



REPUBLIC OF KENYA



**Kimani & another v Mwandago (Civil Appeal E1054 of 2023)
[2025] KEHC 702 (KLR) (Civ) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1054 OF 2023

AM MUTETI, J

JANUARY 27, 2025

BETWEEN

MARAGARET WAMBUI KIMANI 1ST APPELLANT

SAKAYO KIMRI MWANGI 2ND APPELLANT

AND

GRACE MBALA MWANDAGO RESPONDENT

(Being an appeal against the judgment delivered by Honorable B.M Cheloti (Ms) Principal Magistrate on 08th September, 2023 in Nairobi Milimani Civil Suit No. E8287 of 2021)

JUDGMENT

Introduction

1. The appellant challenges the judgment of the Lower court on both liability and quantum.
2. The respondent was a pedestrian at the time of the accident when the driver of motor vehicle KBH 889Y negligently drove the said motor vehicle along Juja Road and as a result hit respondent causing him to suffer injuries.
3. At the end of the hearing the court entered judgment for the respondent in the following terms:
 - a. Liability 80:20 in favor of the respondent
 - b.
 - (i) General damages Kshs. 254,840
 - (ii) Special damages Kshs. 3,550



- (iii) Police attendance Kshs. 5,000
 - (iv) Doctors attendance Kshs. 10,000
 - c. Costs of the suit
 - d. Interest on (b) & (c) at court rates.
4. The appellants have appealed on the following grounds:
- i. The Learned Magistrate erred in law and misdirected herself when she failed to consider the Appellants' submissions on both points of law and fact.
 - ii. The Learned Magistrate's decision was unjust against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice. .
 - iii. The Learned Magistrate erred in law and in fact in awarding an award on liability inconsistent with facts pleaded and proveyd.
 - iv. The Learned Magistrate erred in law and in fact in finding the Appellants 80% liable as she disregarded the evidence submitted by the Appellants.
 - v. The Learned Magistrate having misapprehended and misunderstood the points of fact and points of law erred in law and in fact in relying on authorities which were irrelevant and thus arrived at an award that is so manifestly high as to be erroneous.
 - vi. The Learned Magistrate erred in assessing an award which was inordinately high and a wholly erroneous estimate against damages suffered by the Claimant, he erred in law and in fact in awarding under the head of general damages for pain and suffering at Kshs.254,850/=, under the head of special damages at Kshs.3,550/=, police attendance at Kshs.5,000/= and doctor's attendance at Kshs.10,000/= the same based in the wrong principles of law was excessively high and unjust and not based on any logical justification.<
 - vii. The Learned Magistrate erred in awarding an excessive sum of the injuries suffered in the face of the evidence adduced and submissions made by the Appellants' Counsel on quantum.
 - viii. The Learned Magistrate erred in awarding costs of the suit and interest to the Respondent.

Analysis and Determination

- 5. The appellants case is that the sum of Kshs. 318,550 in general damages is excessive and or inordinately high taking into account the injuries sustained by the respondent.
- 6. The appellants therefore propose a concrete figure of Kshs. 80,000 as being adequate compensation.
- 7. In support of the figure the appellants have cited the case of Ndugu Dennis Vs. Ann Wangari Nditangu & another [2018] eKLR in which the court awarded the plaintiff the sum of Kshs. 100,000 for similar injuries.
- 8. The appellants have also cited the case of HB (Minor Suing through Mother & Next friend DKM Vs. Jasper Nchonga Magari & another [2021] eKLR where the court awarded a sum of Kshs. 60,000 in damages.
- 9. The appellants have submitted that the sum of Kshs. 80,000 should only be considered if the court disagrees with them that the respondent should have borne 100% liability over the accident.



10. Respondents counsel has submitted that this appeal is not merited and should be dismissed on both liability and quantum.
11. On liability the respondent has referred the court to the evidence of PW1 , PW2 and PW3.
12. It is the respondent submission that the respondent who testified as PW3 was lawfully walking along the road when he was knocked down by the 2nd appellant.
13. The respondent has urged this court to find that appellants were solely to blame for the accident thus the decision by the learned Honorable magistrate should not be interfered with.
14. The police officer who testified as PW2 blamed the appellants for the accident.
15. The respondent contends that the evidence tendered regarding the circumstances of the occurrence of the accident point to the 2nd appellant as having been negligent in the manner he drove motor vehicle KBH 889Y at the time of the accident.
16. This court as a first appellate court is under duty to analyze and reappraise the evidence tendered before the lower court and make its own determination applying the law to the facts.
17. I have perused the record and noted that according to the evidence of the doctors as per the radical reports the respondent suffered a deep cut on the left, periorbital region and blunt injury to the chest.
18. The injuries were classified as harm. The injuries were confirmed by both Dr Okere and Dr Jenipher Kahuthu
19. The respondents have urged this court to find that the decision of the learned Honorable magistrate was proper on both liability and quantum and the entire appeal should be dismissed
20. The record of Appeal by the appellants in this courts view inadequate.
21. The record of appeal does not contain a copy of the lower court record of proceedings as well as a copy of the decree.
22. Order 42 Rule 13 (4) (c) requires that the notes of the trial magistrate made at the hearing should be included in the record of Appeal. Although the proviso to the rule makes it permissible for the court to dispense with the document , it is not feasible for this court to determine conclusively on all the issues without the benefit of the Lower court proceedings.
23. It is not possible for the court to tell what portions of evidence informed the courts decision in apportioning liability. The exclusion of the proceedings therefore by the appellant renders it impossible for the court to impeach the lower courts finding on liability.
24. I do not have any material before me to persuade me to interfere with the decision of the court on both liability and quantum.
25. The court in Mbogo Vs. Shah [1968] EA page 93 held:-

“I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion”



26. Following the well settled principles in the above quoted decision this court fines that it is not possible to determine in what sense the learned magistrate misdirected himself acted or failed to act on matters that were relevant for consideration in determining both liability and quantum.
27. The appellants appeal therefore fails on that account. Having failed to include the lower court notes of the learned magistrate the appellants took a very risky gamble.
28. Unfortunately, this court cannot come to their aid for the notes are not before me.
29. As a result, the appeal is dismissed with costs on both liability and quantum.
30. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JANUARY, 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Kimondo Gachoka absent for the /appellant

Odhiambo for Respondent

