

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. E010 OF 2024

SIMBA COACH BUS COMPANY LIMITED.....
APPELLANT

VERSUS

BENJAMIN MASIGA.....RESPONDENT
AS CONSOLIDATED WITH
CIVIL APPEAL NO. E012 OF 2024

BENJAMIN MASIGA..... APPELLANT

VERSUS

SIMBA COACH BUS COMPANY LIMITED.....
RESPONDENT

(Appeals from judgement and decree by Hon. PA Olengo,
Senior Principal Magistrate, SPM, of 22nd February 2024, in
Busia MCCC No. E033 of 2022)

JUDGMENT

1. The suit, at the primary court, was by Benjamin Masiga, who I shall hereafter designate as the appellant, against Simba Coach Bus Company Limited, who I shall designate hereafter as the respondent. The appellant sought compensation in general and special damages, with respect to pain and loss that he suffered on account of a road traffic accident, that had allegedly happened on 12th March 2018, involving his motor vehicle registration mark and number KAS 120H and motor vehicle registration mark and number KBQ 631C, belonging to the respondent. The appellant was driving his vehicle, when it collided with that other vehicle. He alleged that KBQ 631C was negligently driven, hence it hit KAS 120H, occasioning injury to him.
2. The respondent resisted the claim; through a defence it filed, dated 23rd February 2022. It denied everything pleaded in

the plaint, and averred that the accident in question was caused by negligence on the part of the driver of KAS 120H.

3. A trial was conducted. Both parties presented witnesses. Judgement was delivered on 22nd February 2024. Liability was apportioned at the ratio of 50:50. General damages were assessed at Kshs. 700,000.00.
4. Both sides were dissatisfied by that outcome, and filed the appeals herein, which were consolidated by an order made on 27th October 2025.
5. For the appellant, the award of general damages was too low, comparative to the injuries sustained; the special damages pleaded were not considered; and costs were not awarded. For the respondent, it was the issue of liability being assessed at 50:50; failure to dismiss the suit for being time-barred; failure to consider submissions; and applying the wrong principles in the assessment of damages.
6. Directions were taken, on 27th October 2025, for canvassing of the appeal by way of written submissions. I have only seen submissions by the appellant, which I have read and noted the arguments made.
7. Let me start with the most critical of the issues, whether the suit was time-barred. It is critical because it goes to jurisdiction, for no court has jurisdiction to entertain a claim that is time-barred.
8. The suit was a claim for compensation, founded on a motor traffic accident. The claim was based on the tort of negligence, whose limitation period, by dint of the provisions of the Limitation of Actions Act, Cap 22, Laws of Kenya, is 3 years. Upon lapse of the 3-year limitation period, such a claim would become stale, and no court would have jurisdiction to entertain it. The only saving grace would be

extension of time to file it. In the absence of such extension, the claim would be as dead as a dodo.

9. According to the filings, and other papers on record, the accident occurred on 12th March 2018. 3 years, from 12th March 2018, lapsed on 11th March 2021. The plaint was lodged at the registry of the trial court on 10th February 2022, nearly a year after expiry of the limitation period. It is indicated though, on the face of the plaint, that leave to file suit out of time had been obtained, on 7th February 2022. A copy of the order, extending time for filing suit, was part of the bundle of documents that the appellant filed on 10th February 2022, with the plaint. Consequently, the matter of the claim being stale is a non-issue.
10. On liability, the trial court assessed it at 50:50. The respondent argues that there was no evidence to support that, and that the suit should have been dismissed, for liability, against the respondent had not been proved. The trial court was of the view that the evidence tendered by both sides did not establish who was to blame for the collision, and it was guided by *Hussein Omar Farah vs. Lento Agencies* [2016] eKLR (Omolo, Tonui & Githinji, JJA) and *Platinum Car Hire Limited vs. Samuel Arasa Nyamesi & another* [2019] eKLR (Majanja, J), on the point that where a court is unable to determine who is to blame, it should apportion liability equally.
11. Was there material on record which suggested that the court should have arrived at a contrary position?
12. The appellant testified as PW1. He said that the vehicle belonging to the respondent was being driven negligently and carelessly, causing it to collide with his vehicle. He said that that other vehicle was in motion, after it had left a roadblock. PW3 was a police officer called to produce the police abstract. He did not investigate the accident. He stated

that the abstract was issued in 2022, and the accident had happened in 2018. According to the abstract, there were no results of the investigations, but the appellant was blamed for the accident, and was to be charged. He said the records in their office blamed the driver of the respondent's vehicle.

13. The driver of the respondent's vehicle testified as DW2. He stated that his vehicle was hit while stationary, at a roadblock. In his statement to the police, which he relied on as his evidence, he had written that his vehicle was stationary at the roadblock, but when he saw the vehicle, the appellant was driving, approaching dangerously, he moved his vehicle to avoid a collision, but the other vehicle hit his. He called DW1, a traffic police officer, who testified that the vehicle was hit while at a roadblock. He blamed the appellant for the accident. He conceded that he never investigated the matter. He referred to a police abstract, but stated that he did not know how it was issued.

14. Although the driver of the respondent's vehicle and his witness testified that the vehicle was stationary, when it was hit by the other vehicle, his statement to the police, which he adopted as his evidence, said something different, while it confirmed that his vehicle had stopped at the roadblock, he moved it when he saw the other vehicle approach dangerously, and it was amid that movement that the collision occurred. That tallied with the testimony of the appellant, that the other had been stationary, and it moved, and it was while in motion that the collision occurred.

15. I would agree with the trial court, the narratives by both the appellant and DW2, the sole eyewitnesses, were rather vague on what exactly transpired. The police records would have helped, but they did not. Both PW3 and DW1 were not at the scene, they did not investigate the accident, and did not provide the trial court with material, from the investigations, if any were conducted by the police. The

court only had the vague testimonies of PW1 and DW2, the eyewitnesses, to go by. The effect was that there was a collision of the 2 vehicles, but it was unclear, as to who could be blamed, between the 2 drivers, for that collision.

16. On the general damages, the appellant pleaded, in his plaint, that he had sustained a broken right femur, blunt injury on the chest, multiple wounds on the body and swollen body. He placed reliance on a medical report by Dr. Andai, dated 20th April 2022, which identified his injuries as a fracture of the right femur. He was hospitalised for 6 weeks. There was shortening of the leg by about 2 cm, and permanent disability was assessed at 50%. The court cited 2016 and 2017 decisions, where awards had been made for intertrochanteric fractures of the femur.
17. I have reviewed awards made by the High Court, for comparable injuries. In *Peter Karoka vs. Mbaluka Malonza & 2 others* [2018] KEHC 1683 (KLR) [2018] eKLR (Sergon, J), the injury was a fracture of the left femur, and an award of Kshs. 800,000.00 was made. It was observed that awards for that class of injury ranged from Kshs. 200,000.00 to Kshs. 750,000.00. In *Gerald Odera Omollo vs. Rose Anyango Rayola* [2022] KEHC 1480 (KLR) [2022] eKLR (Wendoh, J), the claimant had a fracture of the right femur, with soft tissue injuries, and Kshs. 600,000.00 was awarded.
18. In *Jacaranda Bodaboda Operators & another vs. Nyasero* [2023] KEHC 23806 (KLR) (J. Njagi, J), there was a fracture of the right femur, with 10% disability, and Kshs. 750,000.00 was awarded. In *Matheka vs. Mackenzie Educational Centre Limited* [2024] KEHC 7143 (KLR) (Olel, J), there was fracture of the right femur, with a deep cut wound on the right eyebrow, and a permanent disability of 10%, and Kshs. 500,000.00 was awarded. In *Ndavi vs. Mwangangi* [2024] KEHC 8106 (KLR) (Ougo, J), there was a simple femur fracture, and Kshs. 700,000.00 was awarded.

19. The injury sustained, according to the medical report, was a single fracture of the right femur. No record was made of soft tissue injuries, in the medical report, by Dr. Andai, put in evidence. From the review of the decisions on awards for comparable injuries, it would appear that the award made by the trial court was within the range. Curiously, despite averring in the memorandum of appeal, that the award was too low, for the injuries sustained, the appellant has not adverted to it in his written submissions.
20. The appellant submits that he sought special damages, but the trial court did not award them. In the plaint, the appellant pleaded a total of Kshs. 211,224.00 as special damages, covering medical treatment, medical report and police abstract. At the trial, he produced bundles of receipts, as PEXH-6, 7 and 8b. In the judgement, the trial court did not address itself to special damages at all. It is not clear what the bundle of receipts produced, as PEXH-6 and 7, were for. I do not see the marked exhibits in the original trial record. I see a number of invoices in the record of appeal, but there is nothing to indicate that those invoices were produced at trial. PEXH-8b is identified, in the judgement, as a receipt for the medical report, and I see a copy of it in the record. The appellant should have, at least, been awarded the amount in that receipt, being Kshs. 8,000.00.
21. The appellant also avers that he was not awarded the costs of the suit. That is true, the trial court did not address itself to costs. It did not award them, nor state why it did not. Costs follow the event, and ought to have been awarded. The appellant was successful, in his suit against the respondent, meriting an award of costs. It mattered not that liability was assessed at 50:50.
22. A claim for damages is a claim for monetary relief. Interest on a monetary award should be imposed. Interests

were pleaded in the plaint, and award of interests ought to have been considered, and made. However, the appellant has not appealed on that, and the silence of the trial court on interests shall remain.

23. There was the matter of the written submissions of the respondent not being considered, on the matter of the suit being time-barred. I have already ruled on the issue. Leave to file the suit out of time had been granted. The failure to consider the written submissions would have been of no moment.

24. Overall, the appeal by the appellant succeeds, and is hereby allowed, to the extent of special damages and costs. The judgement of the trial court shall be revised, to include an award of Kshs. 8,000.00, being special damages, and costs of the suit. The appeal by the respondent fails, and it is hereby dismissed, with costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, THIS 27TH DAY OF FEBRUARY 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

**Mr. Okutta, instructed by Ouma-Okutta & Associates,
Advocates for the appellant.**

**Ms. Kirabo, instructed by Kairu & McCourt, Advocates for the
respondent.**

