



**Ndirangu v Sagala (Civil Appeal E273 of 2024)  
[2026] KEHC 723 (KLR) (Civ) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 723 (KLR)

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

**CIVIL**

**CIVIL APPEAL E273 OF 2024**

**FR OLEL, J**

**JANUARY 26, 2026**

**BETWEEN**

**DANIEL KARIUKI NDIRANGU ..... APPELLANT**

**AND**

**GEORGE ATSANGO SAGALA ..... RESPONDENT**

**JUDGMENT**

**A. Introduction**

1. The Respondent filed the primary suit vide his plaint dated 11<sup>th</sup> April 2022 where he averred that on or about the 4<sup>th</sup> November 2021, he was lawfully riding his Motor Cycle Registration Number KMFW 454K ( herein after referred to as the suit Motor cycle) along his rightful lane on Mbazi Avenue near Vanga, when the Appellant his lawful driver, agent servant and/or employee drove and/or controlled the Appellants Motor Vehicle Registration Number KCZ 489E Nissan Station Wagon ( hereinafter referred to as the suit motor vehicle) in a negligent and reckless manner, that he caused it to loose control at high speed and collided into the on coming suit Motor Cycle thereby causing the respondent to suffer loss and damage.
2. The respondent further particularized the negligence of the Appellant and/or his driver and further stated that as a result of the said accident he had suffered a fracture of the left tibial plateau and abrasion on the right heel and thus urged the court to award him damages
3. The Appellant did file their statement of defence, where they denied in total all the averments made by the respondent and in the alternative did plead that if indeed an accident did occur, the same was caused by the negligence and/or carelessness of the respondent and thus was also to partly blame for the said accident. All the particulars of special damages and injuries pleaded too were denied.



## **B. Facts at Trial**

4. PW1 CPL George Ratemo, confirmed that indeed the accident had occurred at Around 1300hrs involving the suit Motor Cycle and suit Motor Vehicle, which incident was reported at Muthangari Police Station and a police abstract issued. The matter was still pending under investigation, and he further confirmed that the respondent as a result had sustained serious injuries classified as grievous harm.
5. PW2 George Atsango Sagala, adopted his witness statement, and further explained that the said Appellant's driver had been talking on phone and was driving at high speed when lost control of the suit Motor Vehicle, veered off his lane and ended up crashing into the suit Motorcycle. As a result of the collision, he had fractured his left tibia and had abrasions on the right heel. He produced his claim, supporting documents and urged the court to award him damages for the injuries sustained.
6. DW1 Daniel Kariuki Ndirangu adopted his witness statement, where he stated that on the material day he was lawfully driving on his lane heading towards James Gichuru road, when the suit Motorcycle ridden by the respondent appeared from the opposite side direction as it made an attempt to overtake the vehicle Infront of it by going on the said Motor Vehicle right side towards the middle of the road. Upon noticing the dangerous maneuver, the respondent had taken, he hooted to alert him, however the distance was too close and the suit Motorcycle crashed onto his front bumper (FRS) resulting in damaging his Motor Vehicle.
7. He immediately stopped and reported the incident to the police. The appellant blamed the respondent solely for causing this accident and urged the court to note that he was not arrested or charged with any traffic offence after investigation had been completed. He thus urged the court to dismiss the respondents' claim. Under cross examination he reiterated his earlier evidence and insisted that it was the respondent who was overtaking an oncoming SUV and hit him head on, while he was on his rightful lane.
8. DW II CPL Henry Ille from Muthangari Police Station confirmed that on the material day he was on duty at Gatanga/James Gichuru junction, when he got a report about the said accident, and immediately he went to the scene where he confirmed the same. The Motorcycle was from Bahazi-Kingara Road junction heading towards Siaya road, while the suit Motor Vehicle was headed in the opposite direction. Based from his observation of the accident scene, the suit Motorcycle was not on its lane and must have been overtaking when it hit the suit Motor Vehicle and thus had to take blame for the accident as he had failed to keep to its lane.
9. Under cross examination he confirmed that he was the Investigating Officer, who went to the scene of accident but did not witness the said accident occur. From the accident scene he had escorted both the Motorcycle and Motor Vehicle to the Police Station, where the police abstract was issued. DWII reaffirmed that he blamed the respondent for causing the said accident as he was carelessly overtaking and veered off his lane. He had also taken pictures of the accident scene using his phone but did not have the same before the court.
10. The trial court did consider the pleadings, evidence adduced and submissions filed and on liability made a finding of 90:10 against the Appellant and awarded the respondent general damages of Kshs. 500,000/=, Special damages of Kshs. 20,550/= plus costs and interest of the suit.



