

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E060 OF 2025

JESSICCA JEPCHIRCHIR KIPYEGO
APPELLANT

VERSUS

JOSEPH MUSYOKA YUMBU.....
RESPONDENT

JUDGMENT

1. This is an appeal against the decision of the lower court in a road traffic accident in which the lower court found the appellant liable at 100% and
2. Awarded damages totaling Ksh 724,550. I have read the submissions on record and the proceedings. To determine this appeal, I shall look at the evidence on record- this is how I will do it;

Liability

3. The plaintiff testified that he was off the road waiting for traffic to clear so as to cross over from gate B to get A when he was suddenly run over from behind by the Appellant's motor vehicle. To the contrary the Respondent said that the plaintiff who was cycling a bicycle rammed into her car from

the left rear side. This court has to decide which version is correct in order to dispense justice. Two police abstracts with opposite findings; one indicating that the matter is pending under investigation and the other that the respondent's motor vehicle was to blame. The Claimant's witness faltered in his evidence in court when he said that there was traffic jam and later in the same breath said indeed there was no traffic jam. In fact, this witness wondered how a motorist can veer off the road in a traffic jam and when he realized that it would have been impossible for this to happen, he decided to say that there was no traffic jam. Both the Appellant and the Respondent admit that there was Jam and this should be the position. If we are to take this position, then how could it have been possible for the vehicle to veer off the road and cause such serious injuries to a person standing off the road or again with such jam, how possible was it for a cyclist to hit the rear left side of a motor vehicle so hard that led into the said fractures when there were other cars closely behind the Appellant's car? These two scenarios however happen but albeit rarely. The inspection report produced by the respondent is barely legible. No photos were produced to show the point of impact on both the bicycle and the car nor a copy of OB which would have guided the court into knowing which abstract to believe in. This is purely a case born out of a mess by police investigation. The two abstracts by themselves frowns at their truthfulness and it is my hope that

this shall never happen again. The common law of evidence provides that where, the court is not certain as to who should bear responsibility, the court is obliged to hold liability at 50-50- and this I do.

Quantum

4. The plaintiff suffered a fracture of the tibia and fibula, soft tissue wounds in the knees and hands and was awarded Ksh 600,000. This amount is low so I shall exercise my Appellate jurisdiction to enhance to Ksh 800,000. All specials have been proved and so I shall not disturb this award.

Conclusion

5. The appeal partially succeeds. The liability is at 50-50, general damages enhanced to Ksh 800,000, specials to remain the same. Each party shall pay own costs.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 16TH DAY OF FEBRUARY 2026.

HON L P KASSAN

JUDGE

In the presence of;

Oloo for Appellant

Muchiri for Respondent

Carol - Court Assistant

ORIGINAL