

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CIVIL APPEAL NO. E045 OF 2024

DOREEN KARENDI MBAE.....APPELLANT

VERSUS

WANJUGI DISCOUNT

**STORE (MERU) LTD.....1ST
RESPONDENT**

**AMIRAN KENYA LIMITED.....2ND
RESPONDENT**

(Being an appeal arising from the decree emanating from the Judgement delivered by Hon. Oscar Wakina Kinyua (R.M.) delivered on 9th December 2024 in Chuka SCCC E048 of 2024.)

JUDGEMENT

1. This Appeal arises from the decision of Hon. Oscar Kinyua (R.M) in the Small Claims Court in Chuka SCCC/E048 of 2024 delivered on 9th December 2024. By a Claim dated 9th October 2024 the Claimant (now Appellant) had sued the Respondents for compensation for damages

relating to injuries she suffered as a result of the negligent actions of the Respondents' driver on 27th June 2024 while their driver was driving motor vehicle KCW 060L along Chuka- Chogoria around Mitheru.

2. The Claimant's case as per her written statement dated 9th October 2024 is that on 27th June 2024 at around 9:00am she was lawfully walking along Chuka- Chogoria road at Mitheru when the 1st and 2nd Respondents 'authorized driver/agent, servant and/or employee so negligently drove, managed and or controlled motor vehicle registration number KCW 060L S.Wagon that he caused or permitted the said motor vehicle to lose control and veer off the road onto the lane of motor vehicle registration number KBP 081U causing a violent collision.

3. That as a result of the impact of the collision, the Claimant was forced off the pedestrian path forcing her to jump into a nearby ditch where she sustained injuries. She blamed the driver of motor vehicle registration number KCW 060L for the accident.
4. The Respondents filed a response to the claim dated 31st October 2024 denying the occurrence of the accident and the particulars of negligence set out by the Claimant. They averred that there was no physical contact between the Claimant and the car thus the Claimant was not a victim.
5. The matter proceeded at the trial court under Section 30 of the Small Claims Court Act with the parties filing written submissions. Judgment was entered in favour of the Respondents with the Claimant's claim being dismissed for having not proven the Respondents' negligence. The trial

court however, stated that had it been satisfied that the Claimant had proved the Respondents 'negligence, it would have awarded Kshs. 180,000 in general damages.

6. Aggrieved with the judgment, the Appellant lodged the appeal on the following grounds as per the memorandum of appeal dated 11th December 2024:-

- i. The learned trial magistrate erred in law and in fact in finding the Claimant's injuries were not a proximate result of the 1st and 2nd Respondent's negligence by disregarding the evidence including the police abstract and uncontested facts of the accident which clearly demonstrated a chain of causation leading to the Claimant's injuries.

- ii. The learned magistrate erred in law by failing to adequately consider the uncontroverted evidence of the Claimant's injuries supported by medical reports, the police abstract and credible witness testimony that established liability on the Respondents for creating a situation of imminent danger.
- iii. The learned trial magistrate erred in dismissing the Claimant's claim based on the absence of direct contact between the 1st and 2nd Respondents' vehicle and the Claimant by failing to apply the principles of foreseeable risk, reasonable action under emergency circumstances as established in Jones V Boyce and other authorities.

- iv. The learned trial magistrate erred in law and fact by misapplying the principle of foreseeability in disregarding the fact that the Claimant's injuries arose from the reasonable reaction to the dangerous situation caused by the 1st and 2nd Respondent's negligence.
- v. The learned magistrate erred in law and in fact in failing to appreciate that even if contributory negligence were found on part of the Claimant it did not absolve the 1st and 2nd Respondents of their primary liability for creating the dangerous situation that led to the Claimant's injuries.
- vi. The learned magistrate erred in law and fact in disregarding binding and persuasive case law cited by the Claimant

including Farrah V Kenya Ports Authority and Mwadime v Yamani which emphasize that the 1st and 2nd Respondents are liable for creating situations forcing plaintiffs to take defensive actions.

vii. The learned magistrate erred in law and fact by failing to appreciate the extent and severity of the injuries sustained by the Claimant by wrongly characterizing them as mere soft tissue injuries despite medical evidence and expert testimony indicating otherwise.

7. The Appellant prayed that the Appeal be allowed, the trial court judgment be set aside, determination that the 1st and 2nd Respondents are liable for the injuries sustained by the Appellant and quantum of damages.

