

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL NO. E062 OF 2024

PHILIP MUTOTO GACHANJA.....APPELLANT

VERSUS

FRANCIS MUCHERU.....RESPONDENT

JUDGMENT

*(Appeal from the Judgment dated 6/03/2024 delivered in Eldoret CMCC No. E094 of 2022 by
Hon. R.K. Onkoba-SRM)*

1. This Appeal arises from the Judgment delivered in the said Magistrate’s Court suit in which the Respondent (as the Plaintiff) instituted a claim against the Appellant (as Defendant) seeking compensation for injuries he suffered as a result of a road/traffic accident. The Judgment was in favour of the Respondent and the Appeal is stated to be against the trial Court’s decision on both liability and quantum.
2. In his Complaint filed at the Magistrate’s Court, dated 2/02/2022 through **Messrs Morgan Omusundi Law Firm**, the Respondent pleaded that he was a passenger on the motor-cycle registration number **KMDH 721P** when on 29/12/2021 along the Kapseret-Eldoret road, the Appellant’s motor vehicle registration **KBU 238Z**, was so negligently driven, controlled and/or managed causing it to lose control and veer off the road, resulting into an accident which occasioned the Respondent bodily injuries for which the Respondent held the Appellant liable. The Respondent listed several particulars of negligence against the Appellant’s driver, and prayed for general damages and special damages of Kshs 74,278/-, costs and interest.
3. The Appellant, in response, filed the Statement of Defence dated 14/03/2022 through **Messrs Onyinkwa & Co. Advocates** wherein he denied, *inter alia*, occurrence of the accident and the particulars of negligence and liability alleged.
4. At the trial, the Respondent-Plaintiff testified as **PW1**. He adopted his Witness Statement and stated that he suffered injuries on the left side of the head, left ear and mouth, teeth, lips and legs, and that he underwent 2 surgeries. He also testified that the doctor found that he required a sum of Kshs 150,000/- for future medical expenses.
5. From the record, I gather that the suit the subject of this Appeal, **Eldoret CMCC No. 094 of 2022** was consolidated with **Eldoret CMCC No. 093 of 2022**, which was then adopted as **Iten High Court Civil Appeal No. E062 of 2024**

the lead file. I thus gather that the evidence of a Traffic Police Officer taken therein was then adopted in the suit. The Record of Appeal before me does not however contain a transcript of the evidence taken in the test suit. However, looking at the parties' respective Submissions and also the Judgment, it is clear that the Traffic Officer (**PW2**) basically stated that the motor-vehicle hit the motor-cycle from the rear but agreed that he was not the Investigating Officer, and he also did not produce any sketch plan or police file or the investigations diary, and he did not also attribute blame for the accident to any person.

6. In defence, one **Dennis Mbugu Gachanja** testified as **DW1**. He, too, adopted his Witness Statement in which he had stated that he was driver of the Appellant's motor vehicle at the time of the accident. He testified that he saw the motor-cyclist approaching from a rough road carrying a pillion passenger and knocked his motor vehicle. He denied that the motor-cycle was ahead of his motor vehicle and insisted that it is the motor-cyclist who hit the vehicle while coming from a feeder road. He also observed that the police abstract did not blame him.
7. After the hearing, the trial Court delivered the Judgment in favour of the Respondent. Liability was found at 100% against the Appellant and damages were awarded (plus costs and interest) in the following terms:

i)	General damages	Kshs 800,000/-
ii)	Special damages	Kshs 74,278/-
	Total	Kshs 874,278/-

8. Dissatisfied with the Judgment, the Appellant filed this appeal on 22/07/2024, premised on the following grounds:
- i) **That the Learned Magistrate erred in law and fact in holding the Appellant 100% liable without taking into account the evidence adduced and/or on record.**
 - ii) **The Learned trial Magistrate erred in law and fact to apportion liability on the basis of contributory negligence on the part of the Respondent.**
 - iii) **The Learned trial Magistrate erred in law and using the wrong principles in the assessment of damages thereby arriving at an erroneous decision.**

