



- (iii) Multiple bruises and cut wounds on both lower limbs.**
- (iv) Blunt injuries on the lower back and knee joints.**
- (v) Deep cut wounds on the left foot dorsal aspect.**

3. The hearing proceeded by way of submissions under Section 30 of the Small Claims Court Act.

4. The trial court found that the Appellant failed to keep distance and found him 100% liable in negligence.

5. The trial court assessed damages as follows:-

- (i) General damages                      Kshs. 200,000/=**
- (ii) Future medical expenses            Kshs. 20,000/=**
- (iii) Special damages                    Kshs. 5,550/=**
- Total                                    Kshs. 225,550/=**

6. The Appellant has appealed against the said judgment on the following grounds:-

- (i) The learned Adjudicator erred in law by holding the Appellant 100% liable for the accident on 6<sup>th</sup> April 2025 without sufficient evidence to establish negligence by the Appellant's driver, contrary to Section 107 of the Evidence Act, Cap 80.**
- (ii) The learned Adjudicator erred in law by relying on the police's intention to charge the Appellant's driver under Section 49(1) of the Traffic Act without corroborative evidence, such as a police abstract,**

**contrary to the principles in Hahn v. Singh (1985) KLR 716.**

- (iii) The learned Adjudicator erred in law by awarding excessive general damages of Kshs. 200,000 for soft tissue injuries, which are inconsistent with established decisions from superior courts.**
- (iv) The learned Adjudicator erred in law by awarding Kshs. 20,000 for future medical expenses without any justification or basis, constituting a material error of law.**
- (v) The learned Adjudicator erred in law by proceeding under Section 30 of the Small Claims Court Act 2016, without ensuring the Appellant's defense was adequately tested, prejudicing the Appellant's right to a fair trial under Article 50 of the Constitution of Kenya, 2010.**
- (vi) The learned Adjudicator erred in law by failing to provide adequate reasons for dismissing the Appellant's defense that no accident occurred involving vehicle KAY 410M, contrary to Article 47 of the Constitution of Kenya, 2010.**

7. The parties filed written submissions as follows:- The Appellant submitted that he challenges the entire judgment delivered on

11th July 2025 by the Voi Small Claims Court, which held the Appellant 100% liable for a road traffic accident and awarded the Respondent Kshs. 200,000 in general damages plus Kshs. 20,000 for future medical expenses.

8. The Appellant argues that the trial Adjudicator erred in failing to properly evaluate the defence of contributory negligence, as the Respondent did not prove how he could not have avoided the accident or show want of reasonable care for his own safety, such as failing to wear protective gear.
9. Relying on case law including **Mombasa Maize Millers v Gicovi, Nance v British Columbia Electric Rly, and Rentco East Africa Limited v Ngonzi**, the Appellant contends that liability should be apportioned, proposing at least 50% contributory negligence by the Respondent.
10. Regarding quantum, the Appellant submits that the award for future medical expenses lacks evidentiary basis because no receipt or medical estimate was produced, only a bill estimate, and cites authorities such as **David Bageine v Martin Bundi, A Minor v Omolo, and Tracom Limited v Adan** to emphasise that special damages must be strictly proved with receipts, not invoices or estimates.
11. On procedure, the Appellant argues that the Adjudicator erred by determining the claim solely on documents under

Section 30 of the Small Claims Court Act without conducting a viva voce hearing, yet the dispute over liability arising from a road traffic accident was inherently fact-sensitive and required oral testimony to assess credibility and competing narratives.

12. Consequently, the Appellant prays that the appeal be allowed, the trial judgment set aside, and either the Appellant be found not liable or liability be apportioned with at least 50% contributory negligence, and that the damages awards be set aside for lack of proof.
13. The respondent submitted that the appeal by Abdisalam Qumane Omar against Kennedy Moshe Mwamboji should be dismissed.
14. The dispute arises from a road traffic accident on 6 April 2025, in which the respondent was a pillion passenger on a motorcycle that was hit from behind by the appellant's motor vehicle.
15. The respondent sustained soft tissue injuries to the left shoulder, right knee, and foot.
16. The trial court in Voi Small Claims Court found the appellant 100% liable and awarded Kshs. 200,000 in general damages and Kshs. 25,550 in special damages.
17. The respondent submits that the trial court correctly apportioned full liability because the appellant's vehicle rear-

ended the motorcycle, a situation where the law presumes negligence unless rebutted.

18. The appellant failed to present any evidence to challenge the police abstract or the respondent's account.
19. On quantum, the respondent contends that the awards are reasonable and consistent with comparable cases for similar soft tissue injuries, and special damages were properly pleaded and supported by receipts and a medical report.
20. Regarding the procedure under Section 30 of the Small Claims Court Act, the respondent notes that the appellant himself proposed that the matter proceed by way of documentary evidence, and both parties consented and therefore, the appellant cannot now challenge that procedure simply because the outcome was unfavourable.
21. Finally, the respondent argues that the trial court was entitled to accept the respondent's unchallenged evidence on how the accident occurred, as the appellant adduced no contrary evidence.
22. Since the appellant has failed to demonstrate any error of law or fact, the respondent urges the High Court to dismiss the appeal with costs.