8. This is an appeal from the Small Claims Court. As such my jurisdiction is circumscribed by section 38(i) of the Small Claims Court Act which provides:

-

“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.”

9. The Appeal was canvassed by way of written submissions as directed by the court. The Appellant filed written submissions dated 5th May 2025 while the Respondents filed written submissions dated 7th July 2025.

10. The Appellant contends that it is undisputed that an accident did occur on 27th June 2024 involving the Respondent's motor vehicle registration number KCW 060L and another motor vehicle KBP 081U as confirmed in the police

abstract and that motor vehicle registration number KCW 060L was blamed for the accident and that the Respondents did not join the owner of motor vehicle registration number KBP 081U as a third party, it reasonably follows that the Respondents 'motor vehicle registration number KCW 060L is to blame for the accident. She relied on the case of **Baker v Market Harborough Industrial Cooperative Society Ltd [1953] 1 W.L.R 1472.**

11. The Appellant further contends that it is undisputed that the Appellant was not actually hit by the Respondents' said motor vehicle or motor vehicle registration number KBP 081U with which the Respondents' motor vehicle collided. That the driver of the Respondents 'motor vehicle owed other road users including the Appellant, a pedestrian a duty of care.

12. The Appellant urged that there was sufficient/proximate nexus or connection between Respondents or their driver's alleged negligent acts or omission leading to the accident and the injuries suffered by the Appellant as a result of jumping from the pedestrian path into a ditch to avoid being hit and potentially killed, as a result of the impact resulting from the accident.

13. The Appellant further submitted that the trial court correctly found that the driver of the Respondents' motor vehicle owed other road users a duty of care which the driver breached under the tort of negligence. She submitted that the four elements in the tort of negligence being the existence of law of a duty of care, breach of the duty of care, a causal connection between the Defendant's careless conduct and the damage suffered by the claimant was not too remote. She

urged that causation had been adequately established and relied on the case of **Donhogue Vs. Stevenson [1932] AC 352.**

14. It was also submitted that the Appellant, a pedestrian was one of the persons closely related and affected by a driver's actions or omissions that the driver ought reasonably to have them in his contemplation as persons who may be affected one way or the other by the driver's acts or omissions. To support the argument on remoteness/proximity to danger. She relied on the case of **Caparo Industries PLC v Dickman [1990] 1 ALL ER 568, Transfield Shipping Inc. v Mercator Shipping Inc. [2009] 1 AC 61 and Annastacia Thomos v Occidental insurance Co. Ltd [2017] eKLR.**

15. It was further submitted that the Respondents' witness one James Kamau Karani the driver of

motor vehicle registration number KCW 060L stated that in a bid to avoid colliding with another vehicle, swerved off the road and rested on a guard rail and that he did not see the Appellant at the scene of accident. She relied on the case of **Masembe v Sugar Corporation and Another [2002] EA 434** on the express responsibility of drivers to exercise reasonable care and to anticipate any act which is reasonably foreseeable. She placed further reliance on the case of **Bourhill v Young [1943] AC 92**.

16. Citing **Jone v Boyce [1816] 1 Stark 493**, the Appellant argued that her case establishes the doctrine of alternative danger which offers legal protection to passengers and by extension other road users including pedestrians who act reasonably in the face of perceived peril caused by the negligence of the driver of a motor vehicle

even if their actions ultimately lead to injury. She further cited **Maina Stephen Mathu and 2 others v David Kanja Macharia and Esther Wangui Mwai (suing as the administrators of the estate of James Gachoka Macharia (Deceased) [2019] eKLR.**

17. The Appellant submitted that the doctrine of *volenti non fit injuria* cannot be pleaded to explain away the Appellant's injuries as she acted reasonably. In support of her argument, she relied on **J Kudwoli & Another v Rureka Educational and Training Consultants & 2 Others [1993] eKLR** and **Stanley Munga Githunguri v Republic [1986] eKLR.**

18. On general damages, the Appellant submitted that the trial court erred by failing to appreciate the extent of the injuries which per the medical report were left knee joint dislocation with

tenderness with limping gait as a residual injury. The Appellant proposed an award of Kshs. 350,000 as general damages as opposed to the trial court's assessment of 180,000/-.

