

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E033 OF 2024

MUREITHI CHARLES 1ST
APPELLANT DANIEL KIMUTAI CHERUIYOT
2ND APPELLANT

VERSUS

JACOB ATINA NYAGUSUKA
RESPONDENT

*(Being an appeal from the judgment and decree of the Senior
Principal Magistrate's Court at Mavoko (Hon. B. Ojoo, SPM)
delivered on 18th January 2024 in CMCC No. 467 of 2014)*

JUDGMENT

1. This appeal challenges both liability and quantum. The Respondent, a passenger in motor vehicle KAX 661 Z, instituted proceedings in the trial court seeking compensation for personal injuries sustained in a road traffic accident. The trial court found the Appellants 50 per cent liable and awarded the Respondent general damages of Kshs.400,000/- and special damages of Kshs.3,000/- less 50 per cent contribution totalling to Kshs.201,500/-.
2. Dissatisfied with that decision, the Appellants lodged this appeal. Their grounds of appeal can be collapsed into two broad issues:

- a. Whether the trial magistrate erred in law and fact in apportioning liability at 50:50 between the parties.
 - b. Whether the award of damages was inordinately high and based on wrong principles.
3. The appeal was canvassed by way of written submissions. The Appellants filed submissions dated 3rd March 2025, while the Respondent filed submissions dated 17th March 2025.
4. Upon considering the memorandum of appeal, the rival submissions, and the authorities cited, the central issues for determination are: first whether the trial court erred in finding the Appellants 50% liable and second, whether the award of damages was excessive and based on wrong principles.
5. The Appellants contend that the subject motor vehicle was a tipper truck designed to carry only two passengers in the front cabin. The Respondent was riding at the back, which was designated for goods, not passengers. They argue that the Respondent was an unauthorized passenger who had “stolen a ride” and was therefore the author of his own misfortune. Reliance was placed on the testimony of PW1, who admitted to being at the back of the lorry at the time of the accident.
6. The Appellants further faulted the trial court for failing to apply the principle of *stare decisis*, noting that several appeals arising from the same accident had already been determined. In particular, they cited: **Edwin Chiroto**

***Mandera v Mureithi Charles & Another* [2019] eKLR**, where claims by other passengers were dismissed on the basis that the driver was not negligent and that the passengers had assumed the risk under the doctrine of *volenti non fit injuria*; and ***Mureithi Charles & Another v Boniface Kamunzyu Uvyu (Suing as personal representative of the estate of Thomas Kilonzo Kamunzyu (Deceased))* [2019]eKLR**, where the High Court set aside a trial court's apportionment of liability at 50:50 and substituted it with an order dismissing the suit with costs. The Appellants therefore urged this Court to uphold consistency in judicial findings and dismiss the Respondent's claim.

7. On the other hand, the Respondent maintained that he was expressly authorized by the 2nd Appellant to board the vehicle. He argued that the accident was caused by the driver's failure to control the vehicle during heavy rain, leading it into a culvert. He relied on ***Paul Muthui Mwavu v Whitestone (K) Ltd* [2015] eKLR**, submitting that once the Appellants permitted him to board, they owed him a duty of care.
8. This being a first appeal, this Court is obliged to re-evaluate the evidence and draw its own conclusions, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses.
9. In the present case, it is not disputed that the Respondent was riding at the back of a tipper truck, a space not

designated for passengers. It is also not in dispute that other suits arising from the same accident have already been dismissed by the High Court, with findings that such passengers assumed the risk and that the driver was not negligent.

10. Consistency in judicial outcomes for identical facts is a cornerstone of legal certainty. In this instance the High Court in two different appeals made a finding that the appellants were not liable for the accident. Therefore, the trial court ought to have been guided by and bound the decision of the appellate court in accordance with the doctrine of *stare decisis* as submitted by the appellants.
11. The doctrine of *stare decisis* is central to our jurisprudence. In ***Kidero & 5 Others v Waititu & Others, Sup. Ct. Petition No. 18 of 2014 (Consolidated with Petition No. 20 of 2014)***, the Supreme Court emphasised that the courts should adhere to the principle that enhances certainty and predictability in the legal system. Courts of concurrent jurisdiction must strive for consistency, particularly where the facts are identical and the lower courts should equally be guided by the holding of the higher courts where the facts are identical. Thus, given that the facts of this case are similar to those of ***Edwin Chiroto Manderu v Mureithi Charles & Another [2019] eKLR***, and ***Mureithi Charles & Another v Boniface Kamunzyu Uvyu (Suing as personal representative of the estate of Thomas***

Kilonzo Kamunzyu (Deceased) [2019] eKLR, the trial court ought to have been guided by the holding and findings of the appellate court. I therefore find that the trial court erred in failing to adopt and adhere to those binding precedents.

12. Accordingly, and in line with the findings by other courts of concurrent jurisdiction, this Court finds that the Respondent was wholly to blame for the accident. The apportionment of liability at 50:50 by the trial court is set aside.
13. On quantum, the Respondent sustained fractures to the left tibia and fibula, together with soft tissue injuries. The trial court awarded general damages of Kshs.403,000/=. The Appellants argued that the award was excessive and failed to consider comparable awards for similar injuries.
14. However, having found that the Appellants are not liable for the accident, it is unnecessary to interrogate the issue of quantum. The award of damages cannot stand where liability has been wholly displaced.
15. For the foregoing reasons, the appeal succeeds. The judgment and decree of the trial court in **Mavoko CMCC No. 467 of 2014** are hereby set aside. The Respondent's suit in the lower court is dismissed. Each party shall bear their own costs of this appeal and of the suit in the trial court.

Dated, signed and delivered at Machakos this 14th day of January, 2026.

RHODA RUTTO

JUDGE

In the presence of;

.....for Appellant

.....for Respondent

Selina Court Assistant