

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E1287 OF 2023

HENRY NJOROGI WAWERU..... 1ST
APPELLANT

BERNICE WAIRIMU KAMAU2ND
APPELLANT

VERSUS

ENOCK BASAKHILA SIMIYU.....
RESPONDENT

JUDGMENT

1. This is an appeal from an award resulting from a road traffic accident at the lower Court. The lower court found the Appellant 90% liable and proceeded to assess general damages.
2. The evidence on record is that the Plaintiff was knocked off the road as per PW1 while the Appellant who was driving a motor vehicle testified that while driving on the road, he saw two matatus ahead of him and so to prevent a head on collision, he swerved slightly on the edge of the road and knocked the Respondent. I have analyzed the evidence and noted that the Appellant seems to be blaming other drivers yet he did not enjoin them in this suit. His action of swerving to avoid ahead on collision could have saved more damage but it certainly led into this accident and so it is right to say

that had he not swerved, this accident could not have happened meaning that the Respondent was lawfully walking on the road- and in fact the Appellant was charged with a traffic offence which had not been concluded at the time the lower Court matter was pending. The trial Court apportioned liability at 90:10 in favour of the Respondent and I think this was fair enough given that the Appellant's driver avoided a head on collision that would have caused more harm otherwise he would have been found 100% negligent. The 10% was perhaps a reward for choosing a lesser evil.

Quantum

- 3.** The lower Court Ksh 500000 for the injuries sustained by the Respondent. As per DR. Ndeti, the plaintiff suffered moderate head injury with transient loss of consciousness, fractured bilateral orbital bones no- displaced fractures blunt injury on; temporal hemorrhagic cerebral contusion, cervical spine, left ear, abdomen, chest, pelvic, and upper elbows. The award is not excessive for all these injuries and so I shall not disturb it.
- 4.** The conclusion of the above is that the appeal is dismissed with costs to the Respondent.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 26TH DAY OF FEBRUARY 2026.

**HON L P KASSAN
JUDGE**

**In the presence of;
Ms Muthoni for Appellant**

**Masika for Respondent
Carol - Court Assistant
30 DAYS STAY GRANTED**

ORIGINAL