19. Lastly, on costs, the Appellant submitted that costs follow the event and in the event of the Appeal being successful, she was entitled to the award of costs of both the trial court proceedings and the costs of the Appeal.

20. The Respondents on their part submitted that the jurisdiction of this court is limited on questions of law as set out under Section 38 of the Small Claims Court Act. They relied on the case of **Wanjiru v Kiilu [2024] [KEHC] 8881 KLR** where the court equated the jurisdiction of this court to second appeals of the Court of Appeal.

21. The Respondents argued that the grounds set out in the Memorandum of Appeal being grounds 1,

2 and 5 relate to factual issues the court cannot interrogate.

22. The Respondents submitted that the only issue for determination is whether the findings made by the trial court on the doctrine of foreseeability are unreasonable that no reasonable court or tribunal could arrive at the same conclusion. They cited the case of **Idris Abdi Abdullahi v Ahmed Bashane & 2 Others [2018] KECA 455 KLR.**

23. The Respondents further submitted that the trial court's finding on liability was based on facts and that the Appellant has not demonstrated how the trial court misapprehended the case. They urged the court to affirm the trial court's findings.

24. Lastly, that on the issue of quantum, the Respondents submitted that the trial court made reference to judicial authority that was binding to it relating to soft tissue injury and arrived at what it

deemed reasonable as damages had liability been proved.

Analysis and determination

25. From the pleadings and submissions by the parties, the following issues arise for my determination: -

- i. Whether this court has the jurisdiction to entertain the appeal as framed.
- ii. Whether the trial court appreciated the principle of causation.
- iii. Whether the Appellant is entitled to damages and the appropriate quantum.

26. The Respondents raised a substantive issue that this Court lacks jurisdiction to entertain the appeal beyond questions of law, as circumscribed by **the Small Claims Court Act**.

27. **Section 38(1) of the Small Claims Court Act, 2016** provides:

“A person aggrieved by the decision or order of the Court may appeal against that decision or order to the High Court on matters of law.”

28. In **Fidelity Insurance Company Ltd v Korir [2024] KEHC 3365 (KLR)**, the Court (Korir J. as he then was) held that: -

“An appellant who invites the court to re-evaluate evidence and substitute its own findings in place of the adjudicator’s ventures beyond the confines of Section 38(1). The High Court cannot act as a second fact-finder.”

29. However, in **Beth Wanjiku v Julius Irungu [2025] KEHC 3461 (KLR)**, Mativo J. (as he then was) held that: -

“An appellant may legitimately challenge the trial court’s reasoning where the facts were not disputed but the legal effect of those facts was erroneously determined.”

30. From the above persuasive authorities, it emerges that while pure questions of fact cannot be re-opened, mixed questions of law and fact that go to the application of legal principles are permissible grounds of appeal.

31. There is no dispute that this Court cannot re-evaluate pure questions of fact or substitute its own factual findings for those of the Small Claims trial court. However, it is equally settled that where a trial court misdirects itself on the law, applies

incorrect legal principles to uncontested facts, or draws conclusions unsupported by law, it commits an error of law properly subject to appellate intervention. In **Kondoo v Kenya Bus Services Ltd [1986] KLR 223**, the Court of Appeal held that the question whether the facts as found support the legal conclusion reached is itself a question of law.

32. Likewise, in **David Njuguna Wairimu v Kenya Power & Lighting Co. Ltd [2015] eKLR**, the Court emphasized that a failure to properly apply the law on negligence to established facts amounts to an error of law.

33. In the present Appeal, the Appellant challenges the trial court's interpretation and application of the doctrines of negligence, causation, foreseeability, proximity, and remoteness of damage. The complaint is not that

the trial court believed the wrong witnesses, but that it applied an erroneous legal standard by holding that absence of physical contact removes causation and defeats liability.

34. I therefore find that the appeal raises substantial questions of law falling squarely within the jurisdiction of this Court under Section 38 of the Small Claims Court Act.

35. It is undisputed that on 27th June 2024, a road traffic accident occurred along the Chuka-Chogoria Road involving motor vehicle registration number KCW 060L, owned by the Respondents, and motor vehicle registration number KBP 081U. The police abstract produced before the trial court attributed blame to the driver of motor vehicle KCW 060L. The Respondents did not tender any contrary evidence to rebut this prima facie finding, nor did

they enjoin the owner of motor vehicle KBP 081U as a third party.

