



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS COUNTY

COURT NAME: MACHAKOS HIGH COURT

CASE NUMBER: HCCA/E185/2022

DOUBLE ONECOMPANY LTD VS PATRICK MUTUA NDIKU

JUDGMENT

(Being an appeal from the judgment and orders of Hon Ole Keiwua (Chief Magistrate) delivered on 30th November 2022 in Kangundo Chief Magistrate's Court Civil Suit No. 189 of 2019)

1. This appeal arises from an award of general and special damages arising from a traffic accident which allegedly occurred along the Kangundo- Nairobi Road on 27th April 2019. Evidence in the court below was that on the material day the Respondent was a fare paying passenger in motor vehicle KCE 974C belonging to the Appellant when the driver, drove the vehicle at such a high speed that it veered off the road and rolled several times thereby causing serious injuries to the Respondent.
2. In its Statement of defence dated 3rd December 2019, the Appellant vehemently resisted the claim and urged the court to dismiss the suit with costs.
3. At the hearing, after the Respondent had testified, Counsel for the parties consented to the production of the police abstract and the medical report without calling their makers. They then agreed to file written submissions and left the assessment of damages to the trial



magistrate. The Appellant did not therefore call any witnesses. After considering the evidence and submissions the learned magistrate found the Appellant wholly to blame for the accident and awarded the Respondent damages as follows:

a. General damages	Kshs 1,500,000
b. Special damages	Kshs 3,550
Total	Kshs 1,503,550

4. Being aggrieved, the Appellant preferred this appeal on grounds:
- a. ***That the learned Trial Magistrate erred in fact and in law in finding the Defendant/Appellant 100% liable for the accident.***
 - b. ***That the learned Trial Magistrate erred in law and in fact by failing to exonerate the Appellants from any wrong doing in view of the actions of the Respondent.***
 - c. ***That the learned Trial Magistrate erred in law and in fact in finding that the Respondent was entitles to General damages of Kshs 1,500,000.***
 - d. ***That the learned Trial Magistrate grossly misdirected himself treating the evidence presented before him on quantum and consequently coming to a wrong conclusion on the same.***
 - e. ***That the learned trial Magistrate erred in awarding a sum in respect of damages which was inordinately high in the circumstance was excessive occasioning miscarriage of justice.***
 - f. ***That the learned trial Magistrate failed to adequately evaluate the evidence provided both on quantum thereby arrived at a decision unsustainable in law.”***
5. This appeal was to be canvassed by way of written submissions but by the time of writing this judgment, only the Respondent’s submissions dated 13th May 2025 had been filed. Counsel for the Respondent urged this court not to set the judgment and decree of the learned magistrate aside; that the case was proved as required; that the award



of Kshs1,500,000 was reasonable in view of the seriousness of the injuries sustained by the Respondent. In support of the above submissions, reliance was placed on the following cases: **Peter Osoro Omwaga & Anor -Vs-**



Bathsheba Mwango Maikini HCCA.NO. 36 OF 2021- Kisii, Julian Anyango Kuni-Vs- United Millers Ltd & 3 Others HCCA NO. 35 OF 2004-Kisumu, Dominic Mutua Mawu-Vs- Bestways Plumbers Ltd HCCA NO. 255 OF 2001-MOMBASA and HCCA No. 6 Of 2015 - Nanyuki Lucy Waruguru Gatundu - Vs- Miriam Nyambura Mwangi.

Analysis and determination.

