



**Manoah v Ochieng (Civil Appeal E255 of 2024)
[2026] KEHC 1768 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E255 OF 2024
A MABEYA, J
FEBRUARY 19, 2026**

BETWEEN

WIMSY OSORE MANOAH APPELLANT

AND

RICHARD OCHIENG RESPONDENT

(Being an appeal from the judgment and decree of Hon. G.C. Serem RM/Adjudicator delivered on the 7/11/2024 in the Ksm SCCCase No. E166 of 2024, Richard Ochieng v Wimsy Osore Manaoh)

JUDGMENT

1. The respondent filed a claim against the appellant seeking compensation for personal injury following a road traffic accident that occurred on the 4/10/2023. The respondent also sought special damages and future medical expenses as well as costs of the claim.
2. The appellant entered appearance and filed a response denying the claim, the occurrence of the accident and pleaded contributory negligence on the part of the respondent.
3. In its judgment, the trial court found in favour of the respondent and entered judgment as follows: -
 - a. Liability – 50:50 between the parties
 - b. General damages – Kshs. 650,000 less 50% Kshs. 325,000/-
 - c. Future Medical Expenses – Kshs. 300,000/-
 - d. Special Damages – Kshs. 1,000/-
 - e. Costs of the suit and interest from the date of judgment until payment in full.
4. Being dissatisfied with the said judgment/decreed, the appellant lodged this appeal vide the Memorandum of Appeal dated 29/11/2024 raising six (6) grounds of appeal as follows: -



- a. That the learned trial adjudicator/magistrate erred and misdirected herself by proceeding on wrong principles when assessing damages to be awarded to the respondent under the head of general damages and thereby failed to apply precedents and tenets of the law applicable.
 - b. That the learned magistrate erred in law and facts in awarding the claimant/respondent herein future medical expenses of Kshs. 300,000/- when the same was not proved.
 - c. That the learned trial magistrate erred in law by failing to take into account the injuries pleaded by the respondent and considering comparable reasonable awards thereby arriving at an erroneous estimate of the compensatory award leading to an excessive award.
 - d. That the learned trial magistrate erred in law by awarding the respondent general damages of Kshs. 650,000/- and future medical expenses of Kshs. 300,000/- which was excessive in the circumstances.
 - e. That the learned trial magistrate erred in law and facts in failing to subject future medical expenses to liability.
 - f. That the learned trial magistrate erred in law in over relying on the respondent's evidence most of which was speculative in nature thereby reaching an entirely erroneous finding.
5. The parties agreed to dispose the appeal by way of written submissions but at the time of writing this judgment there were no submissions on record.
 6. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See *Selles & Anor vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123.
 7. Before the trial court, the respondent testified as Cw1. He adopted his witness statement dated 28/3/2024 as his evidence in chief, which statement reiterated the allegations made in his statement of claim. He further testified that he would need an additional Kshs. 300,000/- for purposes of reconstructive surgery.
 8. In cross-examination, he testified that the accident happened at 9pm, that there was no light and he was not crossing the road. He denied that any vehicle blocked him or that he was facing the Busia side. He stated that he was from Kisumu to Busia and that his home was on the right side facing Busia and was not crossing the road. He denied taking any alcohol. That nobody had been blamed for the accident. That he had not fully healed and was taking traditional medicine.
 9. Cw2 Philip Killimo, a clinical officer at Kisumu County Hospital testified that he examined the respondent at the hospital and he produced the P3 form he filled on the 11/10/2023 as CExh3. He testified that the respondent sustained a fracture of the right leg, injuries on the hand, a cut wound on the head, swelling on the left eye and ear with cut wound.
 10. In cross-examination, he reiterated that the respondent sustained a fracture of the right leg and that management was through pop and painkillers but that the respondent did not return to the hospital for review. In re-examination, it was his testimony that the respondent needed a recheck every 2 weeks.
 11. Cw3 No. 87911 PC Hillary Masiga produced an abstract as CExh2 for the accident that occurred on the 4/10/2023 at 9pm along Kisumu – Busia road along Kuoyo area involving motor vehicle registration number KBT 174H, a Toyota Auris driven by the appellant and the respondent who was a pedestrian.



