



REPUBLIC OF KENYA



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**Wainaina v Muniu (Civil Appeal E293 of 2023)
[2026] KEHC 839 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E293 OF 2023
JM NANG'EA, J
JANUARY 26, 2026**

BETWEEN

SAMUEL MUIRURI WAINAINA APPELLANT

AND

SAMUEL NJUGUNA MUNIU RESPONDENT

(Being an appeal from Judgement and Decree of the Chief Magistrate's Court at Nakuru (Hon. RUTH KEFA CHEBISIO (PM) delivered on 27/09/2023 in Nakuru CMCC NO.E729 OF 2021)

JUDGMENT

Grounds of Appeal and reliefs sought.

1. By a Memorandum of Appeal dated 13/10/2023 and filed on 16/10/2023, the Appellant faults the said trial court's Judgment on grounds that may be summarized into three broad grounds as hereunder:
 1. That the Learned Magistrate erred in law and fact in awarding the Respondent exorbitant general and future medical costs in the circumstances of the case considering the injuries the latter sustained.
 2. That the Learned Magistrate erred in law and fact in determining the issue of liability against the weight of evidence adduced.
And
 3. That the Learned Magistrate erred in law and fact by failing to consider the Appellant's submissions on quantum of damages awardable in the case.
2. The Appellant therefore seeks the following orders;
 - i) That the Appeal herein be allowed.



- ii) That the Judgement of the lower court delivered on 27/09/2023 on both liability and quantum be set aside and/or reviewed and a reasonable Judgement substituted therefor.
- iii) That the costs of the Appeal be borne by the Respondent

Analysis and determination.

3. Learned Counsel for the Parties filed written submissions which I have perused together with the trial court's record. In the impugned judgment, the trial magistrate found the Appellant, the defendants in the suit before the lower court, 100% liable for the claim. The trial court also awarded the Respondent Kshs. 500,000/=; Kshs. 100,000/= and Kshs. 55,000/= in general damages, future medical costs and special damages respectively. The Respondent was further granted the costs of the suit.
4. Based on medical evidence presented before the trial court, the Respondent suffered a fracture of the right femur; severe soft tissue injuries of the right hip joint; further soft tissue injuries to the left shoulder joint; and blunt injuries to the right knee that led to more soft tissue injuries mid shaft right humerus and soft tissue injuries to the right hand, left cheek and left leg. The injuries allegedly arose in a road traffic accident in which the Appellant's motor vehicle registration number KCX 912 L is said to have lost control owing to negligent steering thereby knocking down the Respondent who was a pedestrian, causing the injuries. He was allegedly walking off the Gilgil- Nakuru highway on the left side. The police through PW2 confirmed occurrence of the accident and tendered an abstract report. The Respondent was attended to at Gilgil Sub-County Hospital where he was admitted and later transferred to Nakuru Level 5 hospital where he was admitted between 30/03/2021 and 04/05/2021. He denied being drunk at the time or any negligent conduct that caused the accident. The Respondent further told the court that he could not carry on with his work as a mason after the accident. He required Kshs. 100,000/= for an operation on his affected right leg.
5. The Appellant testified that he was the vehicle driver. At the scene of the accident as he was driving to Thika, he saw a pedestrian staggering as he tried to cross the road. He swerved and applied brakes to avoid hitting him, but it was too late. The left side of the vehicle suddenly hit him. He accused the victim of unlawfully crossing the road while drunk.
6. It is trite law that the appellate court has the duty of re-assessing the evidence adduced before the trial court and reach its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle vs. Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd vs. Oakdale Commodities Ltd* (1997) eKLR. The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
 - “i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”



Appellant's Submissions.

7. Counsel inter alia fault the lower court for disregarding of the Appellant's submissions and evidence on the claim of intoxication. It is pointed out that the Respondent's Discharge Summary from Nakuru Level 5 Hospital indicates that he was crossing the road and was intoxicated at the time of the accident. The medical evidence is therefore said to corroborate the Appellant's evidence on the Respondent's conduct on the road.
8. According to the Appellant's advocates, the burden of proof lay on the Respondent (see *Raila Odinga & Another vs IEBC & 2 Others*; *Aukot & Another (Interest Parties)*; *Attorney General & Another Amicus Curiae (Presidential Election Petition No. 1 of 2017 (2017) KESC 42 (KLR)* cited in reliance by Counsel. The court is also referred to the provisions of Sections 107 and 112 of the *Evidence Act* on who bears the burden of proof.
9. Among other contentions, the Respondent is faulted for giving inconsistent evidence in the lower court as to whether or not he was intoxicated at the material time. The Doctrine of approbation and reprobation alluded to by Counsel deprecates inconsistency of conduct by parties seeking justice in court (see *Republic vs Institute of Certified Public Secretaries of Kenya Ex parte Mundia Njeru Geteria (2010) eKLR* relied upon by Counsel.
10. I am referred to a medical report dated 18/03/2022 by Dr. Malik prepared at the instance of the Appellant. The report finds no evidence of permanent disability resulting from the Respondent's injury and that the fractures he suffered reunited to near perfect position. This report contradicts that of Dr. Obed Omuyoma's tendered by the Respondent on the basis of which Kshs. 100,000/= was awarded in future medical costs.
11. Regarding general damages, the Appellant submits that for various injuries that included closed fractures of the left tibia/fibula and deep cuts, Kshs. 400,000/= was granted in *Nyambura Njuguna & Another CA no. E025 of 2022 [2024] KEHC 4285 (KLR) (30 April 2024) (Judgement)*.
12. For compound fractures of tibia/tibia bones with deep cuts among other soft tissue injuries Kshs. 400,000/= is also said to have been awarded in *Daniel Otieno Owino & Another vs Elizabeth Atieno (2020) eKLR*.
13. Furthermore, in *Otundo vs Oeril Civil Appeal E060 of 2024 (2025) KEHC) 2328 (KLR) – Kshs. 400,000/=* was assessed for a fracture of the left femur, bruises on the left tibia bone and related soft tissue injuries.

