



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**CIVIL APPEAL NUMBER E139 OF 2022**

VALLARY MMBONE KANGUHI .....  
.....APPELLANT

VERSUS

CHARLES MWANGI NELSON KIBE ..... 1<sup>ST</sup>  
RESPONDENT

JOSEPHAT GITHUI MURITHI ..... 2<sup>ND</sup>  
RESPONDENT

CHESROB ENTERPRISES LTD. .... 3<sup>RD</sup>  
RESPONDENT

ROBERT ROTICH KIPKEBUT ..... 4<sup>TH</sup>  
RESPONDENT

*(Being an Appeal from the Judgement/Decree delivered of the Chief  
Magistrate's Court at Nakuru (Honourable R. Ombata -Resident Magistrate )  
delivered on 4<sup>th</sup> October, 2022 in NAKURU CMCC No. 1112 of 2019 between  
VALLARY MMBONE KANGUHI vs CHARLES MWANGI NELSON KIBE & 3  
Others)*

**JUDGEMENT**

1. This Appeal arises from Judgement and Decree of the lower court entered in favour of the Appellant in which liability was apportioned against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the suit, in the ratio of 90% and against the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the suit, in the ratio of 10%. The trial court subsequently granted Kshs. 150,000/= and Kshs. 10,550/= in general and special damages respectively to the Appellant. The Appellant was also awarded the costs of the suit and interest.
2. Aggrieved by the Judgement on both on liability and quantum of general damages, the Appellant relies on the following two grounds as per Memorandum of Appeal dated 25/10/2022;

**1) THAT the Honourable trial magistrate erred in law and fact in awarding a sum of Kshs. 150,000/= which was inordinately low. (sic)**

**2) THAT the trial magistrate erred in law and fact in holding the 3<sup>rd</sup> and 4<sup>th</sup> Defendants 10% to blame and 1<sup>st</sup> and 2<sup>nd</sup> Defendants**

**90% to blame contrary to the weight of evidence on record. (sic)**

3. The Appellant therefore prays ;

**(a) Setting aside of the trial court's Judgement**

;

**(b) An appropriate finding on liability and quantum of damages.**

**(c) The costs of the Appeal.**

4. A brief background to the Appeal is that the Appellant sued the Respondents in the lower court for special damages of Kshs. 10,550/=, general damages as well as costs and interest. The cause of action arose from a road traffic accident in which the Appellant suffered bodily injuries while she was a passenger in the 1<sup>st</sup> Respondent's motor vehicle registration KBG 262 V driven at the material time by the 2<sup>nd</sup> Respondent.

5. The Appellant contended in the suit that she sustained the injuries as a consequence of negligent driving of motor vehicle registration KBG 262 V resulting in a collision with another motor vehicle registration KBH 733 C which was knocked at the rear. A third motor vehicle registration

KCC 424H is also said to have rammed the rear side of the former vehicle.

6. The Appellant complained of sustaining blunt injuries to the left knee joint leading to a sprain; the lower back resulting in soft tissue injuries and the head also occasioning soft tissue injuries.
7. Only the 3<sup>rd</sup> and 4<sup>th</sup> Respondents entered appearance and filed defence. They traversed all the material particulars of the suit including negligence attributed to them. Alternatively, they aver that any such accident as might be proven to have occurred was caused by negligent driving of the 1<sup>st</sup> and 2<sup>nd</sup> respondents' motor vehicle registration KBG 262 V.
8. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents therefore urged the court for the above reasons *inter alia* to dismiss the suit with costs.
9. The suit went to full trial, and the parties underscored the averments in their pleadings, save that the Appellant appeared to change tune and exonerate the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

10. Learned Counsel for the parties to this Appeal filed written submissions which I have perused against the Record of Appeal. I shall consider the grounds of appeal above set out together.

11. This being a first appeal I am required to reconsider the evidence adduced, evaluate it and draw my own conclusions bearing in mind that I did not hear and see the witnesses who testified { (see **Selle & Another Vs Associated Motor Boat Company Ltd & Others [1968] EA 123** }. 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.”***

12. In arriving at its judgement the trial court absolved the Appellant of any responsibility for the accident having been merely a passenger in motor vehicle registration KBG 262 V, which fact was undisputed.
13. Noting that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not defend the suit, the court adjudged them “largely” responsible for occurrence of the accident and apportioned liability against them at 90%. As regards the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the learned trial magistrate noted from the evidence that the driver of their vehicle registration KCC 424 H conceded in his evidence that he had failed to keep a safe distance from motor vehicle registration KBG 262 V and that, had he done so, the accident could have been avoided. The court ordered them to shoulder the remainder 10% liability for causation of the accident.

