, suffering and loss of amenities was inordinately low and based on an erroneous assessment of the injuries and principles of law.
 - d. What orders should be made as to costs.

Analysis and Determination

9. This appeal is against the decision on liability and damages, I am guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held that;
- “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. 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”
10. As a first appellate court, I am bound by the principle in *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123 to re-evaluate and re-analyze the evidence afresh while bearing in mind that I did not have the opportunity to see or hear the witnesses testify.

A. Competence of the Appeal

11. The 1st Respondent argues that the appeal is incompetent for failure to annex a certified copy of the decree and for want of a complete record.
12. Order 42 Rule 2 of the Civil Procedure Rules requires that a memorandum of appeal be accompanied by a copy of the decree or order appealed from. Order 42 Rule 13(4) further sets out the documents that should form part of the record at the hearing of the appeal. However, not every omission is automatically fatal. The Court must consider whether there is sufficient material on record to enable it to determine the appeal and whether any prejudice has been occasioned.
13. In the present appeal, the record contains the judgment of the subordinate court, certified proceedings and the pleadings necessary to appreciate the issues raised. The complaint about the missing decree has been raised at the stage of submissions, long after directions on the appeal were taken, without any suggestion of actual prejudice suffered by the Respondents. A formal decree is a reflection of the judgment; any omission can be remedied and does not deprive this Court of jurisdiction where the substance of the decision appealed from is clear and available.
14. In line with the overriding objective in sections 1A and 1B of the *Civil Procedure Act* to facilitate the just, expeditious and affordable resolution of civil disputes, I am not persuaded that the omission complained of should defeat the appeal. I therefore hold that the appeal is properly before this Court and proceed to consider it on the merits.



B. Joinder, Amendments and Liability

Whether there was error in the joinder of parties and amendments

15. Grounds 1–6 of the appeal essentially fault the learned trial adjudicator for, enjoining the 2nd and 3rd Respondents “without third-party proceedings”; Allowing amendments and further pleadings after the close of pleadings; and allegedly sitting “on appeal” over his own orders and failing to give effect to statutory timelines for transfer of motor vehicles.
16. The record shows that the 1st Respondent applied to have the 2nd Respondent enjoined after disclosing that he had sold the vehicle to him. Likewise, after the 2nd Respondent disclosed an onward sale to the 3rd Respondent, the court, on its own motion, ordered that the 3rd Respondent be joined.
17. Order 1 Rule 10(2) of the Civil Procedure Rules expressly empowers a court, at any stage of the proceedings, either upon application or of its own motion, to order that a party be added whose presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. Joinder in such circumstances is distinct from “third party proceedings” under Order 1 Rule 15, which are invoked by a defendant seeking contribution, indemnity or some other relief from a third party.
18. In this case, the court was faced with multiple competing claims of ownership in a personal injury suit. It was clearly necessary that all persons claiming to have had an interest in the vehicle be made parties so that liability, if any, could be properly determined. The court’s action in enjoining the 2nd and 3rd Respondents was therefore well within its powers and consistent with Order 1 Rule 10(2). No prejudice has been demonstrated to have been occasioned to the Appellant; indeed, the joinder broadened the pool of potential tortfeasors from whom he could recover.
19. With regard to amendments and further pleadings after the close of pleadings, the Appellant complains that the learned adjudicator allowed the 1st Respondent to amend his pleadings without leave. The record indicates that directions on amendment and service were given in open court and the Appellant was afforded an opportunity to respond, after which the matter proceeded to hearing on the basis of the amended pleadings. Even if the procedural steps were not strictly perfect, any defect was cured by the parties’ full participation and the court’s broad powers under Order 8 (Amendment of pleadings) and sections 1A, 1B and 3A of the *Civil Procedure Act*. No miscarriage of justice has been shown to have arisen from the complained-of amendments.
20. I also see no basis for the allegation that the learned adjudicator “sat on appeal” over his own orders. What emerges from the record is not a reversal of final orders but the exercise of case management powers, including joinder of parties and directions on pleadings, in the interests of a comprehensive determination of the dispute.
21. The grounds of appeal challenging joinder and amendment therefore fail.

Whether the finding of 100% liability against the 3rd Respondent was erroneous

22. On liability, the principal complaint is that the 1st Respondent, as the registered owner, ought to have been held liable jointly with the 3rd Respondent (and possibly the 2nd Respondent) because he failed to effect transfer of the vehicle within the time prescribed, thereby frustrating proper insurance and exposing members of the public to risk.
23. Section 8 of the *Traffic Act* provides that the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner. The registration certificate (logbook), therefore,



raises a rebuttable presumption. Courts have repeatedly held that this presumption may be displaced by credible evidence of actual or beneficial ownership or of a sale and delivery of the vehicle prior to the accident.