12. In cross-examination, he testified that he was not the investigating officer. That the accident occurred at 9pm that it was dark as there were no street lights. That the Toyota was heading to Kisumu and the respondent was crossing the road when the driver of the Toyota applied emergency brakes but it was too late. In re-examination, he testified that the OB produced by the driver would blame the pedestrian.
13. Cw4 George Mwita a senior clinical officer at Rabuor sub-county hospital testified that he did a medical report for the respondent on the 26/1/2024. That the respondent had injuries on the hand, left eye, right leg and right knee joint.
14. That on further examination, the respondent had a cut wound on the head, a swollen left eye, fracture of the right ending of the bone joining the knee joint. That it was concluded that the respondent needed further treatment on fracture femoral bone which would cost Kshs. 300,000/-. He produced the medical report as CExh3.
15. In cross-examination, he testified that he saw the respondent 3 months after the accident and that with the right treatment it would take 6 months for the respondent to heal. That it was recommended that for the respondent's healing to go the herbal way.
16. The appellant testified as Rw1 and adopted his statement as his evidence in chief wherein he reiterated the details in his response to the statement of claim. He further testified that it was at 9pm when the accident occurred and that he was headed towards Kisumu from Busia. That on reaching Buoge, he saw another vehicle approaching and that the pedestrian jumped to his windscreen. That he reported the accident at Maseno Police Station.
17. In cross-examination, he told the court that at the time of the accident, he was driving motor vehicle registration number KBT 174A which he had bought from one Dominic Baraka and was still in the name of the old owner. That his headlights were functioning. He reiterated that the pedestrian jumped on his windscreen.
18. Rw2 Dr. Jenifer Kahathi produced the medical report prepared after examining the respondent as RExh2 which report was prepared by one Dr. Steve Ochieng. That the respondent was treated for fracture of the right leg and soft tissue injuries. That the respondent was examined 11 months after the accident and that the respondent did not have a mild limping gait but had a healed scar on the right knee and scalp with reduced range of motion on the right knee.
19. In cross-examination, Dr. Kahathi stated that the respondent had a limping gait and reduced range of movement on the knee as a result of the accident. In re-examination, she testified that the respondent had chosen to use a herbalist for his further medication.
20. Rw3 No. 725885 PC Mike Cheruiyot produced an OB No. 3/5/10/2023 over the accident as RExh3. He testified that he was the Investigation Officer in the matter and that the driver was heading to Kisumu. On reaching Kuoyo, the pedestrian was crossing the road and was hit by the vehicle. That nobody had been charged for causing the accident.
21. In cross-examination, he told the court that the accident was reported by road users through mobile phone. That the driver of the vehicle told him how he was driving and how the accident occurred. That the pedestrian also told him how the accident occurred and both their statements were the same though he had not produced the same in court.
22. I have considered the evidence tendered before the trial court and the submissions made before me. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the [*Small Claims Court Act*](#) provides for the jurisdiction of this Court in determining appeals from the Small Claims Court. It provides thus; -



1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
2. An appeal from any decision or order referred to in subsection (1) shall be final.”
23. It is clear from the foregoing that the jurisdiction of this Court from the Small Claims Court will only be on matters of law and not factual issues.
24. I have gone through the grounds of appeal again and I find none of the grounds that is a pure point of law. The appellant argues that the trial adjudicator proceeded on the wrong principles when assessing damages awardable to the respondent.
25. In the case of *Kimatu Mbuvi T/A Kimatu Mbuvi & Bros vs Augustine Munyao Kioko* (2006) eKLR, the Court of Appeal stated that: -

“It is generally accepted by Courts that the assessment of damages in personal injury cases is a daunting task as it involves many imponderables and competing interests for which a delicate balance must be found. Ultimately the awards will very much depend on the facts and circumstances of each case. As Lord Morris stated in *H. West & Son Ltd vs. Shephard* [1964]AC 326 at page 353- ‘The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion of judgment and of experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range of limits of current thought. In a case such as the present it is natural and reasonable for any member of an Appellate tribunal to pose for himself the question as to what award he himself would have made. Having done so, and remembering that in this sphere there are inevitably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment.’”

26. In view of the foregoing, the Court finds that the appeal lacks merit and dismisses the same with costs. It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF FEBRUARY, 2026.

A. MABEYA, FCI Arb

JUDGE

