



**EK (Minor suing through next friend and father Daniel Kipkemoi Chepkwony) v Uzuri Foods Ltd (Civil Appeal E014 of 2024) [2026] KEHC 5950 (KLR) (5 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 5950 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL E014 OF 2024  
JK NG'ARNG'AR, J  
MAY 5, 2026**

**BETWEEN**

**EK (MINOR SUING THROUGH NEXT FRIEND AND FATHER DANIEL KIPKEMOI CHEPKWONY) ..... APPELLANT**

**AND**

**UZURI FOODS LTD ..... RESPONDENT**

*(Being an Appeal from the Judgment of Resident Magistrate, Michuki M. at the Magistrate's Court at Sotik, Civil Suit Number E153 of 2023)*

**JUDGMENT**

1. The Appellant (then Plaintiff) sued the Respondent (then Defendant) for general and special damages that arose from a road traffic accident on 16<sup>th</sup> May 2023. In its Judgement delivered on 11<sup>th</sup> July 2024, the trial court dismissed the suit.
2. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 19<sup>th</sup> July 2024 appealing against the whole Judgement.
3. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
4. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.



### **The Plaintiff's/Appellant's case.**

5. Through his Complaint dated 16<sup>th</sup> June 2023, the Appellant stated that he was walking off the verge of the road along Bomet-Narok road when motor vehicle registration number KCH 203W/ZE 046Y knocked him and caused him serious injuries.
6. It was the Appellant's case that the Respondent was negligent in causing the accident. The particulars of the negligence were stated in paragraph 5 of the Complaint. That as a result of the accident, the Appellant suffered the following injuries: -
  - i. Head injury with loss of consciousness.
  - ii. Liner occipital and left temporal skull fractures.
  - iii. Left occipital parietal scalp hematoma.
  - iv. Chest contusion.
  - v. Physical and psychological pains.
  - vi. Deep cut wounds on the head.
  - vii. Deep cut wounds on the left hand.
  - viii. Deep cut wounds on the left leg.
  - ix. Blunt trauma to the left thigh.
  - x. Blood loss.
7. The Appellant prayed for special and general damages against the Respondent.
8. Through his written submissions dated 21<sup>st</sup> April 2025, the Appellant submitted that failure to plead the particulars of the driver was not fatal. That he proved that the Respondent's car caused the accident. He relied on Kenya Bus Service Ltd vs Dina Kawira Humphrey [2003] KECA 179 (KLR), Lake Flowers vs Cila Francklyn Onyango Ngonga & another [2008] KECA 54 (KLR) et.al.
9. It was the Appellant's submission that a person in control of a motor vehicle need not necessarily have an agent relationship with the registered owner of the motor vehicle for vicarious liability to arise. He relied on Board of Governors of Kangubiri Girls High School & another vs Jane Wanjiku Muriithi & another [2014] KECA 224 (KLR). That where it has been proved that a motor vehicle caused an accident, the registered owner was responsible. He relied on Kansa vs Solanki (1969) EA 318 et.al.
10. The Appellant submitted that the trial court erred in dismissing his suit. He proposed an award of Kshs 1,500,000/= as general damages, Kshs 24,415/= as special damages and that the Respondent be found 100% liable for causing the accident.

### **The Defendant's/Respondent's case.**

11. Through his statement of defence dated 10<sup>th</sup> July 2023, the Respondent denied the occurrence of the accident on 16<sup>th</sup> May 2023 and further denied being the registered owner of motor vehicle registration number KCH 203W/ZE 046Y.
12. It was the Respondent's case that if the accident occurred then it was caused by the negligence of the Appellant. The particulars of negligence were contained in paragraph 5 of the Defence.