## B. Analysis And Determination

11. I have considered this appeal, submissions, and the impugned judgment. I have also considered the decisions relied on and perused the trial court's record. This being a first appeal, it is by way of a retrial, and this court, as the first appellate court, must re-evaluate, re-analyze, and re-consider the evidence afresh and draw its conclusions on it. The court should, however, bear in mind that it did not see the witnesses as they testified and give due allowance for that. (see *Selle v Associated Motor Boat Co Ltd & Others* [1968] EA 123) & *Peters Vs Sunday Post Limited* (1968) EA 123
12. A first appellate court is also the final court of fact, and litigants are entitled to full, fair, independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of Section 78 of the *Civil Procedure Act*, a court of first appeal can appreciate the entire evidence and come to a different conclusion. See *Kurian Chacko Vs Varkey Ouseph* AIR 1969 Kerala 316
13. This Appeal, challenges both quantum and liability as awarded by the trial court. In *Isabella Wanjiru Karangu vs. Washington Malele* Civil Appeal No. 50 of 1981 [1983] KLR 142 and *Mahendra M Malde vs. George M Angira* Civil Appeal No. 12 of 1981, it was held that apportionment of blame represents an exercise of a discretion with which the appellate court will interfere only when it is clearly wrong, or based on no evidence or on the application of a wrong principle.
14. The Court of Appeal in *Micheal Hubert Kloss & Another vs. David Seroney & 5 Others* [2009] eKLR did succinctly proffered that;

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley vs. Gypsum Mines Ltd* (2) (1953) A.C. 663 at p. 681 as follows:

“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...”.
15. The respondent pleaded that the accident did occur when the Appellant negligently drove the suit Motor Vehicle at high speed and collided into his Motorcycle thereby causing him to sustain serious injuries. In his witness statement he made the same averments without elaborating the same but while testifying further clarified that the Appellant was on phone and veered off his lane and crushed him, while he was on his lane.
16. DW1 and DW2 were categorical that it was the respondent who was negligent and was overtaking when it was not safe to do so. As a result, he was the one who was at fault. In my considered opinion the Appellant discharged the evidentiary burden of proof especially through the evidence of DWII



who visited the accident scene and confirmed that the same occurred on the Appellant rightful lane. Unfortunately, the trial Magistrate ignored this crucial evidence and wrongly arrived at the finding that it was the Appellant who was 90% to blame for the said accident, when the clear facts of the case showed otherwise. The trial courts finding on liability is thus set aside and awarded 10:90 in favour of the Appellant.

17. On quantum the Court of Appeal in the case of Southern Engineering Company Ltd. vs. Musingi Mutia [1985] KLR 730 set out the principles of determining quantum where it was held that:

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated... The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment...It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award...it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably be made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion.”

18. Further, while considering this issue, reliance is also placed on the decision of West(H) and Sons Limited vs Shepherd [1964] AC 326 at 345 which appreciated that ;-

“The purposes of compensation is not to remedy or re-compensate every injury but must be a reasonable compensation in line with comparable. In order to interfere with the award of the lower Court, this court must be satisfied that the trial court did not exercise its discretion judiciously”.

19. The Appellant fractured his left tibial plateau and had abrasions on the right heel. The injuries were confirmed by the treatment ‘notes, P3 and Dr Cyprianus Okere medical report. Considering similar injury awards I do find that sums awarded of kshs 500,000/= was adequate and thus there is no basis for interfering with the same.



**C. Disposition**

- 20. This Appeal is therefore partially merited and the same is allowed on the following terms.
  - a. The judgment of Hon N.Ruguru (SPM) dated 1<sup>st</sup> December 2023 in Milimani Commerical Courts, Nairobi CMCC NO E2323 of 2022, with respect to his findings on liability is set aside and substituted with a finding that it was the respondent largely liable for causing the said accident. Liability is therefore entered 10:90 in favour of the Appellant herein.
  - b. The trial court finding on quantum and special damages remains undisturbed.
- 21. The Appellant will have half costs of this Appeal.
- 22. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 26<sup>TH</sup> DAY OF JANUARY, 2026.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Team this 26<sup>th</sup> day of JANAURY,2026.

In the presence of: -

.....Appellant  
 ..... Respondent  
 ..... Court Assistant