24. In the present case, the 1st Respondent produced a written sale agreement dated 01.03.2022 showing that he sold and delivered the motor vehicle to the 2nd Respondent. The 2nd Respondent in turn produced a sale agreement dated 01.06.2022 showing that he sold and delivered the vehicle to the 3rd Respondent. The 3rd Respondent admitted purchase and possession of the vehicle but alleged an onward sale to one “Captain Sigi”, for which no written agreement was produced and only MPesa transactions were tendered.
25. The learned trial adjudicator, having heard and seen the witnesses, was persuaded that, as at 01.01.2023 the 3rd Respondent was the person in possession and control of the vehicle, and thus the beneficial owner, and that the 1st and 2nd Respondents had effectively divested themselves of ownership.
26. Sitting as an appellate court, I am slow to interfere with such factual findings unless they are plainly unsupported by the evidence. On my own re-evaluation of the record, I agree with the trial court that the chain of written sale agreements placing the vehicle in the hands of the 3rd Respondent by June 2022 was cogent. The alleged onward sale to “Captain Sigi” was unsupported by any formal documentation concerning the vehicle and did not credibly demonstrate that the 3rd Respondent had relinquished possession and control by the date of the accident. By his own statement, the 3rd Respondent testified that he was waiting for payment of the full purchase price before he could enter into an agreement with “Captain Sigi”.
27. The Appellant’s argument that the 1st Respondent should nonetheless be liable due to failure to effect formal transfer within the statutory period is not without moral force; however, civil liability in negligence is fundamentally anchored on control and responsibility at the material time. Statutory obligations regarding timely transfer and registration may attract administrative or penal consequences but do not automatically override clear evidence that actual control had passed to a beneficial owner, particularly where the injured third party has sued and proved liability against that beneficial owner.
28. In these circumstances, I find no misdirection in the trial court’s conclusion that the 3rd Respondent, as beneficial owner and person in control of the vehicle on 01.01.2023, was properly held 100% liable in negligence, and that the presumption attaching to the 1st Respondent as registered owner stood rebutted.
29. The appeal against the finding on liability therefore fails.

C. Quantum on General Damages

30. Grounds 7–10 challenge the award of Kshs 280,000/= as general damages as inordinately low, alleging that the trial court mischaracterised the injuries as soft tissue, failed to consider comparable precedents and misapplied the law.
31. As already noted, an appellate court will only interfere with an award of damages if it is shown that the trial court:
 - i. Acted on wrong principles of law;
 - ii. Misapprehended the relevant evidence; or
 - iii. Arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.



32. The medical evidence on record shows that the Appellant sustained a traumatic brain injury with loss of consciousness for over two months; Fractures of both first ribs; Fracture of the scapulae; Blunt chest injury; Soft tissue injuries to both shoulders.
33. There was evidence of prolonged hospitalisation and residual cognitive and physical effects consistent with a serious head injury.
34. Despite this, the learned trial magistrate appears, from the judgment, to have grouped the injuries with relatively modest soft-tissue cases and to have relied on authorities that involved significantly less severe trauma. The award of Kshs 280,000/=, in the circumstances of a traumatic brain injury with a lengthy period of unconsciousness and multiple fractures, is manifestly on the lower side.
35. In the case of *Great Rift Express Shuttle Service & another v Kiplagat* (Civil Appeal E027 of 2021) [2025] KEHC 6687 (KLR) (22 April 2025) (Judgment), the Respondent therein sustained fractures of the 5th and 7th ribs of the right side of the chest, fracture of the clavicle and multiple abrasions on both hands. Permanent disability was assessed between 30%-40%. The Trial court award of Kshs 1,000,000/= was upheld by the High Court.
36. Even taking into account, the need for restraint in interfering with a trial court's discretion, I am satisfied that the magistrate misapprehended the nature and severity of the injuries suffered by the Appellant. Comparable awards for serious head injuries with fractures, when adjusted for inflation, fall substantially above the figure of Kshs 280,000/=.
37. I note in the *Great Rift* case supra, the Respondent sustained permanent disability of 30-40% which was not the case herein. In balancing the need for reasonable but not extravagant compensation, I consider that a fair and just award for pain, suffering and loss of amenities in this case is Kshs 800,000/=.
38. I therefore set aside the award of Kshs 280,000/= made by the trial court under this head and substitute it with an award of Kshs 800,000/= as general damages for pain, suffering and loss of amenities.
39. The awards for loss of income (Kshs 48,079/=) and special damages (Kshs 33,040/=) were not specifically challenged on distinct grounds in this appeal and, in any event, I find no misdirection in the trial court's treatment of those heads. They are therefore upheld as awarded.

Disposition

40. The upshot of the foregoing analysis is as follows –
 - i. The appeal on liability fails. The finding of the trial court that the 3rd Respondent is 100% liable for the accident is hereby upheld. The 1st and 2nd Respondents remain absolved of liability.
 - ii. The appeal on quantum of general damages succeeds in part. The award of Kshs 280,000/= for pain, suffering and loss of amenities is set aside and substituted with an award of Kshs 800,000/=.
 - iii. The awards for loss of income (Kshs 48,079/=) and special damages (Kshs 33,040/=), together with the trial court's orders on costs of the suit, are upheld.
 - iv. The enhanced award of Kshs 800,000/= shall attract interest at court rates from the date of the judgment of the subordinate court until payment in full, just as the original award would have done.
41. As the Appellant has only partially succeeded, and only as against the 3rd Respondent, I order that:



- a. The Appellant shall have half the costs of this appeal as against the 3rd Respondent.
- b. The costs for the 1st and 2nd Respondents to be borne by the 3rd Respondent.

42. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2025

LINUS P. KASSAN

JUDGE

In the presence of:-

Wandera for Appellant

Vincent Olala for 1st Respondent

Carol – Court Assistant