13. Through its written submissions dated 31<sup>st</sup> May 2025, the Respondent submitted that the Appellant failed to provide any evidence linking the driver to the Respondent. That there was no evidence to demonstrate the existence of an employer-employee relationship between itself and the driver. It relied on John Nderi Wamugi vs Ruhesh Okumu Otiangala & 2 others [2015] KECA 214 (KLR).
14. It was the Respondent's submission that mere ownership of a motor vehicle did not ipso facto establish vicarious liability. It was the Respondent's further submission that the trial court did not err when it dismissed the Appellant's suit.
15. I have gone through and carefully considered the Record of Appeal dated 5<sup>th</sup> October 2024, the Appellants' written submissions dated 21<sup>st</sup> April 2025 and the Respondent's written submissions dated 31<sup>st</sup> May 2025. The only issue that I have sieved for my determination was whether the trial court erred in dismissing the suit.

### **Liability.**

16. In regards to liability, DKC (PW1) testified as the next friend and guardian of the Appellant. PW1 testified that on the material day, the Appellant was knocked down by KCH 203W/ZE 046Y thereby causing him injuries. PW1 further testified that he blamed the owner and driver of KCH 203W/ZE 046Y. When PW1 was cross examined, he testified that he witnessed the accident. That the Appellant was knocked down while crossing the road.
17. PW1 produced the Motor Vehicle Copy of Records as P. Exh 5a. I have looked at the exhibit and it stated that KCH 203W/ZE 046Y was registered in the Respondent's name.
18. No. 72792 Reyland Nzai testified that the accident occurred on 16<sup>th</sup> May 2023 along Bomet-Narok road. He produced an abstract as P. Exh 4. I have looked at the exhibit and it confirmed the occurrence of the accident.
19. The Appellant was dissatisfied with the trial court's determination on this issue. In dismissing the suit, the trial court found that the Appellant had not sued the driver of the subject motor vehicle and had failed to establish any agency relationship between the Respondent and its driver. With great respect to the trial court, I disagree with this position. I am of the view that once the ownership of the motor vehicle and the occurrence of the accident had been proved, a presumption arose that the motor vehicle was being driven by a person whose negligence is assumed by the registered owner. The Court of Appeal in *Lake Flowers v Cila Francklyn Onyango Ngonga & another* [2008] KECA 54 (KLR) held: -  
  
“.....However, it is our view that the failure to sue the appellant's driver and the omission by the 1st respondent to directly refer to the appellant's liability as being vicarious was not necessarily fatal to his claim. It is sufficient that the relevant primary facts were pleaded and evidence led to show the owner of the mitsubishi canter and from which vicarious liability can be inferred as a matter of law.”
20. Similarly, in *Richard Mbeva Ngumbi v Attorney General* [2017] KEHC 1371 (KLR), the court held: -  
  
“The trial Magistrate dismissed this suit on the ground that the driver of the accident car had not been enjoined in the suit. The trial Magistrate erred in law in that the driver must not be a necessary party to a suit for negligence to be proved. This was reiterated by the Court of appeal case of *Kenya Bus Services Ltd –vs–Humphrey* (2003) KLR 665;(2003)2 EA 519, where the court of appeal held inter alia that:



“.....where it is proven that a car has caused damage by negligence, then in the absence of evidence to the contrary, a presumption arises that it was driven by a person for whose negligence the owner is responsible. This presumption is made stronger by the surrounding circumstances and it is not necessarily disturbed by the evidence that the car was lent to the driver by the owner, as there mere fact of lending does not of itself dispel the possibility that it was being driven for the joint benefit of the owner and the driver,”

It is therefore inconsequential to a suit whether the driver had not been enjoined, the trial Magistrate should have gone ahead to determine the issue of quantum, liability having been settled by consent by the parties during the trial.”

21. Flowing from the above, I am satisfied that the Appellant proved his case against the Respondent. He was able to prove that the accident occurred on the material day involving the subject motor vehicle and the Appellant and he was able to establish that the subject motor vehicle was owned by the Respondent. It is salient to also note that the Respondent did not call any witness or adduce evidence and the Appellant’s evidence remained unchallenged. To put it clearly, I find the Respondent 100% liable for causing the accident.

