

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**MILIMANI LAW COURTS**  
**CIVIL APPEAL NO. E1062 OF 2023**

**BETWEEN**

**FREDRICK BEGI SIAVUKA .....**

**1ST APPELLANT**

**ARON KARIUKI .....**

**2ND APPELLANT**

**VERSUS**

**ANTHONY NDEGWA MUTURI .....**

**RESPONDENT**

***(Being an appeal from the whole judgment of Hon.  
Senior Resident Magistrate P.K. Rotich delivered on  
29th September 2023 in Milimani CMCC No. 6160 of  
2018)***

**JUDGMENT**

1. The Respondent filed suit before the trial court seeking damages for the injuries that he sustained in a road traffic accident.
2. The Respondent's case was that he was a lawful pillion passenger on a motorcycle travelling along Outering Road

when motor vehicle KCJ 269A, driven by the 2nd Appellant or his authorised agent, veered from its lane and collided head-on with the motorcycle.

3. The Respondent sustained severe injuries including:

- a) **fracture of the right distal femur,**
- b) **deep lacerations to the right leg and knee, and**
- c) **multiple bruises.**

4. Medical evidence showed that he sustained grievous bodily harm and suffered 40% permanent incapacity.

5. In the judgment delivered on 29<sup>th</sup> September 2023, the trial court found the Appellants 100% liable for a road traffic accident involving motor vehicle KCJ 269A and awarded the Respondent the following damages:

- **General damages - Kshs. 700,000**
- **Future medical expenses - Kshs. 100,000**
- **Special damages - Kshs. 113,620**

**together with costs and interest.**

6. Dissatisfied with the findings on liability and quantum, the Appellants lodged this appeal.

### **Evidence Before the Trial Court**

7. The Respondent relied on the police abstract and OB extract, medical reports, treatment records, receipts proving special damages and expert medical opinion regarding future surgery.

8. The police officer who recorded the accident confirmed that the collision occurred when the Appellant's motor vehicle drove on the wrong side of the road.
9. The Appellants denied liability and blamed the motorcycle rider for causing the accident.

## **Grounds of Appeal**

10. The Appellants challenged the trial court's decision on several grounds including that:

- a) The trial court erred in finding the Appellants 100% liable for the accident.***
- b) The trial court failed to properly consider the evidence of the police officer and the defence witness.***
- c) The trial court disregarded the police abstract allegedly blaming the Respondent.***
- d) The award of general damages of Kshs. 700,000 was excessive.***
- e) The award of future medical expenses of Kshs. 100,000 was not supported by evidence.***
- f) The award of special damages of Kshs. 113,620 was not properly proved.***

11. The appeal was canvassed by way of written submissions. The Appellant had not filed any submissions as at the time I was writing this judgment.

## **The Respondent's Submissions**

12. The Respondent submitted that the trial court correctly found the Appellants 100% liable for the accident.
13. It was argued that the evidence of the police officers and the police abstract clearly showed that the accident occurred because the Appellant's motor vehicle was driven on the wrong side of the road, resulting in a head-on collision.
14. The Respondent further submitted that he was merely a passenger, and therefore could not be held liable for the negligence of either driver.
15. The Respondent also argued that the Appellants attempted to rely on a revised police abstract issued later, which the trial court correctly rejected as an afterthought.
16. On quantum, the Respondent submitted that the injuries sustained were serious and the award of damages was consistent with comparable precedents.
17. Reliance was placed on ***Kemfro Africa Ltd vs. A.M. Lubia & Another, (No. 2) [1982-88] 1 KAR 727*** where the Court of Appeal held:

***“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held to be that it must be satisfied that either the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low***

***as to make it an entirely erroneous estimate of the damage.”***

18. The Respondent also relied on ***Fred Mohinga Kipkigiya vs. David Agreey Zimbiru (Eldoret Civil Suit No. 142 of 2007)*** where the court awarded **Kshs. 1,000,000** for similar injuries.

### **Issues for Determination**

19. I have carefully considered the pleadings, the evidence and submissions. I find that the issues for determination are whether the trial court arrived at the correct findings on liability and quantum.
20. As a first appellate court, this Court is required to reconsider and re-evaluate the evidence on record in order to arrive at its own independent findings. In ***Selle vs. Associated Motor Boat Co. Ltd, [1968] EA 123*** the Court of Appeal stated:

***“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts are that it must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses.”***

### **Analysis and Determination**

#### **Liability**

21. The evidence on record shows that the Respondent was a passenger on the motorcycle. The police evidence confirmed that the Appellant's motor vehicle was driven on the wrong side of the road, causing a head-on collision. No evidence was produced to show negligence on the part of the Respondent.
22. The law is clear that a passenger cannot ordinarily be held liable for negligence unless active participation in the negligent act is demonstrated. In ***Haji vs. Marair Freight Agencies Ltd [1984] KLR 139*** the court of Appeal held that a mere passenger **in a motor vehicle** cannot ordinarily be held liable for negligence.
23. I find that the trial court therefore correctly found the Appellants 100% liable.

### **Quantum of Damages**

24. The record shows that the injuries sustained by the Respondent included fracture of the right distal femur, deep lacerations to the leg and multiple bruises. Permanent incapacity was assessed at 40%.
25. The Respondent will also require surgery to remove a metallic implant. The trial court awarded Kshs. 700,000 for general damages.
26. I have considered the following cases where the claimants sustained similar injuries: -
- i) *Toyota Kenya Limited vs. Adero [2024] KEHC***  
an award of Kshs. 1,500,000 general damages for pain, suffering and loss of amenities

was made to a claimant who suffered fracture of the femur and other trauma.

**ii) Ngure vs. Maina [2025] KEHC** an award of Kshs. 800,000 general damages comminuted fracture of the right femur with soft-tissue injuries.

**iii) Pestony Limited & Another vs. Samuel Itonye Kagoko [2022] eKLR** Kshs. 800,000 general damages was awarded for serious lower-limb fracture injuries.

27. Applying the principle in **Kemfro Africa Ltd vs. Lubia**, case (supra) this Court can only interfere with the award if it is based on a wrong principle or is inordinately high or low.

28. Considering comparable authorities cited and the seriousness of the injuries, I find that the trial court's award cannot be said to be excessive. Similarly, the award for future medical expenses was supported by medical evidence, and the special damages were supported by receipts.

29. Having carefully reviewed the record of appeal, the evidence before the trial court, and the submissions of the Respondent, this Court finds that the trial court properly evaluated the evidence, the finding on liability was supported by the evidence on record, and the award of damages was within reasonable limits.

30. Accordingly, I make the following final orders:

**a) The appeal is dismissed in its entirety.**

***b) The judgment of the Chief Magistrate’s Court in CMCC No. 6160 of 2018 delivered on 29th September 2023 is upheld.***

***c) The Appellants shall bear the costs of this appeal.***

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. W. A. OKWANY**

**JUDGE**

**12/03/2026**

**FOR APPELLANT .....**

**FOR THE RESPONDENT Kassima**

**COURT ASSISTANT Abdirizak**