



Gatheru v Bernard (Civil Case E092 of 2025) [2026] SCC 18 (KLR) (19 January 2026) (Judgment)

Neutral citation: [2026] SCC 18 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E092 OF 2025
FM MULAMA, RM
JANUARY 19, 2026**

BETWEEN

EDITH NGETHIGIA GATHERU CLAIMANT

AND

KIPKEMOI LANG'AT BERNARD RESPONDENT

JUDGMENT

Introduction

1. The claim arises out of an accident that occurred on 11/10/2025 where the claimant was a lawful passenger aboard motor vehicle registration number KDR344W that was being driven along the Nairobi-Mombasa highway within Taita Taveta County heading towards Mombasa.
2. The claimant avers that as the vehicle approached Kanga area the respondent's authorized agent, servant and/or driver so negligently drove, managed and/or controlled motor vehicle registration number KDB 237J so carelessly and while over speeding that he failed to keep his lane and when it was not safe for him to overtake and as a result, it lost control and rammed into the claimant's motor vehicle and as a result he sustained right and left knee contusions and lumbo sacral sprain. She blames the respondent for the accident and particulars of negligence have been pleaded.
3. The respondent was served but he failed and/or ignored to enter appearance and as such the matter proceeded by way of documents only after interlocutory judgment was entered.
4. I have considered the claim, submissions and the authorities attached thereto.

Issue for Determination.

- a. Whether the Respondent is liable for the accident.
- b. What is the quantum of damages awardable if any.
- c. Who bears costs of the claim.



Analysis and Determination.

a. Whether the respondent is liable for the accident.

5. As already stated interlocutory judgment was entered as against the respondent. In the case of William Wagura Maigua vs Elbur Flora Limited (2012) eKLR Justice William Ouko (as he then was) held thus;

“the defendant though served with summons to enter appearance or file defence within the stipulated time on 21/10/2011 interlocutory judgment was entered in favour of the plaintiff and the matter was fixed for formal proof. In this case as no appearance or response was filed. The issue of liability was settled in favour of the plaintiff through entry of interlocutory judgement on 21/10/2011 and the plaintiff was under no obligation to call evidence to prove it”

6. In this matter, similar situation obtains. The respondent was served but to date he has not entered appearance and interlocutory judgement having been entered settles the issue of liability. The court therefore makes a finding that the respondent is 100% liable for the accident jointly and severally.

b. What is the quantum of damages awardable if any.

7. It is the claimant’s case that as a result of the accident she suffered the following injuries; right and left knee contusions and lumbo sacral sprain.

8. The medical report by Doctor Wisdom Njumwa upon examining the claimant confirmed the injuries that were sustained and further formed the opinion that the injuries sustained were soft tissue injuries which resulted to temporal partial disability but he anticipated full and functional recovery.

9. It is trite law that no two cases can be completely similar but it is a settled principle that comparable injuries should attract comparable awards see the case of Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR.

10. It is also trite that damages should represent a fair compensation but should not be excessive. In particular, courts have stated as follows -

“Damages must be within limits set out by decided cases and also within limits the Kenyan economy can afford. Large damages are inevitably passed to the members of public, the vast majority of whom cannot afford the burden, in the form of increased insurance or increased fees. See the case of Osman Mohammed & Ano. Vs Saluro Bundit Mohammed Civil Appeal No. 30 of 1997.”

11. The claimant in his submissions has proposed Kshs.400,000/= as compensation for the injuries and pain sustained. In doing so she has placed reliance on the cases of Joseph Wambura v Joseph Mwangi Obai [2018] eKLR where an award of Kshs.300,000/= was awarded, Siaya Hcca No. 5 Of 2020, Equity Bank Kenya Ltd & 2 Others Vs. David Githuu Kuria (2020) eKLR where an award of Kshs.250,000/= was awarded, Bungoma HCCA No. 17 of 2019, Poa Links Services Limited & anor Vs. Sindani Boaz Bonzemo (2021) eKLR, the High Court sitting on appeal upheld an award of Kshs. 350,000/= awarded to the Respondent therein who sustained; Blunt trauma to the chest, bruises on the abdomen, bruises of the right hip joint, bruises of the thigh and bruises on the knee and finally the case of Lake Naivasha Growers v Muigai Thuka [2020] eKLR whereby Justice Mwongo upheld an award of Kshs.250,000/- as general damages for multiple soft tissue injuries.



12. In reaching an appropriate award, the court ought to consider the value of the shilling and the state of the economy. The court should avoid astronomical awards but strive to ensure that the final award makes sense and fairly compensates the claimant (see *Kigaraari v Aya* [1982-88] 1 KAR 768 *Ugenya Bus Service v Gachoki NKU CA Civil Appeal No. 66 of 1981* [1982] eKLR and *Jabane v Olenja* [1986] KLR 661).
13. In the case of *Abdi Haji Gulleid v Auto Selection (K) Ltd & another* [2015] eKLR the plaintiff sustained grievous injuries to the spine, serious injuries to the upper limbs and wedge compression fracture at the back of L1 spine. The permanent incapacity was assessed at 25% general damages was assessed and awarded at shs 925,757/= in place of the Kshs 300,000/= awarded by the lower court.
14. In *Nicholas Njue Njuki v Eliud Mbugua Kahuro* [2014] eKLR, Ngaah J awarded Kshs 3,800,000/= in general damages for pain, suffering and loss of amenity for: unstable fracture dislocation of lumbar vertebrae leading to spinal cord damage; complete paralysis in the lower limbs; incontinence of stool and urine. permanent incapacity was assessed at 100%.
15. Admittedly, the injuries in these cases are compound and far more serious than those sustained by the claimant in the present case. They do however give an idea that lumbar spine injuries by the fact that they involve the spine and the spinal nervous system tend to be very severe injuries luckily for this case and as per the medical report the injuries were not severe.
16. I have carefully considered the evidence on record, the written submissions by claimant and the authorities annexed thereto. I have also considered the time when the award was made as well as rate of inflation and I find that for the injuries suffered by the claimant an award of Kshs. 300,000/= would adequately compensate her as general damages.
17. On special damages, it is trite law that they have to be specifically pleaded and proved. The claimant has pleaded Kshs.3,550/= being costs incurred in obtaining the medical report and the motor vehicle copy of records. I have perused the record and from the said expenses has been proved and are hereby allowed.
18. On future medical expenses the doctor confirmed that the claimant would require medication and physiotherapy at a cost of Kshs. 19,000/-. The costs to be incurred have been estimated and particularized per item in the medical report and I do find the same to be reasonable and are hereby allowed as prayed.

c. Who bears costs of the claim?

19. The basic rule on attribution of costs is that costs follow the event. It is also well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.
20. The claimant having been successful in the matter and that costs follow events she is awarded costs of the claim.

Conclusion and Disposition.

21. The upshot of the foregoing I make the following final orders;
 - a. The claim contained in the statement of claim dated 11th November 2025 is allowed in the following terms.
Liability 100%



General damages Kshs.300,000/=

Special damages Kshs. 3,550/=

Future medical expenses Kshs.19,000/=

Total Kshs.322,550/=

- b. The claimant is awarded costs and interests from the date of judgment until payment in full.
- c. Let the file be closed forthwith.

22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 19TH DAY OF JANUARY, 2026.

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Daniel Damise.

Mr. Kiwinda for the Claimant