Respondents' Submissions.

14. On the issue of liability, the Respondent's advocates contend that there is no evidence of intoxication on the part of the Respondent at the time of accident.
15. Citing the holding in *Masembe vs Sugar Corporation & Another (2002) 2EA 434*, Counsel posit that one needs to anticipate presence of other people or things on the road and take precaution not to hit them. The same observation was made in *Mary Njeri Murigi vs Peter Macharia & Another (2016) eKLR*, where it was noted that a vehicle is a lethal weapon or object that ought to be steered carefully to avoid harming others who also have the right to use the road.
16. In respect to quantum of damages awardable, reference is made to the case of *Martin Mwirigi Mbayu & Another vs Abdulrahma Salim Mwakumbuko (2022) eKLR*, where an award of Kshs. 1,000,000/= was made in more or less similar circumstances. The Respondent thinks that the judicial determination



in Ibrahim Kalama Lewa vs Estee Company Ltd, that guided the trial court. in which Kshs. 300,000/= was assessed is also relevant.

17. In adjudging the Appellant wholly liable for the accident the trial court noted that no sketch plan was produced to show the point of impact. It was also observed that the Appellant failed to challenge the Respondent's evidence that he was walking off the road at the material time. The learned trial magistrate further found the evidence as to the Respondent's intoxication not credible as the allegation was only made two days after the accident. The claim is not also recorded in the Respondent's medical records at Gilgil Sub County Hospital where he was first treated.
18. As regards the lower court finding on quantum of damages, a number of decided cases were cited as comparable to the instant matter. In the end, the Court found the award of Kshs. 500,000/= in general damages to be reasonable.

Determination.

19. The Respondent's medical records exhibited indeed show that he told medical personnel who attended to him that he was crossing the road when the Appellant's vehicle knocked him down. This is the recorded history of the injury as recorded by the medical officers. This therefore contradicts his oral pleadings and evidence to the effect that he was walking off the road when the vehicle knocked him. The Respondent offered no independent evidence corroborating his account.
20. Regarding the Appellant's claim that the Respondent was intoxicated at the material time, I note that his discharge records from Nakuru Level 5 Hospital purport to indicate that evidence of intoxication was found in his body. The nature of any intoxication is not, however, specified. Furthermore, it is not evident that the intoxication was such as could have impaired his judgement and influence his conduct.
21. I therefore accept the Appellant's evidence that the Respondent contributed to occurrence of the accident. The Appellant was, however, largely to blame as he had a chance to see him and was in charge of the vehicle. The Respondent had a right to be on the road and the Appellant was duty bound to anticipate his presence and exercise caution while driving, even if the Respondent might have been crossing the road at an undesignated spot.
22. Doing my best in balancing the parties cases, I would find the Respondent 10% liable for causation of the accident. Regarding the quantum of general damages awarded by the trial court, I find the sum of Kshs. 500,000/= reasonable. Even the authorities relied upon by the Appellant suggesting a sum of Kshs. 400,000/= are generally comparable to the instant case. The sum of Kshs. 500,000/= was therefore rightly assessed and allowed it being appreciated that general damages are at large and are awarded in the court's discretion guided by comparable case law and the incidence of inflation.
23. As for the Kshs. 100,000/= award in future medical costs, the trial court did not consider Dr. Malik's report opining that the fracture re-united. The doctor is shown as consultant surgeon whereas Dr Omuyoma appears to be a general physician. Dr. Malik's report would therefore be entitled to more weight also considering it is the more recent of the two medico-legal reports.
24. As the Respondent does not seem to require further medical attention the sum of Kshs. 100,000/= was wrongly awarded.
25. In the result the Appeal is partly allowed as follows;-
 - a. The lower court's judgement assessing liability against the Appellant at 100% is substituted with this court's judgement apportioning liability in the ratio of 90% to 10% in favour of the Respondent.



- b. The General Damages award of Kshs. 500,000/= is not disturbed but it will subject to the determined liability ratio.
- c. The lower court's order granting the Respondent Kshs. 100,000/= in future medical costs is set aside and substituted with the order disallowing the claim.
- d. The parties shall bear their own costs of the Appeal.

26. Judgement accordingly.

J. M. NANG'EA - JUDGE

Judgement delivered virtually this 26th day of January, 2026 in the presence of:

Appellant's Advocate, Ms Chepng'etich

Respondent's Advocate, Ms Sitati

Court Assistant, Jeniffer