6. This being a first appeal, this court has re-considered the evidence in the court below so as to arrive at its own conclusion. This albeit keeping in mind that it did not see or hear the witnesses itself. The Respondent's evidence in the court below was not controverted as the Appellant did not adduce any evidence as would have challenged it. This court therefore finds it a fact that the accident occurred; that it occurred in the manner described by the Respondent in his pleadings and testimony in the court below; that the evidence points to negligence on the part of the driver of the Appellant's vehicle and that therefore the learned magistrate made no error of principle in holding the Appellant wholly to blame for the accident. The Respondent was in any event just a fare paying passenger and the accident was self- involving. That he did not call the other passengers as witnesses did not in my view weaken his case as submitted by the Appellant's counsel in the court below. The Appellant having consented to the production of the medical report without calling the doctor, could not be heard to turn around to impeach that report for lacking supporting documents. In his submissions in the court below, counsel for the Appellant also took issue with the fact that no police officer was called to give evidence yet from the record counsel consented to the officer not being called- see the proceedings of 17th August 2022.
7. As for the quantum of damages, it is trite that damages are in the discretion of the trial court and that the instances in which an appellate court can interfere with such discretion are where it is proved that the court took into account irrelevant factors or omitted to consider relevant factors; or that it misdirected itself on an issue of



principle; or that the damages were so inordinately low or high as to be a wholly erroneous estimate of the damage. In the instance case the Respondent sustained serious injuries including to his spine. In the



medical report the same were assessed as amounting to grievous harm. That medical report was not challenged other than stating that it had no supporting documents, an issue I have found to have no basis as the report was produced by consent at it would be prejudicial for this court to rule that the doctor should have been called to state whether those documents existed or not. It is my finding that considering the nature of the injuries, the cases cited in the court below and the passage of time the award of kshs1,500,000 was reasonable and adequate to compensate the Respondent for pain, suffering and loss of amenities. I do not detect any error on the part of the learned magistrate as would warrant this court to interfere with that award and hence it is upheld.

8. It is also instructive that despite being given a lot of indulgence by this court, learned counsel for the Appellant did not file their submissions. This is not in line with the objectives of the civil procedure rules as set out in Sections 1A and 1B of the Civil Procedure Act and this court takes a serious view of it. Such conduct also negates the tenets of Article 159(2)(b) of the Constitution, that justice shall not be delayed, and is to be deprecated.
9. In compliance with the said orders, an affidavit of service dated 5/07/2025 was filed and I am satisfied that the Appellant was well informed of the next court date which was 29/09/2025. The stamp of the advocate(s) representing the Appellant is well embossed. On 29/09/2025, neither the Appellant nor his representative appeared. The conduct of counsel for the Appellant is no different from that of the applicant in the case of **Ann Nzula Mutua v Patrick Kathanzu Kiilu [2022] KEHC 1972 (KLR) where Odunga J, as he then was, stated-**

“ It is therefore clear that the mode of prosecution of the application dated 21st July, 2021 was by way of written submissions, a mode which the Applicant has not adhered to despite indulgence extended to it by the Court.

5. The history of this matter clearly reveals a party who is lethargic in pursuing his cause.



The conduct of the



Applicant in this matter is that of a person whose only desire is to delay the Respondent from enjoying her fruits of judgement by adopting delaying tactics and thereby obstructing the court of justice. Such conduct can only amount to an abuse of Court process. Court process ought to be invoked by genuinely aggrieved parties and not by parties whose only intention is to frustrate and vex the other parties to the proceeding. That is the conduct portrayed by the Applicant herein.

6. Accordingly, having considered the only material on record as regards the prosecution of the application dated 21st July, 2021 for which no material has been presented by way of prosecution, I find the said application unmerited and dismiss the same with costs to the Respondent.”

10. Similarly, I find that this appeal has no merit and it is dismissed with costs to the respondent.

Orders accordingly.

Judgment signed, dated and delivered virtually on this 19th March 2026.

IN PRESENCE OF :

Ms Omari for Mr Mutunga for the Respondent.

Mary court assistant.

N/A for the Appellant.

SIGNED BY/FOR:
HON. LADY JUSTICE E.N. MAINA





THE JUDICIARY OF KENYA.
MACHAKOS HIGH COURT
HIGH COURT DIV
DATE: 2026-03-23 17:09:53