23. I have carefully considered the appeal by Abdisalam Qumane Omar against the judgment of the Honourable Adjudicator in Taveta SCCC No. E022 of 2025 delivered on 11th July 2025.
24. The Appellant challenges both the finding on liability and the quantum of damages awarded to the Respondent for injuries sustained in a road traffic accident that occurred on 6th April 2025.
25. On the issue of liability, the Appellant contends that the learned Adjudicator erred by holding him 100% liable without sufficient evidence to establish negligence, and further argues that the Respondent should bear at least 50% contributory negligence.
26. The evidence before the trial court established that the Respondent was a pillion passenger on a motorcycle that was hit from behind by the Appellant's motor vehicle.
27. The Appellant's driver was allegedly intended to be charged under Section 49(1) of the Traffic Act.
28. In cases involving rear-end collisions, the law presumes negligence on the part of the following driver unless that presumption is rebutted.
29. The Appellant failed to adduce any evidence to challenge the Respondent's account of how the accident occurred or to demonstrate any want of care on the part of the Respondent as a pillion passenger.

30. The defence that no accident occurred involving vehicle KAY 410M was not substantiated.
31. The Respondent's unchallenged testimony and the medical evidence sufficiently proved that the accident happened and that the Appellant's driver was at fault.
32. Regarding the defence of contributory negligence, it is well established that when such a defence is raised, the defendant must show a want of care on the part of the claimant for his own safety contributing to his injury .
33. The Appellant did not adduce any evidence that the Respondent, as a pillion passenger, failed to take reasonable care for his own safety.
34. The mere suggestion that the Respondent should have been wearing protective gear is not sufficient to establish contributory negligence, particularly where the accident was caused by the Appellant's vehicle hitting the motorcycle from behind.
35. The Respondent had no control over the motorcycle and could not have avoided the collision.
36. Consequently, the trial court's finding of 100% liability against the Appellant is upheld.
37. On the question of general damages, the Appellant argues that the award of Kshs. 200,000 for soft tissue injuries is excessive.

38. The Respondent sustained blunt injuries on both shoulders, multiple bruises on the right forearm, multiple bruises and cut wounds on both lower limbs, blunt injuries on the lower back and knee joints, and deep cut wounds on the left foot dorsal aspect. These are soft tissue injuries.
39. The assessment of general damages is a discretionary exercise by the trial court, and an appellate court will not disturb an award of damages merely because it would have awarded a different sum.
40. An appellate court can only interfere if the trial court acted on wrong principles of law or if the award is so inordinately high or low as to represent an entirely erroneous estimate of the damage suffered .
41. Considering the nature and extent of the injuries sustained, the award of Kshs. 200,000 falls within the range of reasonable compensation for comparable soft tissue injuries and cannot be said to be excessive.
42. I therefore uphold the award for general damages.
43. The Appellant also challenges the award of Kshs. 20,000 for future medical expenses, arguing that it lacks evidentiary basis because only a bill estimate was produced without a receipt.

44. On this ground, the Appellant's argument has merit. The law is clear that special damages must not only be pleaded but also strictly proved.
45. While future medical expenses are often treated as a special claim requiring proof, the Respondent only produced an estimate without any receipt or medical evidence demonstrating that the sum of Kshs. 20,000 would necessarily be incurred.
46. The trial court therefore erred by awarding this amount without strict proof. The award of Kshs. 20,000 for future medical expenses is accordingly set aside.
47. The award of Kshs. 5,550 for special damages, being supported by receipts, is upheld.
48. Regarding the Appellant's procedural complaint that the trial proceeded by way of submissions under Section 30 of the Small Claims Court Act without a viva voce hearing, the record shows that the Appellant himself proposed that the matter proceed by way of documentary evidence, and both parties consented to that mode of hearing.
49. A party cannot be heard to complain about a procedure to which they voluntarily consented, simply because the outcome of the case was unfavourable.
50. The Small Claims Court is designed to handle claims expeditiously, and Section 30 of the Small Claims Court Act

permits the court to determine claims on the basis of written submissions and documentary evidence where appropriate.

51. The Appellant's right to a fair trial under Article 50 of the Constitution was not prejudiced as he was given an opportunity to file his submissions and challenge the Respondent's case.

52. The trial court also provided adequate reasons for dismissing the Appellant's defence, noting that the Appellant failed to adduce any evidence to support his contention that no accident occurred.

53. The judgment demonstrates that the Adjudicator considered the evidence before him and reached a reasoned conclusion.

54. In the final result, this appeal partially succeeds. The finding on liability holding the Appellant 100% liable is upheld.

55. The award of general damages of Kshs. 200,000 is upheld.

56. The award of special damages of Kshs. 5,550 is upheld.

57. The award of future medical expenses of Kshs. 20,000 is set aside for lack of strict proof.

58. The judgment of the trial court is therefore modified to read as follows:

**(i) General damages    Kshs. 200,000/=**

**(ii) Special damages    Kshs. 5,550/=**

**Total award    Kshs. 205,550/=**

**(iii) The Appellant shall pay costs of the appeal to the Respondent.**

59. Orders to issue accordingly.

**Dated, signed and delivered this 22<sup>nd</sup> day of April 2026 in open court at Voi High Court.**

**ASENATH ONGERI**

**JUDGE**

**In the presence of:-**

**Court Assistant: Millicent/Mabishi**

..... **for the Appellant**

..... **for the Respondent**