

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. E006 OF 2024

(CORAM: HON. CHARLES M. KARIUKI – J)

(Being an Appeal from the Judgment on quantum of Honourable. HON. P. L. SHINYADA,
Senior Resident Magistrate in Narok CMCC 1 of 2020 dated and delivered on 19/1/2024.)

VINCENT KIRUI..... 1ST APPELLANT

GILBERT CHERUIYOT KORIR.....2ND APPELLANT

VERSUS

HELLEN CHEPKORIR..... RESPONDENT

JUDGMENT

19/02/2026

INTRODUCTION

1. This appeal arises from a road traffic accident that occurred on 16th July 2019 along the Mai Mahiu–Narok Road at a place known as Kikesha. The Respondent, Hellen Chepkorir (the Plaintiff in the lower court), instituted suit against the Appellants, Vincent Kirui and Gilbert Cheruiyot Korir, seeking general damages, special damages, loss of earnings, loss of future earnings, costs of the suit, interest, and other appropriate relief.
2. The Respondent’s claim was premised on allegations that she was lawfully travelling as a fare-paying passenger aboard motor vehicle registration number KCP 134U, owned

and/or controlled by the 2nd Appellant, when the driver negligently drove the vehicle and rammed into a stationary lorry, thereby causing a serious accident. She attributed the accident to the sole negligence of the driver and particularized the acts of negligence in her plaint dated 9th January, 2020.

3. The Defendants entered appearance and filed a statement of defence dated 19th May 2020, in which they denied liability and put the Plaintiff to strict proof. In the alternative and without prejudice, they pleaded contributory negligence on the part of the Plaintiff. The Plaintiff filed a Reply to Defence on 8th June 2020, reiterating her claim and denying the allegations of contributory negligence.

EVIDENCE BEFORE THE TRIAL COURT

4. The Respondent testified and adopted her witness statement as evidence in chief. She produced treatment notes, medical reports, receipts in support of special damages, and a police abstract.
5. She testified that the accident occurred in the early morning hours and that she sustained serious injuries, including fractures of the right femur and left ulna, a C3 cervical spine fracture, soft tissue injuries, and a scalp laceration. She underwent treatment at Tenwek Mission Hospital and Naivasha Hospital and stated that she continued to experience residual pain and mobility challenges. She further testified that she would require future surgery to remove metal implants at an estimated cost of Kshs. 200,000/=.
6. PW2, a police officer, confirmed that the accident occurred on 16th July 2019 at about 5:12 a.m. along the Mai Mahiu–Narok Road and involved motor vehicle KCP 134U (Toyota matatu) and a Mitsubishi lorry registration number KBS 721K. According to investigations, the matatu rammed into the rear of a stationary lorry, which had stopped

partially on the road. The driver of the matatu was subsequently charged with the offence of dangerous driving. Preliminary investigations blamed the matatu driver.

7. The Appellants did not call any evidence in rebuttal.

TRIAL COURT'S DECISION

8. The trial court entered judgment against the Appellants jointly at 80% liability and awarded damages as follows:

- i. General damages: Kshs. 2,000,000/=

- ii. Future medical expenses: Kshs. 200,000/=

- iii. Special damages: Kshs. 265,550/=

Total: Kshs. 2,465,550/=

- iv. Less 20% contributory negligence: Kshs. 493,110/=

Net Award: Kshs. 1,972,440/=

9. The Respondent was also awarded costs of the suit and interest at court rates.

MEMORANDUM OF APPEAL

10. The Appellants, being dissatisfied with the Judgment delivered on 19th January 2024, lodged this appeal challenging the findings on quantum.

11. In their Memorandum of Appeal dated 13th February 2024, the Appellants contend that;

- i. The Learned Magistrate erred in fact and in law when she failed to consider the Appellants submissions on points of law and facts on finding that the Respondent was entitled to General Damages of Kshs. 2,000,000/-, which is inordinately high in the circumstances.

- ii. The Learned Magistrate erred in fact and in law when she failed to consider the Appellants submissions on points of law and facts on finding that the Respondent

was entitled to Future medical expenses of Kshs. 200,000/ and Special damages of Kshs. 265,660/-, where the same was not strictly proven.