36. In **Statpack Industries v James Mbithi Munyao [2005] eKLR**, the Court of Appeal held that where evidence of negligence is uncontroverted, a court is entitled to find liability established on a balance of probabilities.

37. The driver of motor vehicle KCW 060L admitted losing control of the vehicle in an attempt to avoid a collision. Loss of control of a motor vehicle on a public road, absent a satisfactory explanation in my view, constitutes negligence.

38. The central basis upon which the trial court dismissed the Appellant's claim was that the Appellant was not physically hit by the Respondents' motor vehicle. This was a misdirection in law.

39. The correct legal inquiry is whether the Respondents' negligence created a dangerous situation, and whether the Appellant's injuries were a reasonably foreseeable result of that danger. The Appellant, a pedestrian lawfully using the road, reacted to an imminent danger by jumping into a ditch to avoid being hit by vehicles that had encroached onto the pedestrian path. Her reaction was instinctive and reasonable in the circumstances.

40. In the case of **Farrah v Kenya Ports Authority [1992] eKLR** the court of Appeal held that a man is not bound to wait till danger befalls him and then attempt to extricate himself from it. He is entitled, and indeed bound, if he is not to be guilty of any contributory negligence to take reasonable precaution to avoid injury to himself.

41. In light of the above, I therefore find that the causal link between the Respondents' negligence, and the Appellant's injuries was established, and the chain of causation was not broken.

42. There was no evidence that the Appellant acted negligently or unreasonably. In ***Stapley v Gypsum Mines Ltd [1953] AC 663***, it was held that contributory negligence must be affirmatively proved. No such proof was offered by the Respondents.

43. I accordingly find no contributory negligence attributable to the Appellant and find the Respondents 100 % liable for the accident.

Quantum of Damages

44. The medical report dated 9th July 2024 established that the Appellant sustained a left knee joint dislocation with residual pain and limping gait. These injuries in my view were not trivial.

45. In **Catholic Diocese of Kisumu v Sophia Achieng Tete [2004] eKLR**, the Court of Appeal held that an appellate court may interfere with an award of damages where the trial court acted on wrong principles or misapprehended the evidence.

46. The trial court in its findings having considered the sums proposed for general damages by the parties, proceeded to assess general damages at Kshs. 180,000 while relying on the case of **Channan Agricultural Contractors Limited v Fred Barasa Mutayi [2013] eKLR** where the court awarded Kshs. 150,000 in 2013 for soft tissue injuries. In its judgment, the trial court noted that the injuries were soft tissue in nature.

47. From the medical report dated 9th July 2024 by Dr. Nkonge, the Appellant sustained a left knee joint dislocation with tenderness and at the time of examination, she presented with a limping gait.

48. The Appellant on Appeal proposed a sum of Kshs. 350,000 in general damages in light of the injuries.

49. In **Carolyn Indasi Mwonyonyo v Kenya Bus Service Ltd [2012] eKLR** the court substituted the award of the trial court with an award of Kshs. 350,000 where the Appellant's injuries were in the nature of soft tissues and a dislocation of the right knee joint.

50. Taking into account comparable awards, the nature of the injuries, residual effects, and prevailing economic conditions, I assess general damages at Kshs. 200,000.

51. On special damages, the Appellant pleaded Kshs. 14,150 to which she produced receipts to prove the same. I award the sum of Kshs. 14,150 as pleaded.

52. It is trite that costs follow the event unless the court orders otherwise. The Appellant is therefore entitled to the costs of the suit in the trial court and in this appeal.

53. In the result, I make the following orders:

- i. The appeal is allowed.
- ii. The judgment of the Small Claims Court in Chuka SCCC/E048 of 2024 delivered on 9th December 2024 is hereby set aside.
- iii. Judgment is entered for the Appellant against the Respondents jointly and severally on liability at 100%.
- iv. The Appellant is awarded Kshs. 200,000 as general damages. The same shall attract interest at court rates from the date of this judgement.
- v. The Appellant shall have the costs of the suit before the Small Claims Court and the

costs of this appeal together with interest
at court rates.

Orders accordingly.

**Judgment delivered, dated and signed at
Chuka this 10th day of February, 2026.**

.....

R. LAGAT-KORIR

JUDGE

**Judgement delivered in presence of Mr. Oginga
for the Appellant and Mr. Kiplagat for the
Respondent. Muriuki (Court Assistant).**