



Mutunga v Kibe (Civil Case E104 of 2025) [2026] SCC 5 (KLR) (26 January 2026) (Judgment)

Neutral citation: [2026] SCC 5 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E104 OF 2025
FM MULAMA, RM
JANUARY 26, 2026**

BETWEEN

PETER NDUVA MUTUNGA CLAIMANT

AND

DIVID WAINAINA KIBE RESPONDENT

JUDGMENT

Introduction

1. On or about the 20th October 2025 the claimant being a lawful fare paying passenger and on board motor vehicle registration number KDE 042L that was at all material times relevant to this claim registered and/or insured in the name of the respondent got involved in an accident.
2. It is his averment that all of a sudden and without notice the respondent's driver and/or authorized and/or agent carelessly and recklessly managed the said motor vehicle that the same was so carelessly driven that it collided into motor vehicle registration number KBR 937Q/ZC 3968 which was oncoming and as a result the claimant sustained very serious injuries to wit a head injury, post traumatic headache and swollen left frontal part of the scalp.
3. The claimant blames the respondent for the accident and has pleaded particulars of negligence and has asked for the court to grant general and special damages as well as costs and interests.
4. 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.
5. 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.



SUBPARA c.

Who bears costs of the claim.

Analysis And Determination.

Whether the respondent is liable for the accident.

6. 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”

7. In this matter, similar situation obtains. The respondent was served but did not enter appearance within the stipulated time 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.

What is the quantum of damages awardable if any.

8. It is the claimant’s case that as a result of the accident he suffered the following injuries; a head injury, post traumatic headache and swollen left frontal part of the scalp.

9. The medical report by Doctor Githinji Gathitu dated 16/12/2025 upon examining the claimant confirmed the injuries that were sustained and further formed the opinion that the injuries sustained were soft tissue injuries secondary to road traffic accident that occurred on 20/10/2025 and proposed a total bed rest for a week to alleviate his symptoms while watching out on the danger signs for head injury.

10. 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.

11. 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.”

12. The claimant in his submissions has proposed Kshs.350,000/= as compensation for the injuries and pain sustained. In doing so he has placed reliance on the cases of Vincent Cheruiyot Rono vs Mombasa maize millers ltd(2006) eKLR where an award of Kshs.400,000/= was made for sustained soft tissue injuries closely related with those of the claimant herein. Also in Samuel Muthama vs Kenneth Maundu Muindi (2009)eKLR. Where the High Court on appeal upheld the award of the subordinate



court for the sum of Kshs 380,000 wherein the respondent sustained injuries closely related with those of the claimant herein.

13. 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).
14. In the case of *S.A.O (Minor suing through next friend M.O.O) vs The Registered Trustees of the Anglican Church of Kenya Maseno North Parish* [2017] eKLR where the plaintiff sustained a head injury with brain concussion and damage to the right lower mandible jaw and left cheek, blunt chest injury, multiple frictions lacerations/bruised on the right elbow joint, fracture of the right tibia at the mid shaft region, compound fracture of the left tibia/fibula at the distal metaphysis, multiple cut wounds on the left ankle joint involving thigh down to knee region, fracture left ankle joint involving malleolus bones and dislocation right ankle joint. The court enhanced an award of Kshs. 200,000/- to Kshs. 600,000/- in 2017.
15. Further I have also considered the case of *Gladys Lyaka Mwombe vs Francis Namatsi & 2Others* [2019] eKLR where the plaintiff sustained head injury, cut wounds on the scalp, spinal cord neck injury and fracture of the left lower limb. General damages were awarded at Kshs. 300,000/- by the trial court which was upheld by the High Court on appeal.
16. I have also considered that in as much as the said decision offer guidance on the damages to award, the injuries are evidently more severe than those sustained by the claimant herein.
17. 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 him as general damages.
18. On special damages, it is trite law that they have to be specifically pleaded and proved. The claimant has pleaded Kshs.20,550/= being costs incurred in obtaining the medical report, the motor vehicle copy of records, police and medical officer court attendance fees. I have perused the record and from the said expenses has been proved save for the costs of facilitate the police and the medical doctor to attend court. This is simply because they are not only provided for under the head of special damages but the said officers did not attend court as the matter proceeded under section 30.

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 he 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 17th December 2025 is allowed in the following terms.



Liability 100%

General damages Kshs.300,000/=

Special damages Kshs. 5,550/=

Total Kshs.305,550/=

- 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 26TH DAY OF JANUARY 2026.

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Daniel Damise.

Mr. Muriuki for the Claimant