- iii. The Learned Magistrate erred in law and in fact when she over-relied on the Respondent's submissions.
- iv. The Learned Magistrate erred in fact and in law by weighing the Respondent's case in isolation from the appellants' case, and thereby precluded herself from assessing the magnitude of quantum impartially.
- v. The learned magistrate erred in law and in fact when she relied on erroneous principles of law in arriving at an excessive award on quantum.
- vi. The Learned Magistrate erred in fact and in Law in failing to apply the relevant and pertinent judicial principles, precedents, and trends regarding the award of quantum.
- vii. The Learned magistrate grossly misdirected herself by treating the evidence and submissions before her on quantum superficially and consequently arrived at a wrong decision without any basis in law or fact.
- viii. The Learned magistrate's findings on quantum of damages are not supported by facts or law, hence irregular.

12. On the basis of the foregoing grounds, the Appellant seeks orders that the appeal be allowed; that the judgment of the trial court on liability and quantum be set aside and substituted with a fresh award; that the costs of the appeal and those of the trial court be awarded to the Appellant; and that such further or other orders be made as this Honourable Court may deem fit.

THE PARTIES' SUBMISSIONS

Appellants' Submissions

13. On liability, the Appellants submit that the Respondent failed to discharge the burden of proof as required under Sections 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya. They argue that the police officer (PW1/PW2) who testified was not the investigating officer, did not visit the scene, did not produce the police file or occurrence book extract, and could not conclusively explain how the accident occurred. Further, the police abstract indicated that the matter was pending before court and did not apportion blame.
14. The Appellants contend that no sketch map, eyewitness statements, point of impact evidence, or documentary proof that the driver was charged with a traffic offence was produced. They argue that negligence cannot be presumed merely from the occurrence of an accident or from the contents of a police abstract.
15. In support of this position, reliance is placed on **Nickson Muthoka Mutavi v Kenya Agricultural Research Institute (2016) eKLR**, where the court held that the burden of proof in negligence rests on the plaintiff to establish duty, breach, and causation. They also rely on **Evans Mogire Omwansa v Benard Otieno Omolo & another [2016] eKLR**, where the court emphasized that a plaintiff must prove his case on a balance of probabilities even where the defence does not testify, reiterating that "he who asserts must prove."

16. The Appellants therefore submit that the evidence on record was insufficient to establish negligence against them and that the Respondent failed to prove a causal link between any alleged negligence and her injuries.
17. On quantum, the Appellants do not dispute that the Respondent sustained injuries, namely fractures of the femur, left distal ulna, and C3 vertebra, as well as soft tissue injuries. However, they submit that the medical evidence confirmed that the Respondent healed well and that permanent disability was assessed at 25%.
18. They argue that the award of Kshs. 2,000,000/= as general damages was excessive and not supported by comparable authorities. Before the trial court, they had proposed Kshs. 350,000/= as adequate compensation, relying on **Reamic Investment Limited v Joaz Amenity Samuel (2021) eKLR**, where Kshs. 350,000/= was awarded for a femur fracture and soft tissue injuries.
19. The Appellants submit that the trial court failed to apply settled principles guiding appellate interference with awards of damages. They reiterate that assessment of damages is discretionary but must be exercised judicially and in accordance with established principles. An appellate court may interfere where: The trial court took into account irrelevant factors; Failed to consider relevant factors; or the award is so inordinately high or low as to represent an erroneous estimate.
20. They further rely on **Kigaraari Vs Aya (1982-88) 1 Kar 768, As Quoted By Kamau J In Godfrey Wamalwa Wamba & Another V Kyalo Wambua [2018] eKLR**, for the principle that damages must fall within limits set by decided cases and within what the Kenyan economy can reasonably sustain, and that large awards inevitably burden the public through increased insurance premiums and related costs.

21. The Appellants argue that the award of Kshs. 2,000,000/= in general damages, together with Kshs. 200,000/= for future medical expenses and Kshs. 265,550/= as special damages, was excessive and unjustified in light of the medical evidence and comparable decisions.
22. On costs, the Appellants rely on Section 27(1) of the Civil Procedure Act and submit that costs follow the event. They urge the Court to allow the appeal, set aside the findings of the lower court on liability and quantum, substitute them with appropriate findings, and award costs of both the appeal and the trial court proceedings to the Appellants.
23. In conclusion, the Appellants urge this Honourable Court to find that the Respondent failed to prove negligence on a balance of probabilities and, in the alternative, that the award of damages was excessive and not in line with comparable precedents. They pray that the appeal be allowed, the judgment of the trial court be set aside or varied on liability and quantum, and costs be awarded to them.