- iv) **The Learned trial Magistrate erred fact by failing to take into consideration and/or be guided by relevant authorities and/or precedents with comparable injuries to the ones sustained by the Respondent thereby awarding an excessive amount as general damages.**
 - v) **The Learned trial Magistrate erred in law and fact by awarding the Respondent Kshs. 800,000/- as general damages which is inordinately high, in view of the evidence on record.**
 - vi) **The Learned trial Magistrate erred in law and fact in failing to consider the Submissions by the Appellant on the issue of liability as well as the issue of quantum while assessing general damages payable to the Respondent.**
9. The Appeal was then canvassed by way of written Submissions. The Appellants' Submissions is dated 11/12/2024 while the Respondent's is dated 15/09/2025.

Appellant's Submissions

10. Counsel for the Appellant submitted that the trial Magistrate erred in finding the Appellant 100% liable. He pointed out that the Traffic Police Officer confirmed that he was not the Investigating Officer, he did not witness the accident, he did not produce any sketch maps, police file or the investigation diary and that his testimony is therefore hearsay. He pointed out further that the police abstract indicated that the matter was still pending under investigations, the driver was never charged with any traffic offence, and the Occurrence Book did not attribute blame. He submitted that the Respondent's testimony was that both the motor-cycle and the motor vehicle were moving in the same direction when the motor vehicle knocked the motor-cycle from behind, while the Respondent, on his part, claimed that the motor-cycle was approaching from a feeder road when it knocked the motor-vehicle. He thus faulted the trial Magistrate for basing her findings on the mere fact that the Respondent was a passenger, and not analysing the conflicting evidence in respect to the two versions presented of how the accident occurred. He asserted that the driver of the motor-vehicle had the right of way as he was on the highway, that he applied emergency brakes, and that the simple fact that the Respondent was a passenger did not absolve him from liability as he had a duty to warn the rider not to join the highway carelessly. Regarding the injuries sustained by the Respondent, Counsel submitted that considering the nature thereof, the award of general damages be reduced to between Kshs 200,000 and 300,000/-. He cited several authorities.

Respondent's Submissions

11. The Respondent's Counsel, on his part, contended that a pillion passenger cannot be held responsible for the occurrence of an accident unless there is clear evidence of careless exposure of oneself to any hazard that may arise from the acts of others. He dismissed the Appellant's Counsel contention that the passenger should have warned the rider as impractical and untenable in law, and averred that the Appellant did not demonstrate any exposure by the Respondent to any hazard. He submitted that if the Appellant was seeking indemnity or contribution from the rider, then his recourse was to institute 3rd Party proceedings against the rider, and the Appellant cannot now shift blame to an innocent passenger. Regarding quantum, he submitted that the award of general damages at Kshs 800,000 was fair.

Determination

12. The duty of an appellate Court has been reiterated in a plethora of cases, including, for instance in the case of **Kenya Ports Authority vs Kuston (Kenya) Ltd. [2009] 2 EA 212**, where the Court of Appeal guided in the following terms:

“On a first Appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly, that the responsibility of the Court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

13. In this case, the award for special damages was not challenged. Regarding the claim for future medical expenses, the trial Magistrate did not grant it and did not also say anything about it. As the same was not even pleaded in the Plaint, I leave it at that. In view thereof, the issues that arise for determination are the following;

- i) **Whether the trial Court erred in finding the Respondent 100% liable for causing the accident.**
- ii) **Whether the trial Court's award in general damages was inordinately high or excessive.**

14. The extent of the powers of an Appellate Court when called upon to review an assessment and award of damages by a trial Court is well-settled. It is that an appellate Court will only interfere with the conclusions and findings of a trial Court if the same was not supported by **Iten High Court Civil Appeal No. E062 of 2024**

evidence or was premised on wrong principles of law. In re-affirming this principle, the Court of Appeal, in the case of **Mwangi V. Wambugu (1984) KLR 453**, held as follows:

“A court of Appeal will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principle in reaching the finding and an appellate court is not bound to accept the trial Judge’s finding of fact if it appears either that he has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

15. In this case, the Respondent was a pillion passenger carried on a motor-cycle which was involved in an accident with the Appellant’s motor-vehicle. It is true, as contended by the Appellant’s Counsel, that the trial Magistrate did not attempt to make any analysis on how the accident occurred. This is because she was presented with two conflicting versions both presented by eye-witnesses. While the Respondent contended that the motor-cycle was knocked from the rear as the two were moving towards the same direction, the Appellant on the other hand, averred that it is the motor-cycle that knocked the motor vehicle after the motor-cycle abruptly joined the highway from a feeder road. The police abstract did not attribute blame and the Traffic Police Officer’s did not also assist as he did not produce any sketch plans. It is therefore clear that one of the two witnesses must have lied to the Court.

16. Studying the matter however, I choose to believe the Respondent. I make this finding because the Appellant’s witness, although claiming that the motor-vehicle was knocked by the motor-cycle when the motor-cycle abruptly joined the highway from a feeder road, he did not disclose which part of the motor-vehicle was, in fact, knocked. This issue is relevant because the Appellant’s witness, when asked in cross-examination, which part of the motor-vehicle was damaged, he stated that it was the left side of the bumper and the left headlights. This is sufficient proof that the damaged part of the motor-vehicle was its front part. The Appellant’s witness did not explain, how, if indeed it is the motor-cycle that knocked the motor-vehicle upon joining the highway from a feeder road, the damage ended up to be on the front side of the motor-vehicle. The location of this damage on the motor-vehicle strongly points to the Respondent as telling the truth. Although the trial Magistrate’s determination that the Appellant’s driver was liable simply because the Respondent was a pillion passenger was not a proper manner of attributing blame, proof in civil cases being on a balance of probabilities, and having now established that the damage on the motor-vehicle

was on the front part, I find no reason to interfere with the trial Magistrate's eventual conclusion that the Respondent proved his case that the Respondent's driver is the one who knocked the motor-cycle from the rear. The Appellant's contention that it is the motor-cycle that knocked the motor-vehicle upon joining the highway from a feeder road being wholly unsupported, I decline to interfere with the trial Court's final determination on liability.

17. On the issue of quantum, the limits within which an Appellate Court can interfere is also well-known. The Court of Appeal, in the case of **Kemfro Africa Limited t/a "Meru Express Services" [1976] & Another V. Lubia & Another (No. 2) [1987] KLR**, held that:

".... The principles to be observed by the appellate Court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held to be that; it must be satisfied that either that the Judge in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

18. The Court of Appeal reiterated the above principle in the case of **Dilip Asal v Herma Muge & another [2001] eKLR [2001] KLR**, as follows:

"..... Assessment of damages is essentially an exercise of discretion and the grounds upon which an appellate Court will interfere with the manner in which a trial Court assessed damages relate to issues of an error of principle."

19. An appellate Court will not therefore disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. For the appellate Court to interfere, it must be shown that the trial Court proceeded on wrong principles, or that it misapprehended the evidence in some material respect and so arrived at a figure which was unsupported.

20. On the mode of assessing damages, the Court of Appeal in the case of **Odinga Jacktone Ouma v Moureen Achieng Odera [2016] eKLR** stated that **"comparable injuries should attract comparable awards"**. Similarly, in **Simon Taveta v Mercy Mutitu Njeru Civil Appeal 26 of 2013 [2014] eKLR** the Court of Appeal observed that:

"The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past."