### **Quantum**

22. The Appellant pleaded the following injuries: -
- i. Head injury with loss of consciousness.
  - ii. Liner occipital and left temporal skull fractures.
  - iii. Left occipital parietal scalp hematoma.
  - iv. Chest contusion.
  - v. Physical and psychological pains.
  - vi. Deep cut wounds on the head.
  - vii. Deep cut wounds on the left hand.
  - viii. Deep cut wounds on the left leg.
  - ix. Blunt trauma to the left thigh.
  - x. Blood loss.
23. PW1 produced a Discharge Summary, Radiology Report, P3 Form and a Medical Report as P. Exh 1a, 1b, 2 and 3 respectively. I have looked at the exhibits and I have confirmed that the Appellant suffered the injuries pleaded.
24. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See *Catholic Diocese of Kisumu vs Tete* (2004) eKLR.
25. In the present case, the Appellant proposed an award of Kshs 1,500,000/= while on the other hand, the Respondent prayed that the Appeal be dismissed. The trial court held that had the Appellant’s claim been successful, it would have awarded Kshs 800,000/= as general damages.



26. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards.
27. In addition to the authorities cited by the parties in their respective submissions, I have found the following cases quite helpful in terms of comparison: -
- I. In *Elizaphen Mokaya Bogonko v Fredrick Omondi Ouna* [2022] KEHC 2892 (KLR), the Respondent suffered a head injury with loss of consciousness, fracture of the right zygoma (facial bone), multiple facial lacerations, blunt injury to the shoulders, blunt injury and bruises to both lower limbs. The court reduced the award of Kshs 850,000/= and substituted it with an award of Kshs 500,000/=
  - II. In *Board of Directors Chuka University College v Lagat* [2025] KEHC 17789 (KLR), the Plaintiff suffered depressed right sided skull fracture, extensive laceration right frontal parietal scalp, chest contusion, laceration right hand dorsal surface, laceration and contusion to the left knee, multiple lacerations right pretibial region, laceration over the right ankle joint with associated ankle joint contusion, abdominal contusion, laceration left shoulder joint and a laceration left wrist joint. The court upheld the trial court's award of Kshs 1,000,000/=.
  - III. In *Dismas Kipyego v Philip Kiprono* (2019) eKLR, the court awarded Kshs. 250,000/= for severe blunt injury to the head and loss of consciousness, depressed skull fracture of the occipital parietal bones, blunt injury to the chest, sub-laxation of the right shoulder joint and blunt injury to the right hip.
  - IV. In *Moiz Motors Limited & Another V Harun Ngethe Wanjiru* [2021] KEHC 8702 KLR, the Appellate court substituted an award of Kshs. 700,000/= with Kshs. 500,000/= for depressed frontal bone fracture of the skull, severe tissue injuries in the face, soft tissue injury to the chest, soft tissue injury of both knees, soft tissue injury of both hip joints and severe soft tissue injury of the toes of the right leg.
28. I have considered the authorities above and the nature of the injuries suffered by the Appellant. I have also considered the current inflation rates and I hereby award of Kshs 600,000/= as general damages. This award in my view is commensurate to the injuries suffered by the Appellant.
29. In regards to the special damages, the Appellant pleaded Kshs 6,500/= for the Medical Report, Kshs 550/= for the motorcycle search and Kshs 17,465/= for medical expenses. I have seen the receipt for the Medical Report (P. Exh 3b), motor cycle search receipt (P. Exh 5b) and medical expenses (P. Exh 6). I hereby award Kshs 23,015/= as special damages.
30. In the final analysis, the final computation is as below: -
- General Damages Kshs 600,000/=
- Special Damages Kshs 23,015/=
- Total Kshs 623,015/=
31. In the end, the Appeal dated 19<sup>th</sup> July 2024 is successful and the Appellant is awarded a net sum of Kshs 623,015/=. Each party shall bear their own costs in this Appeal.

**JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 5<sup>TH</sup> DAY OF MAY, 2026.**

.....  
**HON. JULIUS K. NG'ARNG'AR**



## **JUDGE**

Judgment Delivered in the presence of;

Susan/Siele Court Assistant

Oremo for Appellant

Waweru for Respondent