(B) Respondent's Submissions

24. The Respondent submits that the sole issue for determination in the appeal is whether the award on quantum was inordinately high, unreasonable, or made in disregard of the evidence and applicable authorities. It is her position that the learned trial magistrate exercised judicial discretion properly and in accordance with settled legal principles.
25. The injuries sustained by the Respondent were not disputed at trial. According to medical reports prepared by Dr. Omuyoma and Dr. Kahuthu and produced in evidence, the Respondent suffered a fracture of the distal end of the left ulna, a fracture of the mid-shaft of the right femur, a right intertrochanteric fracture of the femur, a C3 cervical spine fracture, soft tissue injuries to the left hand and right thigh, and a lacerated scalp wound.

Medical assessment placed permanent disability between 25% and 30%. The Respondent's right leg was shortened as a result of the fractures, and metallic implants inserted during treatment were to be removed in a future surgical procedure. The injuries were categorized as grievous harm and had significantly altered the Respondent's life.

26. In justifying the award, the Respondent relies on the guiding principles for assessment of damages articulated in **West (H) & Son Ltd v Shepherd [1964] AC 326**, where Lord Morris of Borth-y-Gest emphasized that although monetary compensation cannot restore a shattered physical frame, courts must endeavor to award reasonable compensation with moderation and ensure that comparable injuries attract comparable awards. The Respondent further refers to Halsbury's Laws of England, 4th Edition, Vol. 12, Paragraph 884, which underscores that damages compensate not only for physical pain but also for mental distress, disability, embarrassment, and anxiety arising from injury.
27. On the question of appellate interference, the Respondent invokes the well-established principles in *Butt v Khan*, where Law JA held that an appellate court will not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate, or unless the trial court proceeded on wrong principles or misapprehended the evidence. This principle was reaffirmed in *Kemfro Africa Limited t/a Meru Express Services & Another v A.M. Lubia & Another*, where the Court of Appeal stated that assessment of damages lies within the discretion of the trial court and that an appellate court is not justified in substituting its own figure merely because it would have awarded a different sum.
28. The Respondent maintains that the trial magistrate neither misapprehended the evidence nor applied wrong principles. Instead, the award was made after considering the nature

and severity of the injuries, the degree of permanent disability, and comparable judicial precedents.

29. In support of the quantum awarded, the Respondent cites comparable authorities. In **Board of Trustees of the Anglican Church of Kenya Diocese of Marsabit v N I A (minor suing through her next friend I A I S) & 3 others [2018] KEHC 3272 (KLR)**, the High Court awarded Kshs. 2.5 million for multiple fractures involving the radius, ulna, femur, and hip, with deformities. Similarly, in **Akwaba Olubuliera Nicodemus v Dickson Shikuku [2020] KEHC 7979 (KLR)**, the court upheld an award exceeding Kshs. 3 million for severe orthopedic injuries, including amputation. The Respondent submits that in comparison, an award of Kshs. 2,000,000/= for multiple fractures, including a cervical spine fracture and femur fractures, is moderate and well within the acceptable range of comparable awards.
30. With respect to special damages, the Respondent submits that the sum of Kshs. 265,550/= was specifically pleaded and strictly proved by receipts produced at trial, which the learned magistrate examined and confirmed. As for future medical expenses, the Respondent submits that the amount of Kshs. 200,000/= was expressly pleaded and supported by medical evidence recommending the removal of implants. She argues that future medical expenses, once pleaded and supported by evidence, are properly awardable.
31. The Respondent further contends that courts must take into account prevailing economic conditions and inflation when assessing damages to ensure that compensation remains fair and realistic. Given the severity of the injuries, the permanent disability suffered, and the long-term impact on her quality of life, the award cannot be said to be excessive.

32. In conclusion, the Respondent submits that the Appellants have failed to demonstrate that the award was inordinately high or that the trial court acted on wrong principles. Applying the principles in **Butt v Khan [1977] 1 KAR**, and **Kemfro Africa Limited t/a Meru Express Services & Another v A.M. Lubia & Another (1982-88) KLR 72**, the Respondent urges the Honourable Court to dismiss the appeal in its entirety with costs and to uphold the judgment of the trial court, together with interest at court rates from the date of judgment.

ISSUES FOR DETERMINATION

33. Having considered the record of appeal, the memorandum of appeal, and the submissions of the parties, the following issues arise for determination:

- i. Whether the Respondent proved negligence against the Appellants on a balance of probabilities.**
- ii. Whether this Court should interfere with the trial court's apportionment of liability at 80:20.**
- iii. Whether the award of Kshs. 2,000,000/= as general damages was inordinately high so as to warrant interference by this Court.**
- iv. Whether the awards for special damages and future medical expenses were specifically pleaded and strictly proved.**
- v. Who should bear the costs of the appeal.**

