



**SA & another v Munge; Yusuf (Appellant); Munge (Defendant) (Civil Appeal E785 of 2022) [2026] KEHC 544 (KLR) (Civ) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 544 (KLR)

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

**CIVIL**

**CIVIL APPEAL E785 OF 2022**

**AN ONGERI, J**

**JANUARY 22, 2026**

**BETWEEN**

**SA ..... 1<sup>ST</sup> APPELLANT**

**MY (SUING AS THE PARENTS AND NEXT FRIEND OF ASM-A**

**MINOR ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ANTHONY KARUME MUNGE ..... RESPONDENT**

**AND**

**KADIJA MOHAMED YUSUF ..... APPELLANT**

**AND**

**ANTHONY KARUNME MUNGE ..... DEFENDANT**

*(Being an appeal from the judgment by Hon. S. A. Opande (PM)  
in Milimani CMCC no. 7815 of 2019 delivered on 8/9/2022.)*

**JUDGMENT**

1. The two appellants SA and MY (Suing as parents and next friend of A.S.M a minor) sued Antony Karume Munge seeking general damages for pain and suffering and special damages for injuries SA and A.S.M (a minor) sustained on 26/4/2017 when the two were travelling along Mombasa – Nairobi highway in motor vehicle registration no. KCL 884H owned by the respondent.
2. The defendant filed similar statements of defence dated 5/5/2020 and 11/5/2020 both cases denying the appellant’s claim.



3. The 1<sup>st</sup> appellant said in her evidence that motor vehicle registration no. KCL 884H in which she was travelling was turning into a petrol station when it was hit by motor vehicle registration no. KBX 741S which was overtaking.
4. As a result of the accident, the 1<sup>st</sup> appellant and her son were injured.
5. Medical reports were produce by consent.
6. The 1<sup>st</sup> appellant sustained the following injuries;
  - i. Soft tissue injuries on the neck.
  - ii. Inability to flex hip and lower limbs.
  - iii. Fracture of the acetabulum, non displaced
  - iv. Altered curvature with leftward tilt suggestive of associated myoplasm
  - v. Cervical spondylosis
  - vi. Paraspinal soft tissue edema on the left
  - vii. Minimal C6 subbluxation
  - viii. Intervertebral discs showing loss of signal intensity.
7. The minor A.S.M sustained the following injuries
  - i. Loss of consciousness.
  - ii. Huge left parietal swelling
  - iii. Depressed skull
  - iv. Linear minimally displaced fracture of the left parietal skull
  - v. Multiple subcentimeter acute hemorrhagic contusion largest mearing 10x8mm
  - vi. Large acute left parietal scalp haematoma
  - vii. Scalp bruises
  - viii. Cervical lordosis slightly reduced.
8. The trial court apportioned liability at 80:20 between the respondent and the appellants
9. The trial court assessed damages as follows;

General damages for minor (ASM) ksh1,700,000

Special damages for ASM ksh.1,788,000

Total ksh.3,488,000

General damages for the 1<sup>st</sup> appellant ksh.1,000,000

Special damages ksh. 2498,560

Total ksh.1,248,560
10. The appellants have appealed against the said judgment on the following grounds;



- i. That the learned magistrate erred in law and in fact in failing to find that motor vehicle KCL 884H was not driven in a negligent manner prior to the accident as was confirmed by the appellants and their witnesses.
  - ii. That the learned magistrate erred in law and in fact in finding the appellants driver to be 20% liable for the accident that occurred on 27<sup>th</sup> April 2017 yet they had established the respondent was 100% liable for the accident.
  - iii. That the learned magistrate erred in law and in fact in not finding that the respondent failed to prove liability on the part of the appellant's driver.
  - iv. That the learned magistrate erred in law and in fact in disregarding the evidence of the appellants.
  - v. That the learned magistrate erred in law and in fact in failing to analyse the evidence adduced by the appellants.
  - vi. That the learned magistrate's decision was against the weight of the evidence showing the respondent was 100% liable for the accident.
  - vii. That the learned trial magistrate erred in law and in fact in failing to appreciate the appellants evidence, written submissions and the extensive authorities submitted and ended up arriving at a wrong decision.
11. The parties filed written submissions as follows; the appellants submitted that they produced a police abstract that confirmed an accident took place on 26th April 2017 and that investigations were done and the results of the investigation were the investigating officer PC Korir blamed the Respondent for the accident and referred the matter to insurance for settlement.
  12. There was no objection by the Respondent through his advocates in production of the said abstract with the outcome. Further the court proceedings show that the Respondent's advocates confirmed they were no longer objecting to the production of the police abstract.
  13. The appellants submitted that the occurrence and cause of the accident was uncontroverted. The Appellant's evidence was in tandem with their key and eye witness who was their driver of motor vehicle Registration Number KCL 884 H.
  14. The Certificate of Examination and Test of vehicle for the Appellant Khadija Mohammed confirms damages to the rear wing, rear door, boot, boot lid, driver door, roof dented, front wing and rear wing dented.
  15. The 1<sup>st</sup> and 2<sup>nd</sup> Appellants' son A S M and Appellant Kadija Mohammed Yusuf were seated on the right side of the vehicle and thus the reason they suffered serious injuries.
  16. The damage to the Appellants' vehicle confirmed that at the time of occurrence of the accident, they had almost completely turned to the right when the Respondent emerged from nowhere and hit them and consequently blamed for the accident by the police officers who were at the scene.
  17. The trial court apportioned liability in the ratio of 20:80 in favor of the appellant yet the appellants were not in control of the vehicle at the time of the accident and could not have done anything to cause of avoid the accident. the driver was neither a party to the suit not had he been enjoined as a third party by the respondent.