21. From the above, it is clear that in awarding damages, some degree of uniformity must be sought depending on the facts and the best guide would be to consider recent awards on comparable injuries.
22. The Appellants' complaint is that the award of general damages at the sum of Kshs 800,000/- was excessive and inordinately high. The Respondent relied on the Medical Report dated 4/01/2022 prepared by **Dr. J. Sokobe** who described the injuries suffered by the Respondent as head injury with loss of consciousness, 3 broken upper incisor teeth, deep cut wound on the parietal scalp, bruises on the right ear and a cut on the upper lip. He then assessed permanent disability at 3% and stated that the Respondent requires further treatment (composite filling) at an estimated cost at Kshs 150,000/-. The Appellant, on his part, relied on the Medical Report dated 1/04/2022 prepared by **Dr. Z. Gaya**, who described the injuries as depressed skull fracture with loss of consciousness, broken 3 upper incisor teeth, deep cut wound on the skull, bruises on the right ear and a cut wound on the upper lip. He, too, stated that the broken teeth require filling but estimated the cost at the lesser figure of Kshs 50,000/-. He did not, on his part, find any permanent disability.
23. At the trial Court, the Respondent (Plaintiff) had proposed an award of Kshs 1,500,000/- in general damages, while the Appellant (Defendant) had proposed Kshs 150,000-200,000/-.
24. To establish comparable awards, I have perused various relatively recent authorities in which the injuries suffered were similar or close to those suffered herein, including fracture of the skull or other similar head injuries. I have for instance, picked out the following:
- a) **Ng'arng'ar J**, in the case of **Gekari v Nyaberi [2025] KEHC 9682 (KLR)**, on appeal, reduced an award of Kshs 2,000,000/- to Kshs 500,000/-.
 - b) **Limo J**, in the case of **Mbeva v Kenya Malik Limited & another [2023] KEHC 23269 (KLR)**, on appeal, reduced an award of Kshs 2,500,000/- to Kshs 500,000/-.
 - c) **F. Ng'arng'ar J**, in the case of **D Light K Company & another v GK alias Baby GK (Suing through the next friend and mother, BCC) [2025] KEHC 11483 (KLR)**, on appeal, reduced an award of Kshs 1,100,000/- to Kshs 600,000/-.

d) **R. Ougo J**, in the case of **Watu Credit Co Limited v Matere [2025] KEHC 2608 (KLR)**, on appeal, and although she dismissed the lower Court suit for other technicalities, assessed the possible damages she would have awarded at a sum of Kshs 500,000/-, down from the Kshs 750,000/- awarded by the lower Court.

e) **R. Mwongo J**, in the case of **Mwadundu v Ndwiga [2025] KEHC 6425 (KLR)**, on appeal, upheld an award of Kshs 500,000/- made by the lower Court.

25. From the foregoing, I find that most awards for the injuries in issue herein range at between Kshs 40000,000/- and Kshs 600,000/-, of course each depending on the severity thereof. While the prevailing status of our currency and economy have to be taken into account in awarding damages, astronomical awards must also be avoided. The Court must therefore ensure that awards result in fair compensation.

26. In light of the comparable awards and the principles referred to, I find the sum of Kshs 800,000/- for general damages awarded by the trial Magistrate to be considerably high and substantially excessive to amount to an error in principle, which justifies interference by this Court. Accordingly, I set aside the award of Kshs 800,000/- and substitute it with one for Kshs 500,000/-.

Final Orders

27. The upshot of my findings above is that this Appeal partially succeeds, and only to the extent that the award of Kshs 800,000/- under the head of general damages is reduced to Kshs 500,000/-.

28. Accordingly, the final particulars and computation of the Judgment shall be as follows:

Liability	100% against the Appellant
General damages	Kshs 500,000.00
Special damages	Kshs 74,278.00
Total	Kshs 574,278.00
Plus costs and interest at Court rates	

29. Since the Appeal has only partially succeeded, each party shall bear his/her own costs of thereof.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 30TH DAY OF JANUARY 2026

.....
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Ms. Nyabuto for the Appellant

Mr. Gaylord for the Respondent

Court Assistant: Brian Kimathi