ANALYSIS AND DETERMINATION

(i) Whether the Respondent Proved Negligence on a Balance of Probabilities

34. The Appellants contend that negligence was not proved, arguing that the police officer who testified was not the investigating officer and that no sketch maps or police file were produced.
35. The law on the burden of proof is well settled. Sections 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya, place the burden upon the party who asserts the existence of a fact. In **Nickson Muthoka Mutavi v Kenya Agricultural Research Institute**, the court reiterated that a plaintiff in a negligence claim must prove duty, breach, and causation.
36. Similarly, in **Evans Mogire Omwansa v Benard Otieno Omolo & another**, the Court held that even where the defence calls no evidence, the plaintiff must still prove his case on a balance of probabilities.
37. In the present case, the Respondent testified that she was a fare-paying passenger when the matatu rammed into the rear of a stationary lorry. PW2 confirmed that preliminary investigations blamed the driver of the matatu and that he was charged with dangerous driving. The Appellants called no evidence to controvert this testimony.
38. While it is true that the police officer was not the investigating officer, the uncontroverted evidence established that the matatu rammed into a stationary vehicle from behind. The general principle is that a driver who collides with the rear of a stationary vehicle is prima facie negligent unless a satisfactory explanation is given.
39. In the absence of rebuttal evidence, the trial court cannot be faulted for finding the Appellants substantially liable. I find no basis to disturb the finding on liability or the apportionment at 80:20.

(ii) Whether the Award of General Damages Was Inordinately High

40. The principles governing appellate interference with awards of damages are settled.

41. In **Butt v Khan**, Law JA held that an appellate court will not disturb an award unless it is inordinately high or low as to represent an entirely erroneous estimate, or unless the judge proceeded on wrong principles or misapprehended the evidence.
42. This principle was reaffirmed in **Kemfro Africa Limited t/a Meru Express Services & Another v A.M. Lubia & Another**, where the Court of Appeal emphasized that assessment of damages is a matter of judicial discretion and appellate interference is limited.
43. The Respondent sustained multiple fractures, including a C3 cervical spine fracture, mid-shaft femur fracture, intertrochanteric femur fracture, and ulna fracture. Permanent disability was assessed at between 25% and 30%. Her right leg was shortened, and implants require removal.
44. In **West H & Son Ltd v Shepherd**, Lord Morris observed that damages must be reasonable, moderate, and comparable to awards in similar cases.
45. The Respondent relied on **Board of Trustees of the Anglican Church of Kenya Diocese of Marsabit v N I A (minor)**, where Kshs. 2.5 million was awarded for multiple fractures, and **Akwaba Olubuliera Nicodemus v Dickson Shikuku**, where an award exceeding Kshs. 3 million was upheld for severe orthopedic injuries.
46. The Appellants relied on **Reamic Investment Limited v Joaz Amenity Samuel**, where Kshs. 350,000/= was awarded for comparatively less severe injuries.
47. Upon reviewing the authorities and the nature of injuries, I find that the Respondent's injuries were significantly more severe than those in Reamic Investment Limited. The award of Kshs. 2,000,000/= falls within the range of comparable awards for multiple fractures involving the femur and cervical spine.

48. I am not persuaded that the learned magistrate applied wrong principles or misapprehended the evidence. The award cannot be said to be inordinately high.

(iii) Whether Special Damages and Future Medical Expenses Were Strictly Proved

49. The law is that special damages must be specifically pleaded and strictly proved.

50. The Respondent pleaded Kshs. 265,550/= and produced receipts, which were examined by the trial court. The Appellants did not challenge the authenticity of the receipts at trial.

51. With regard to future medical expenses, the law recognizes that such expenses must be pleaded and supported by medical evidence. The medical reports recommended removal of implants at an estimated cost of Kshs. 200,000/=.

52. I am satisfied that both heads of damages were properly pleaded and supported by evidence. There is no basis for interference.

(iv) Costs of the Appeal

53. Section 27(1) of the Civil Procedure Act provides that costs follow the event unless the court, for good reason, orders otherwise.

54. The appeal having failed, costs shall follow the event.

CONCLUSION

55. In the final analysis, the Appellants have not demonstrated that the learned trial magistrate misdirected herself in law or fact, applied wrong principles, or made an award so inordinately high as to represent an erroneous estimate.

56. Guided by the principles in **Butt v Khan** and **Kemfro Africa Limited t/a Meru Express Services & Another v A.M. Lubia & Another**, I find no merit in this appeal.

i. The appeal is hereby dismissed in its entirety with costs to the Respondent.

57. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS
APPLICATION, THIS 19TH DAY OF FEBRUARY 2026**

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**CHARLES KARIUKI
JUDGE**