Lamek v Mutungu (Civil Appeal E088 of 2023)
[2026] KEHC 2836 (KLR) (19 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2836 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CIVIL APPEAL E088 OF 2023

WA OKWANY, J

FEBRUARY 19, 2026

BETWEEN

BEATRICE WANGARI LAMEK ..... APPELLANT

AND

SAMUEL GITAU MUTUNGU ..... RESPONDENT

(Being an appeal from the judgment of Hon. J. Ndeng'eri (PM) delivered on 26th September 2023 in Naivasha CMCC No. E257 of 2021)

JUDGMENT

1. The Appellant sued the Respondent for damages arising from a road traffic accident that occurred on 11th August 2020 along the Naivasha–Nakuru road while travelling aboard motor vehicle registration number KCK 827J (matatu) when the Respondent's vehicle Reg. No. KBK 021D (lorry) rammed into the matatu from behind thereby causing it to overturn. She attributed the accident to the negligence to the Respondent's driver and stated that she sustained serious injuries in the said accident.

2. In a judgment delivered on 26 September 2023, the trial court dismissed the Appellant's suit, with costs to the Respondent, holding that negligence had not been proved to the required standard.

3. Aggrieved by the said decision, the Appellant lodged the present appeal raising eight (8) grounds touching both liability and quantum.

4. The appeal was canvassed by way of written submissions, which I have considered.

The Appellant's Submissions

5. The Appellant adopted her testimony that the matatu was hit from behind by the respondent's lorry. She argued that as a passenger, she had no control of events that led to the accident and that her evidence was supported by the police abstract and Occurrence Book (OB) extract.

6. It was submitted that failure to call the investigating officer should not defeat justice since police records confirmed the involvement of respondent's motor vehicle.

7. The Appellant invoked the doctrine of res ipsa loquitur and relied on several authorities including Beatrice Kanini Mutua v Titus Mulinge Kativanga [2019] eKLR, where the court emphasized that the burden shifted once the facts of a rear-end collision were shown.

8. She sought Kshs 300,000 general damages and Kshs 23,020 special damages.

The Respondent's Submissions

9. The Respondent submitted that negligence was not proved and that PW2 was not the investigating officer. He argued that the police abstract could not establish blame and that no traffic charges were preferred against his driver. He also contended that the documents that the Appellant relied on were not filed or served and were thus inadmissible. He relied on Kiema Mutuku v Kenya Cargo Hauling Services Ltd [1991] 2 KAR 258 and Sally Kibii & Another v Francis Ogaro [2012] eKLR for the argument that the Appellant bore burden of proof.

10. He urged this court to dismiss the appeal with costs.

11. Having considered the record of appeal and the parties' rival submissions, I find that the main issue for determination is whether the Appellant proved negligence on a balance of probabilities.

Analysis and Determination

12. This being a first appeal, the court is duty-bound to re-evaluate the evidence presented before the trial court and draw its own independent conclusions, while bearing in mind the fact that it did not observe the witnesses testify. (See Selle v Associated Motor Boat Co. Ltd [1968] EA 123).

13. It is undisputed that the Appellant was a lawful passenger in the matatu. It is further uncontested that the matatu was struck from the rear and that it overturned. The Appellant testified as follows on the accident during cross examination: -

> " I was a passenger in KCK, KBK hit KCK from behind.....the vehicle was parked by the roadside."

14. PW2, PC Racheal Lotukon produced the police abstract which confirmed the involvement of the matatu and the Respondent's vehicle in the accident.

15. The trial court held as follows on the issue of liability: -

> " The Plaintiff is duty bound to demonstrate negligence on the part of the Defendant. This she did not do to the court's satisfaction. The police officer's testimony was of little use to the Plaintiff's case."

16. From a reading of the Appellant's testimony on how the accident occurred and the trial court's finding on liability, I find that it is apparent that the trial court appeared to elevate the evidentiary threshold beyond the civil standard.

17. It is well-established in our law that a driver who collides with another vehicle from behind will generally be presumed negligent unless sufficient evidence is adduced to rebut that presumption.

18. This is the position that was taken in Orioki v Kevian Kenya Limited (Civil Appeal 341 of 2019), where the Court of Appeal reiterated this principle, citing the oft-quoted authority of Njuguna v Chogo

[1985] KLR 452: - where it was held that under common law, a driver who hits another vehicle from behind is generally presumed to be at fault, unless there is sufficient evidence to rebut this presumption. (See Njuguna v Chogo [1985] KLR 452).

19. The Court of Appeal further held that where the appellant admitted that he had collided with the respondent's vehicle from behind, that fact alone placed on the appellant the burden to prove that the collision was not due to his negligence. The learned appellate Judges observed that the appellant "failed to adduce any compelling evidence to counter the police abstract or to disprove the causal link between his actions and the damage", and accordingly upheld the finding of liability against him.

20. Similarly, in Ogola v Owino (Civil Appeal E038 of 2024) [2025] KEHC 5052, the High Court affirmed the rebuttable presumption of negligence in rear-end accidents. The Court noted that: -

> " under normal circumstances, such a hit, by dint of Multiple Hauliers (EA) Ltd v Justus Mutua Malundu & 2 others [2017] eKLR, would point to negligence on the part of the driver hitting the other, on the basis that there is a general 'presumption that he who hits another from behind is ipso facto negligent.' The question then to ask is whether the facts of the instant case pointed to negligence on the part of the respondent."

21. The judgments in the above cited cases expressly recognised a rebuttable presumption, which the defendant may displace only by credible evidence explaining the circumstances of the collision.

22. The principle that there is no injury without liability has also been articulated in Kenyan jurisprudence. In Kiema Mutuku v Kenya Cargo Hauling Services Ltd (supra) the Court affirmed that liability flows from fault; however, the court also recognised inference of negligence where circumstances point to negligent control of a motor vehicle.

23. In Baker v Market Harborough Cooperative Society Ltd [1953] 1 WLR 1472, a leading authority cited locally, courts infer negligence where two vehicles collide and the cause is unexplained.

24. In Beatrice Kanini Mutua v Titus Mulinge Kativanga [2019] eKLR, the court held that failure to call the investigating officer is not fatal where involvement and mechanism of collision is uncontested.

25. The principle that emerges from the above cited cases is that where a moving vehicle rams into another from behind, negligence is inferred unless the defendant provides an alternative explanation. The principle does not remove burden of proof but operates as a permissible inference.

26. In the present case, the Respondent did not tender any evidence to rebut the circumstances pointing to negligent control. No eyewitness was called, no alternative account offered, and no material placed before court to displace the plaintiff's evidence. I therefore find that, on a re-evaluation of the record, the trial court erred in failing to draw the proper inference of negligence from the circumstances of the collision and the Appellant's passenger status.

27. For the above reasons, the appeal on liability succeeds and I find the Respondent 100% liable for the accident since the Appellant was a passenger in the matatu and could not have contributed to the said accident.

Quantum

28. The trial court did not assess the damages that would have been payable to the Appellant if she had succeeded in her case. Instead, the said court held as follows: -

> " ..... the claim for liability having collapsed, the issue of quantum became a non-starter."

29. It is well-established in our jurisprudence that a court of first instance should assess the quantum of damages sought by a claimant even where it ultimately dismisses the claim on the ground of lack of liability. In JNM (Suing as the legal representative of the Estate of SGG – Deceased) v Kenya Power & Lighting Co Ltd [2025] KEHC 11984 (KLR), the High Court correctly noted that: -

> " It is good practice for the trial court or court of first instance to assess damages even if it finds that liability has not been established... After dismissing the case, a court must, as a corollary, assess damages. ... It has been held time and again by the Court of Appeal that the court of first instance should assess damages even if it finds that liability has not been established." In Lei Masaku v Kalpama Builders Ltd [2014] eKLR, the court noted that trial courts and appellate courts alike must assess damages even after dismissing liability, so that the appellate court "needs to know the view by the Court of first instance on the issue of quantum."

30. In Kamau v Coast Bus (Mombasa) Limited (Civil Appeal 76 of 2022) [2024] KEHC 3232 (KLR), the High Court held that to dismiss a suit and refuse to assess the issue of damages is 'a serious indictment on the part of the trial court' and that even after finding no liability, the court should have addressed the issue of quantum.

31. Likewise, in William Mbugua Ng'ang'a v. Mohammed Salim & another [2020] KEHC 5355 (KLR), it was held that a court of first instance has the unwavering obligation to assess damages notwithstanding a dismissal on liability.

32. The above authorities underscore that assessment of damages is a necessary corollary of adjudication and provides guidance for appellate supervision of quantum.

33. It is therefore my finding that the trial court erred in failing to assess the quantum of damages that would have been payable to the Appellant who is reported to have sustained soft tissue injuries to the neck, shoulder joint and right scapular region.

34. I have considered the following comparable authorities where the claimants sustained similar injuries: -

    a. In Ochola v Owuor (Civil Appeal E039 of 2022) [2024] KEHC 7689 an award of Kshs. 250,000 was made to the claimant who sustained soft tissue injuries of the right shoulder joint, blunt injury to chest, neck, back and both knees.

    b. In Arika v Wemba (Civil Appeal 39 of 2022) [2024] KEHC 14602 Kshs. 250,000 general damages was awarded to the claimant who sustained soft tissue injuries.

35. Guided by the above cited cases, I find that an award of Kshs. 250,000 would be adequate compensation for the Appellant's injuries.

Disposition

36. For the reasons that I have stated in this judgment, I find that the instant appeal is merited and I therefore allow it in the following terms: -

    a. The judgment of the trial magistrate delivered on 26th September 2023 is hereby set faside.

    b. Judgment is entered for the appellant on liability at 100% against the respondent.

    c. General damages for pain and suffering are assessed at Kshs 250,000.

    d. Special damages of Kshs 23,020 are awarded as pleaded and proved.

e. Costs of the suit in the trial court and this appeal are awarded to the appellant.

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

HON. W. A. OKWANY

JUDGE

19/02/2026

For Appellant Ms Karau for Waregi

For The Respondent Cheruiyot

Court Assistant Karani

30 days stay of execution is granted file close