18. The appellants proved duty of care through witnesses the 1 st Appellant SA and their driver Abdul Hakim Abubakar Abdul.
19. Their evidence of duty of care was corroborated by the evidence of Khadija Mohammed who were passengers in the said vehicle. the appellant argued that it was therefore unfair and unjust for the trial court to apportion liability on the Appellants yet they were merely passengers.
20. The appellant further argued that the respondents did not prove the particulars of their statement of defence.
21. The respondent alternatively submitted that evaluation of evidence leading to apportionment of liability between two tortfeasors involve to a large extent discretion of the trial court. Wherever discretion is involved an appellate court can only interfere in exceptional circumstances.
22. The respondent indicated that from the documents produced, it is only the appellants' evidence that shed light on how the accident occurred.
23. At trial the Appellants, testified as PW1 SA, PW3 Kadija Mohamed and called one other witness who testified as PW2 Abdulkakim Abdul Abubakar, who was the driver at the time of the accident.
24. Moreover, in the Police Abstract dated 27th April 2017 PC Kipkorir blamed KBX 741S for the accident, which report the Plaintiff/Appellants heavily relied on in their submissions in urging the court to find the Respondent/Defendant wholly liable for the resultant accident.
25. However, the investigating officer did not testify in court. Consequently, save for the parties to the accident, no other witnesses were called to corroborate the appellants' testimony.
26. The respondent argued that the Police Abstract as presented cannot substitute the requirement or need to adduce evidence to prove the case on the part of the Appellants to hold the Respondent 100% liable for the accident.
27. The basis upon which PC Kipkorir came to his conclusion that the Respondent was to blame for the accident was unknown.
28. The respondent on negligence submitted that the record reveals that there was evidence that the trial court did analyze and came to the conclusion it did.
29. The issues for determination in this appeal are as follows;
  - i. Whether the learned trial magistrate erred in law and in fact in apportioning liability for the accident at 80:20 between the Respondent and the Appellants.
  - ii. Whether the quantum of general and special damages awarded by the trial court was erroneous and merits interference by this court.
30. This appeal, arising from the judgment of the Chief Magistrate's Court at Milimani, challenges both the apportionment of liability and the quantum of damages awarded to the Appellants.
31. This Court has carefully considered the Record of Appeal, the written submissions filed by both parties, and the authorities cited.
32. On the main issue of liability, the Appellants contend that the trial magistrate erred in finding their driver contributorily negligent to the extent of 20%.
33. They argue that the uncontroverted evidence, particularly the police abstract which blamed the Respondent's driver, and the testimony of their witnesses established the Respondent's sole liability.



34. While it is true that the Respondent did not call evidence to counter the Appellants' account of the accident, a trial court is not obligated to accept uncontroverted evidence if it is inconsistent or does not, on a balance of probabilities, convincingly discharge the burden of proof.
35. The evidence presented indicated that the Appellants' vehicle, registration number KCL 884H, was turning right into a petrol station when it was hit by the Respondent's overtaking vehicle, KBX 741S.
36. The nature of the damage to the Appellants' vehicle, as detailed in the Certificate of Examination, and the location of the impact, lend credence to this sequence.
37. The police abstract, produced by consent, attributed blame to the Respondent's vehicle.
38. In the circumstances, the evidential burden shifted to the Respondent to demonstrate any negligence on the part of the Appellants' driver, which burden was not discharged.
39. The burden of proof in civil cases is on a balance of probabilities, and if a prima facie case is established, the evidential burden shifts.
40. The trial magistrate's finding of contributory negligence was not anchored on any concrete evidence but appears to have been a general deduction.
41. Consequently, this court finds that the Appellants discharged their burden of proof and established the Respondent's full liability for the accident.
42. The apportionment of liability is therefore set aside, and the Respondent is held to be 100% liable.
43. Regarding the quantum of damages, the role of an appellate court is settled.
44. It will not interfere with an award of general damages unless the trial court acted on wrong principles, misapprehended the evidence, or awarded a sum that is so inordinately high or low as to be an entirely erroneous estimate of the damage
45. For the 1st Appellant, SA, the trial court awarded Kshs. 1,000,000 for the injuries sustained, which included a fracture of the acetabulum, cervical spondylosis, and soft tissue injuries.
46. For the minor, A.S.M., the award was Kshs. 1,700,000 for a depressed skull fracture, brain contusions, and a scalp hematoma. Having reviewed the medical reports and considered comparable awards for similar injuries, this court finds that the awards, while perhaps modest, are not so inordinately low as to constitute an erroneous estimate.
47. The trial magistrate exercised discretion within reasonable bounds.
48. Similarly, the awards for special damages, being specifically pleaded and proved through documentary evidence as required by law, are upheld. There is no basis for appellate interference with the quantum assessed by the trial court.
49. In the final analysis, the appeal succeeds only on the issue of liability.
50. The judgment of the lower court is hereby varied by setting aside the finding of contributory negligence and substituting thereof a finding that the Respondent, Anthony Karume Munge, is wholly liable for the accident that occurred on 26th April 2017.
51. The awards of damages as quantified by the learned trial magistrate are hereby upheld. Accordingly, judgment is entered for the Appellants against the Respondent as follows:



- i. In CMCC No. 7815 of 2019 (SA & another vs Anthony Karume Munge): The 1st and 2nd Appellants shall have Kshs. 3,488,000 plus costs and interest at court rates from the date of the trial court’s judgment until payment in full.
- ii. In the related suit (Kadija MY vs Anthony Karume Munge): The Appellant shall have Kshs. 1,248,560 plus costs and interest at court rates from the date of the trial court’s judgment until payment in full.

52. The Appellants shall also have the costs of this appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
22<sup>ND</sup> DAY OF JANUARY, 2026.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent

