Greatrift Express Shuttle Services Limited & another v Onjete (Civil Appeal E081 of 2023) [2026] KEHC 1134 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEHC 1134 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CIVIL APPEAL E081 OF 2023

MS SHARIFF, J

JANUARY 29, 2026

BETWEEN

GREATRIFT EXPRESS SHUTTLE SERVICES LIMITED ..... 1ST APPELLANT

JAMES MWAURA ..... 2ND APPELLANT

AND

BRAMWEL MULELI ONJETE ..... RESPONDENT

(Being an appeal from the Judgement and Decree of the Chief Magistrate's Court in Bungoma Civil Case No. 442 of 2018 delivered by Hon. T.M. Olando (PM) on 19th July 2023)

JUDGMENT

A. Introduction

1. The Appellants seek to overturn the decision in the Chief Magistrate's Court in Bungoma Civil Case No. 442 of 2018 delivered by Hon. T.M. Olando (PM) on 19th July 2023 on liability and quantum of damages. In the said case, the Respondent had sued the Appellants seeking recovery of general and special damages arising from a road accident that occurred on 10th May 2018, in which the Respondent sustained severe injuries.

B. The Duty of a First Appellate Court

2. A first appellate Court is mandated to re-evaluate the evidence before the trial Court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate Court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. (See Selle & another v Associated Motor Boat Co. Ltd.& others {1968}

EA 123). As was held by the Court of Appeal for East Africa in Peters v Sunday Post Limited {1958} E.A. page 424: -

> "It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion."

3. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court, must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate Court had discharged the duty expected of it. (See Santosh Hazari vs. Purushottam Tiwari (Deceased) by L. Rs {2001} 3 SCC 179).

C. The Pleadings

4. In the Plaint dated 18th September 2018, the Respondent averred that on or about 10th May 2018, he was a lawful pedestrian along Eldoret-Webuye road when at Munialo area or thereabouts, the Appellants agent driver and/or servant drove and controlled Motor Vehicle Registration number KCF 150 F in such a reckless, negligent and careless manner resulting into the Motor Vehicle veering off the road and the causing an accident, resulting in the Respondent sustaining serious personal injuries.

5. The Appellants in their Statement of Defence dated 11th February 2019, denied the occurrence of the accident, liability and alternatively attributed the accident to the Respondent's negligence wholly or substantially.

D. Evidence

6. PW1, Bramwel Muleli Onjote, adopted his recorded statement dated 18th September 2018, as his evidence in chief. He told the Court that the accident occurred along Eldoret-Bungoma road and the Appellants motor vehicle was heading from Eldoret at a high speed while he was on the left facing the Eldoret direction. He told the Court that Appellants Motor Vehicle lost control veered off its lane and knocked him. He told the Court that he was injured on the face, elbow and abdomen. He blamed the Appellants for the accident and noted that he was not even attempting to cross the road.

7. On cross-examination, he told the Court that he was walking on the left side of the road while facing the Eldoret direction and the Appellants Motor Vehicle was the only one on the road.

8. On re-examination, he told the Court that he was on the left side of the road facing Eldoret direction while the Appellant's Motor Vehicle was on the right side moving at a high speed.

9. The Respondent produced his list of documents in Court as PEXH 3, 4,5,6,7,10,12,13,14,15, 27 and 30.

10. PW2, Dr. Edward Vileunwa, testified that he worked at Webuye County Hospital and he was before the Court to avail the Respondent's discharge summary. According to him, the Respondent was admitted

on 11th May 2018 and discharge on 4th June 2018, but he was treated by another doctor. He testified that the Respondent had a fracture of the right femur which led to implantation of a metal and his injuries were termed as grievous harm. He availed in Court the Respondents receipts as PEXH 11,12,13 and 14.

11. On cross-examination, he told the Court that the Respondent's injury was a commuted fracture.

12. On re-examination, he reiterated that the most essential injury was the fracture.

13. PW3, Dr. Mulianga Ekesa, testified that he was a consultant surgeon in Bungoma and he was before the Court to avail the medical report of Respondent dated 29th June 2018. According to him, he relied on the treatment notes of the Respondent from Webuye District Hospital and the x-rays. He noted that the Respondent sustained soft tissue injuries and a fracture of the right thigh bone and trauma. Further, he told the Court that the Respondent underwent surgery and was fixed with a metal which its removal would cost Kshs. 100,000/=. Finally, it was his evidence that he also filled a P3 form report and quantified the Respondent's injures as grievous. The P3 form report cost Kshs. 2,500/= and he availed the receipt in Court as PEXH 1. Also, he availed before the Court the medical report, P3 form report and the receipt of the P3 report as PEXH 2 and 26 respectively.

14. On cross-examination, he told the Court that he did not treat the Respondent and he observed the Respondent had tender soft tissue injures and a fracture of the thigh bone, and he was guided by the treatment notes from Webuye District Hospital. He told the Court as a surgeon he quoted Kshs. 100,000/= fpr the removal of the metal implant.

15. On re-examination, he told the Court that the Kshs. 100,000/= was not itemized and that he quoted the said amount as that is what he charges as a surgeon.

16. PW4, Doreen Ayuma, testified that she was a clinical officer based at Lumakanda Hospital and he was before the Court to avail the patient book of the Respondent. According to her, the Respondent was brought to the facility on 2nd May 2015, with a history of road traffic accident and he had sustained multiple injuries, multiple bruises with a wound on his right fore limb that revealed a fracture of the right femur. She told the Court that the Respondent was referred to MRTH for further management. She produced the Respondent's treatment notes as PEXH 29.

17. On cross-examination, she told the Court that she had no document to show she worked at Lumakanda Hospital and that the Respondent did not sustain any head injuries or loss of consciousness. She told the Court the Respondent was given a pain killer and referred to the orthopedic clinic and they placed a splint on him then referred him to MTRH.

18. PW5, No. XXX Inspector Issa Poghon, testified that he was based at Lumakanda Police Station, traffic duties station and that on 10th May 2018 at 10 P.M. at Munialo an accident occurred involving the Respondent herein and a Motor Vehicle KCF 150 F along Eldoret Webuye road. He told the Court that the Investigations officer was on leave and he had with him the police file, sketch plan and established that the Appellants Motor Vehicle was heading towards Webuye direction from Eldoret and the Respondent was a lawful pedestrian. He told the Court that the matter was still pending investigations and that the accident occurred on the middle lane and the same lane was not for the Motor Vehicle as the same was to be utilized by an oncoming vehicle. He availed before the Court the Police Abstract as PEXH 23.

19. On cross-examination, he told the Court that no one blamed for the accident in the police abstract and the sketch plan was not dated or signed and could not tell when exactly the same was drawn, and that the investigations were not concluded.

20. On re-examination, he told the Court that the sketch plan indicates it was drawn by PC Komen, the investigation officer, and it was in the police file.

21. DW1, Dr. Steve Ochieng, testified that he worked at Direct Live Assurance and he was in Court to avail the medical report dated 24th December 2019, of the Respondent authored by his colleague. According to him, the Respondent was injured in road traffic accident and on examination, he observed he had a head scar on the left elbow and right thigh and from the initial x-rays there was a fracture with the 2nd x-ray showing a reunion. The prognosis was that there was no disability with the future medical expenses curtailed at Kshs. 40,000/=. He also noted that the Respondent required to remove his implant.

22. On cross-examination, he quantified the sustained injuries as grievous and noted that at the time of the generation of the report dated 24th December 2019, there were complaints from the Respondent.

23. DW2, Moses Ndugu, adopted his recorded statement as his evidence in chief. According to him, he blamed the Respondent for the accident as he was crossing the road from the left side without checking causing him to swerve to the right and hit him. He told the Court that the Respondent was running.

24. On cross-examination, he told the Court that the accident occurred on 10th May 2018, while he was heading from Nairobi to Bungoma via Eldoret at Munialo and that his Motor Vehicle had no defections.

25. Upon hearing the parties, the trial Court entered judgment for the Respondent on 19th July 2023. He apportioned liability at 90% as against the Appellant and 10% as against the Respondent, and awarded the Respondent general damages and special damages in the sum of Kshs. 743, 652.00/= plus costs and interest of the suit from the date of the judgement.

E. The Appeal

26. The Appellants seeks to overturn the judgment on both liability and quantum as per the preferred grounds of appeal.

27. The Appellants prayed that this Court do set aside the holding of the subordinate Court and substitute the same with an appropriate holding. Subsequently, that the costs of the appeal be awarded to the Appellants.

28. Vide Court directions, this Court directed the parties to canvass the appeal by way of written submissions. Both parties complied with the Court directives.

F. Analysis and Determination

29. On the issue of liability, the 2nd Appellant himself (DW2) testified that he blamed the Respondent for the accident as he was crossing the road from the left side without checking causing him to swerve to the right and hit him. He told the Court that the Respondent was running. The Respondent (PW1) testified that that he was walking on the left side of the road while facing the Eldoret direction and the Appellants Motor Vehicle was the only one on the road and he was on the left side of the road facing Eldoret direction while the Appellants Motor Vehicle was on the right side moving at a high speed. The police officer (PW5) availing the police file, and sketch plan established that the Appellants Motor Vehicle was heading towards Webuye direction from Eldoret and the Appellant was a lawful pedestrian. He told the Court that the matter was still pending investigations and that the accident occurred on the middle lane and the same lane was not for the Motor Vehicle as the same was to be utilized by an oncoming vehicle. He availed before the Court the Police Abstract as PEXH 23.

30. Established case law places a duty on pedestrians to exercise care for their own safety. The appellate Court will not normally disturb a finding on apportionment of liability unless the trial judge applied a wrong principle of law or the apportionment was so plainly erroneous that it must be set aside. I find that the Appellants have not demonstrated that the 90:10 apportionment was so erroneous as to warrant this Court's interference. I therefore find no reason to disturb the trial magistrate's finding on liability.

31. With regards to quantum, it is settled law that an appellate Court will not interfere with an award of general damages by a trial Court unless:- (a) the trial Court acted under a mistake of law; or (b) where the trial Court acted in disregard of principles; or (c) where the trial Court took into account irrelevant matters or failed to take into account relevant matters: or (d) where the trial Court acted under a misapprehension of facts; or (e) where injustice would result if the appellate Court does not interfere; or (f) where the amount awarded is either ridiculously low or ridiculously high that it must have been erroneous estimate of the damage. (See Dumez (Nig) Ltd v Ogboli {1972} 3 S.C. Page 196." Per BADA, J.C.A (P. 28, paras. C-G).

32. Additionally, in Kivati v Coastal Bottlers Ltd42 the Court of Appeal (Civil Appeal No. 69 of 1984) stated:-

> " The Court of Appeal should only disturb an award of damages when the trial Judge has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to an erroneous estimate."

33. Award of damages is an exercise of discretion of the trial Court, but the same should be within limits set out in decided case law and must not be inordinately so low or so high as to reflect an erroneous figure. The award must also take into account the prevailing economic environment.

34. Based on the medical report dated 29th June 2018, by Dr. Mulianga Ekesa, it is clear that the Respondent herein sustained:

    a. Head concussion.

    b. Multiple bruises and lacerations on the face.

    c. Multiple bruises and laceration on the abdomen.

    d. Lacerations on the medial aspect of left elbow.

    e. Painful swollen and deformed right thigh.

    f. Laceration on his left thigh.

35. At the point of his examination, the Respondent complained of general malaise, mental torture and the accident slowed down his activities and pains at the fracture site.

36. Dr. Mulianga Ekesa opined that the Respondent suffered: head concussion, soft tissue injuries, fracture of the right femur and psychological trauma. He gauged the Respondent's injuries as grievous and advised that the Respondent would require another operation to remove the implant.

37. Base on the medical report dated 24th October 2019, availed by Dr. Steve Ochieng on behalf of Dr. Jenipher Kahuthu, Dr. Ochieng observed that the Respondent sustained pain on the right lower limb, multiple bruises and cut wounds on the head with minimal bleeding. According to him, the Respondent was treated with analgesics and antibiotics and the x-rays of the right femur confirmed a fracture, with the splint of the right lower limb. Further, the report noted at the time of examination

the Respondent was in fair general condition walking with normal gait and he complained of right lower limb pain on exertion. Finally, he observed an MSS-healed scar on the left elbow and healed surgical scar on the right thigh on the lateral aspect.

38. As regards general damages, the lower Court awarded Kshs. 700,000/= and relied on the no case law. The trial Court observed that award of Kshs. 1,500,000/= was not appropriate as the authorities relied upon by the Respondent referred to serious injuries and noted the Appellants cited authorities were appropriate, but considering the nature of the injuries and inflation the proposed figure of Kshs. 250,000/= was too low.

39. I proceed to establish related injuries. In the following cases:-

    a. Reamic Investment Limited vs Joaz Amenya Samuel (2021) eKLR wherein the Respondent sustained an open left femure fracture, abrasion on the left knees, face, neck, right upper limb, left lower lip as well as a contusion on the anterior chest and an award of Kshs. 600,000/= was revised to Kshs. 350,000/=.

    b. Jitan Nagra v Abednego Nyandusi Oigo [2018] eKLR where the Court awarded the Plaintiff Kshs. 1,000,000.00 which was reduced on appeal to Kshs. 450,000.00 for laceration on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back extending to the right side of the lumbar region, blunt trauma to the chest, bruises on the left elbow, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur.

    c. In Francis Ndungu Wambui & 2 others v Benson Gichure Maina [2019] KEHC 2132 (KLR), the Court reduced the award of Kshs 1,000,000/= to Kshs 600,000/= for a fracture of the right femur and soft tissue injuries.

    d. In Tirus Mburu Chege and Another v JKN and Another [2018] eKLR, the Plaintiff sustained fractures on the tibia and fibula on both legs, blunt injuries on the forehead, broken upper right second front tooth, nose bleeding and consisted loss of consciousness. The Appellate Court reduced the award of Kshs. 800,000.00 to Kshs. 500,000.00.

    e. In Jacaranda Boda-boda Operators & another v Nyasero [2023] KEHC 23806 (KLR), the Court reduced the award of Kshs 1,200,000/= to Kshs 750,000/= for a fracture of the right femur that was mixed with metal implants.

40. It is established that general damages are damages at large. The award ought to reflect the nature and gravity of the injuries and compensate the claimant fairly in the sense that it puts him to the position, in so far as money can, he would have been before the accident took place. The general approach should be that comparable injuries should as far as possible be compensated by comparable awards bearing in mind that no two cases are exactly alike (see Stanley Maore v Geoffrey Mwenda [2004] eKLR). While the Court must also take into account the value of the shilling and inflation trends, the Court should eschew astronomical awards which injure the body politic and strive to ensure that awards make sense and result in fair compensation (see Ugenya Bus Service v Gachoki NKU CA Civil Appeal No. 66 of 1981 [1982] eKLR and Jabane v Olenja [1986] KLR 661).

41. Taking into account the nature of the injuries and the cases cited above herein, I find that an award of Kshs. 700,000.00/= is not on the higher side, considering the nature of the injuries and the current trend of awards. I cannot say that it is so inordinately high as to constitute an entirely erroneous estimate. The Respondent sustained not only a head concussion, but also soft tissue injuries and a fracture of the right femur. I affirm the award of the trial Court on general damages.

42. With regards to special damages, the Respondent pleaded Kshs. 26, 280/=, but I have looked at the receipts produced as exhibits and I agree with the Appellants that the Respondent out of the pleaded Kshs. 26,280/= only proved Kshs. 7,190.00/= award as special damages. I therefore interfere with this award and substitute the same with an award of Kshs. 7, 190.00/=

43. A prayer for future medical expense is not an ordinary prayer that a Court can grant in its discretion but it is a special award that must be pleaded specifically and proved. In the case of Tracom Limited & another v Hassan Mohamed Adan [2016] KECA 150 (KLR), the Court of Appeal stated: -

> " ...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of Kenya Bus Services Ltd vs. Gituma (2004) 1 EA 91, this Court, stated: -
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> > " And as regards future medication (physiotherapy), the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person's legal right should be pleaded."
>
> We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require..."

44. In his Plaint dated 18th September 2018, the Respondent pleaded medical costs of Kshs. 100,000/=. In his medical report dated 29th June 2018, by Dr. Mulianga Ekesa, advised that the Respondent would require another operation to remove the implant. He told the Court as a surgeon the removal would cost Kshs. 100,000/=. On the other hand, Dr. Ochieng, told the Court that the same costs Kshs., 40,000/=, as per the medical report prepared by his colleague on 24th October 2019.

45. As regards cost of future medical expenses, the Appellants submitted that the Respondent did not avail any document or hospital quotation to confirm the amount by Dr. Mulianga Ekesa. Counsel submitted that this head was not proved and should not be awarded.

46. A cursory glance at the Amended Plaint shows that the Appellant pleaded future medical expenses.

47. Both medical reports alluded to the possibility of future medical expenses being incurred and estimated the cost, Dr. Ekesa at Kshs 100,000 and Dr. Ochieng at Kshs. 40,000. In Mbaka Nguru & Another v James George Rakwaro NRB CA Civil Appeal No. 133 of 1998 [1998] eKLR, the Court of Appeal put it this way;

> " We come now to the claim under the heading "Future Medical Expenses". There is no such claim made in the body of the plaint. Nor is there any suggestion in the body of the plaint that such a claim would be made. There is no quantification of any sort in the body of the

plaint in respect of this claim. In those circumstances, simple references in a medical report to costs of future medication do not help the plaintiff. Simply putting in a prayer for such a claim does not help. If properly pleaded and proved the plaintiff would certainly have been entitled to some damages under this head ...."

48. Having considered the appeal, I am satisfied that the Appellant's claim on future medical expenses is founded on the basis that the same was pleaded and was confirmed by the doctors on both divides save for the disparity in the amount required.

49. In their submissions at trial, the Appellants had argued that Dr. Ekesa never proposed any future medical costs which is clearly not the case herein. I have considered the proposed costs and in the absence of other suitable parameters to assess the cost now that the doctors do not agree, I have had recourse to a recent decision in similar circumstances in Mary Maina v. Joseph Maingi Wambua [2020]eKLR, the Court of appeal upheld a sum of Kshs.300,000.00 for the removal of two implants. Am satisfied that a sum of Kshs 100,000.00/= would suffice.

G. Conclusion

50. With the result that the appeal herein partially succeeds in terms of special damages. The judgement of the trial Court is set aside on special damages only and substituted with a judgement for as follows;

    a. General damages Kshs. 700,000.00/=

    b. Special damages Kshs. 7,190.00/=

    c. Future medical expenses Kshs. 100,000.00/=

    Total Kshs. 807,190.00/=

    d. Less 10% contribution Kshs. 80, 719.00/=

    Net Kshs. 726,471.00/=

51. Each party shall bear its costs for this appeal.

    Orders accordingly

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 29TH DAY OF JANUARY 2026.

MWANAISHA.S. SHARIFF

JUDGE

In the presence of:

Ms Ong'ong'a for Appellants

Ms Wanyama for Respondent

Peter Machoni - Court Assistant