14. Concerning the quantum of general damages, the lower court was guided by the parties' submissions in relation to the nature and degree of the Appellant's injuries and the inflation factor. The court opined that Kshs.150,000/= in general damages was adequate compensation for the Appellant.
15. On liability, Counsel for the Appellant contend that evidence before the lower court was not properly evaluated and appreciated. It is noted that it was drizzling at the time and there was vehicular traffic gridlock requiring careful driving. The Appellant further observed that Motor vehicle KBG 262 V was hit from the rear while in motion, according to the evidence before the lower court. In light of this admission, Counsel submit that there is no evidence of liability against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as owner and/or driver motor vehicle registration KBG 262 V even if they did not file defence and/or offer evidence. The Appellant and her witnesses exonerated them from blameworthiness in their oral evidence.

16. The Appellant therefore submits that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents ought to be found 100% to blame on the evidence.
17. Regarding quantum of damages, the court was told that a bandage was applied to the Appellant's injured left knee and was removed after 2 weeks. Dr. Omuyoma's medico-legal report dated 30/8/2025 more or less confirms the Appellant's evidence as to the injuries suffered. The report shows that no fracture or dislocation resulted. Relying on **Lake Naivasha Flowers vs Muigai Thuku Naivasha Civil Appeal Number 36 of 2017** they cited in the lower court's submissions, the Appellant's Advocates propose an award of Kshs. 400,000/= in general damages. The Claimant therein suffered soft tissue injuries to the left thigh and the left leg from which he recovered. Kshs. 250,000/= general damages were awarded in the case.
18. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents on their part are of the opinion that the trial court correctly entered Judgement on the issue of liability. It is argued that there is no evidence of negligence on the part of the 3<sup>rd</sup> and 4<sup>th</sup>

Respondents. The Appellant did not therefore discharge her legal burden of proof as required under **Sections 107 and 109 of the Evidence Act**. Moreover, the court is told that the accident's Investigating Officer did not testify to corroborate the Appellant's evidence on causation of the accident.

19. Concerning the claim for general damages, the court is referred *inter alia* to case law in **Lilian Anyango Otieno vs Philip Mugoya Ogila (2022) eKLR**, in which Kshs. 150,000/= general damages were granted for head injury; dislocation of the cervical spine of the neck; chest injury with damage to the rib cage; blunt abdominal injury; soft tissue injuries to both upper limbs with dislocated wrist and elbow joint; dislocated pelvis frame involving both hip joints and damage to the right lower limb with dislocation of the ankle joint.
20. Other more or less comparable cases cited yielded awards of between Kshs. 100,000/= and 180,000/= general damages.

21. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents, wholly agree with judgement of trial magistrate on quantum as well.
22. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not offer evidence in rebuttal of the 3<sup>rd</sup> and 4<sup>th</sup> Respondent's evidence. It is trite law that they are deemed to concede liability having failed to offer evidence in support of their pleadings. The Appellant's attempt to exonerate them is misplaced as her evidence is at variance with her pleadings in the suit which ascribes liability to them.
23. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents' evidence shows that they admit blameworthiness, their driver having failed to keep a safe distance from the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's vehicle. Considering the prevailing circumstances on the road where there was traffic gridlock and it was raining, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' motor vehicle must have been engaging excessive speed in the circumstances.
24. In light of the doctrine of joint tortfeasors' liability, the 1<sup>st</sup> - 4<sup>th</sup> Respondents were wholly, jointly and severally liable for the claim. I find guidance in **National Land Commission & 6 Others Tunoi (Ex parte Applicant)**

**(Environment & Land Judicial Review Miscellaneous Application 7 of 2019 [2024] KE ELC 6525 (KLR) in which this common law principle was explained thus;**

**“Joint and several liability makes all parties liable to pay the costs awarded thereto up to the entire amount awarded. For this reason responsibility for the total amount of costs awarded in a suit then shared by all the parties held liable for their payment. The Decree Holder is at liberty to elect to recover the full amount of the debt from anyone of the judgement debtors or recover a share from each or any of them. The liable parties are in law in a position where they are all exposed to the full amount or any share sought by the judgement creditor. This means that the Respondent is at liberty to pursue any of the Judgement Debtors to settle the full amount of costs awarded. In the event he pursues one party or any number of them for the costs, the party or parties so pursued are in turn entitled to seek reimbursement from their co-liable parties for their shares of the costs.”**

25. The Appellant suffered soft tissue injuries as agreed by all parties. Case law relied upon by Counsel for the parties is more or less comparable to the instant case. Considering, however, that the decisions were handed down between 2017 and 2022, incidence of inflation is a factor to be reckoned with. I would enhance general damages to Kshs. 200,000/=.

26. Consequently, the Appeal is allowed and the trial court's Judgement on both liability and quantum is set aside and substituted accordingly as determined above.

**J. M. NANG'EA - JUDGE**

**Judgement delivered virtually this 9<sup>th</sup> day of February, 2026.**

**In the presence of:**

**Appellant's Advocate, Ms Kirui for Mr. Mboga**

**1<sup>st</sup> and 2<sup>nd</sup> Respondents, Absent.**

**3<sup>rd</sup> and 4<sup>th</sup> Respondent's Advocate, Ms Odhiambo.**

**Court Assistant(Jeniffer)**

**J.M. NANG'EA - JUDGE.**

ORIGINAL