



REPUBLIC OF KENYA



**Maisha Yetu Services Co Ltd v Misigo (Civil Appeal E185 of 2023)  
[2026] KEHC 773 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 773 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E185 OF 2023  
S MBUNGI, J  
JANUARY 29, 2026**

**BETWEEN**

**MAISHA YETU SERVICES CO LTD ..... APPELLANT**

**AND**

**JOYCE KAGAI MISIGO ..... RESPONDENT**

*(Being an appeal from the judgement and decree of Hon.Kassan (CM)delivered on 22/11/2023 in Kakamega CMCC No.258 of 2018 between Joyce Kagai Misigo Vs Maisha Yetu Services CO.LTD)*

**JUDGMENT**

1. This appeal emanates from the judgement of Hon.Kassan(CM)delivered on 22/11/2023 in Kakamega CMCC No.258 of 2018.
2. The Appellant herein, being dissatisfied with the aforesaid decision, filed a memorandum of appeal on 11/12/2023 and appealed to the Honorable Court on the issue of quantum on the ground that the learned trial magistrate erred in both law and fact in finding that the plaintiffs had proved his case on a balance of probabilities, notwithstanding the Plaintiffs failure to adduce any evidence of injury, particularly in light of the fact that the initial treatment notes were not produced in evidence.
3. The appellant alleged that the learned magistrate erred in law by applying incorrect principles in the assessment of damages and by failing to properly appreciate and evaluate the totality of the evidence on record together with the submissions made on behalf of the appellant thereby arriving at an erroneous decision.
4. The appellant was aggrieved that the trial court failed to appreciate that the Respondent had failed to discharge the burden of proof placed upon her as a matter of law.
5. The learned magistrate also erred in assessing general damages at KSh. 200,000/= and failed to apply the principles applicable in award of damages and a comparable award made for similar injuries.



6. The court gave direction that the appeal be disposed off by way of written submissions.
7. The Appellant filed submissions.
8. The Respondent at the time of writing the Judgment he has not filed submissions.
9. The Appellant in its submissions, condensed the grounds of appeal into one, that the trial magistrate erred in finding that the Plaintiff had proved that she had suffered injuries as a result of the accident.
10. I have looked at the judgment of the lower court , the record of appeal, the Memorandum of appeal and the submissions filed by Appellant.
11. This being a first appeal, the jurisdiction of this court involves the reassessment of facts and evidence in order for the court to arrive at its own independent decision. In doing so, the court is required to consider that it neither saw nor heard the witnesses testifying. In the case of Abok James Odera t/a A.J Odera & Associates Vs John Patrick Machira & Co. Advocates (2013)Eklr. The duty of a first appellate court was summarized as follows:-

(this being a first appeal , we reminded of our primary role as a first appellate court namely, to re-evaluate, re-asses and re-analyse the extracts on the record and then determined whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way”

As such, this court is expected to reassess and re-evaluate the evidence on record and come up with a finding as to whether or not the judgment and decree of the trial court should be interfered with.

#### **Analysis and Determination:-**

12. This court is alive to the rule that an appellate court does not ordinarily interfere with an award of damages made by a lower court unless the law court did not consider the appropriate principles governing award of damages.
13. I am guided by the decision of court of appeal in Bashir Butt Vs 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 figure which was either inordinately high or low”.
14. The Respondent pleaded that she suffered the following injuries:-
  - a. Bruises to the scalp
  - b. Blunt injury to the neck
  - c. Bruises to the right shoulder
  - d. Blunt injury to the back.
15. The Appellant case is that the Respondent did not tender any evidence to show that the injuries were sustained on 18<sup>th</sup> May, 2018 for there were no primary treatment notes produced, the P3 form produced was filled on 28<sup>TH</sup> May , 2018 just as the treatment notes from Vihiga County Referral Hospital. So without the primary treatment notes, there is no way the respondent could have proved that the injuries were sustained on 18<sup>th</sup> May, 2018.



16. I have looked at the P3 form and the treatment notes, they were filled 10 days after the accident. The age of injuries as at the time of examination is indicated to be seven days. The Accident was on 18<sup>th</sup> May, 2018 so when you take into account 7 days takes us to 25<sup>th</sup> May, 2018, so there are 3 days unaccounted for.
17. The burden of proof was upon the Plaintiff to prove that she actually sustained injuries on 18<sup>th</sup> May 2018, on a balance of probability.
18. I find this burden has not been discharged as envisaged under section 107 (1)(2) and Section 112 of the *Evidence Act*.
19. Therefore, if the trial court had taken into account the absence of initial treatment notes taken immediately after the accident, he would have arrived to a different finding on whether the Respondent sustained injuries on 18<sup>th</sup> May, 2018 or on a different date. Even assuming there was a delay to go to the hospital on the part of the Plaintiff/Respondent the same was not explained.
20. For this reason, I set aside the finding that the Respondent sustained injuries on 18<sup>th</sup> May, 2018.
21. I have looked at the injuries suffered by the Respondent if the Respondent had proved the injuries were suffered on 18<sup>th</sup> May, 2018 I would not have disturbed the award on damages awarded by the trial court for the award was commensurate to the nature of the injuries.
22. The upshot of the above is that, I find the appeal succeeds and the Judgment on quantum is set aside.
23. I note that liability was not appealed against so it still stands, meaning that the accident occurred and the respondent was in that vehicle though I find that there is no evidence she suffered the injuries complained of. I take judicial notice that she must have suffered some shock and trauma, and for that reason I would have awarded her nominal damages of Ksh. 30,000/= if the same was prayed for in the plain.
24. The Appellant and the Respondent should bear their own cost of the Appeal and the costs in lower court since the Respondent had succeeded on the issue of liability and on the Appeal the Appellant has succeeded on the issue of quantum.
25. Right of Appeal 30 days.
26. It is so ordered.

**DATED, SIGNED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF JANUARY, 2026 AND DELIVERED ON 30<sup>TH</sup> JANUARY, 2026.**

**S.N.MBUNGI**

**JUDGE**

In the presence of:-

**CA:Angong'a**

Delivered in the absence of the parties and counsels though aware of the judgment date.

Court assistant to upload the judgment on the CTS forthwith.

