



**Kipkoech v Adongo (Civil Appeal 023 of 2024)  
[2025] KEHC 3871 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3871 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 023 OF 2024  
TW OUYA, J  
MARCH 27, 2025  
(FORMERLY KIAMBU HCCA NO. E021 OF 2024)**

**BETWEEN**

**LEKONAYA KIBWALEL KIPKOECH ..... APPELLANT**

**AND**

**MICHELLE AKOTH ADONGO ..... RESPONDENT**

*(Being an Appeal against the Judgment and decree of Hon. Wangechi Ngumi  
(SPM) delivered on 22.01.2024 in Gatundu CMCC No. E236 of 2022)*

**JUDGMENT**

**Background**

1. This appeal is in respect of the judgment delivered on 22.01.2024 in Gatundu CMCC No. E236 of 2022 (the suit). The same was commenced by way of the plaint dated 3.08.2022 and filed by Michelle Akoth Adongo being the plaintiff in the lower court (hereafter the Respondent) against Lekonaya Kibwalel Kipkoech the defendant in the lower court (hereafter the Appellant). The reliefs sought therein were in the nature of general, future medical expenses, lost earnings/future earnings and special damages arising out of a road traffic accident which occurred on or about 13.03.2022 along the Gatundu- Juja Road near Oasis area. The Appellant was sued in his capacity as both the driver and registered owner of the motor vehicle registration No. KBZ 377V (hereafter the subject motor vehicle).
2. It was alleged that on the material date, the Respondent was lawfully a pillion passenger in the motorcycle registration number KMFV 724V (the motorcycle) along the abovementioned road when the Appellant so negligently and/or carelessly drove, controlled and/or managed the subject motor vehicle that it lost control, veered off the road and hit the motorcycle, causing the Respondent to sustain bodily injuries particularized as multiple bruises on the face, blunt injury to the trunk, Deep



cut wound on the left hand and deep cut wound on the left leg. The particulars of negligence were equally set out under paragraph 4 of the plaint.

3. Upon entering appearance, the Appellant filed his statement of defence dated 14.09.2022 denying the key averments in the plaint and liability. In the alternative, the Appellant pleaded contributory negligence on the part of the Respondent, by setting out the particulars thereof under paragraph 7 of the statement of defence. The Appellant similarly denied liability in respect of the injuries particularized in the plaint.
4. At the hearing of the suit, the Respondent testified and called an additional witness, while the Appellant opted to close his case without calling any witnesses.
5. The learned counsel for the respondent and the appellant entered into a consent that as regards liability, reliance shall be placed on the evidence adduced in court and on the submissions filed in Gatundu CMCC No. E237 of 2022 and the outcome on liability be taken up as the liability in this case.
6. For clarity, Gatundu CMCC No. E237 of 2022 was initiated by Lawrence Oluoch Mella who was the motor cycle rider and was injured in the same accident. Upon close of submissions, the trial court delivered its judgment in favour of the Respondent and against the Appellant, in the following manner:

Liability 100%

- a. General damages for pain, suffering Kshs. 210,000/-
- b. Special Damages Kshs. 3,550

Total Award Kshs. 213,000

### **The Appeal**

7. Being aggrieved by the trial court's award, the Appellant has sought to challenge it by way of the memorandum of appeal dated 13.09.2023 featuring the following grounds:
  - i. That the learned Magistrate erred in law and fact in failing to consider and find that the Appellant had shown a prima facie case with a high probability of success.
  - ii. That the learned Magistrate erred in law and fact in failing to ascertain who the injured parties were in the purported accident
  - iii. That the learned Magistrate erred in law and fact in failing to note that the purported plaintiff was not involved in the purported subject accident
  - iv. That the learned Magistrate erred in law and fact in failing to consider and find that there was no concrete evidence placed before the court to determine the circumstances surrounding the purported subject accident.
  - v. That the Learned Magistrate erred in law and fact in failing to consider and find that the contents of a police abstract as extracted from the records held by the police is merely evidence that a report of an accident was made and not that an accident occurred.
  - vi. That the Learned Magistrate erred in law and fact in failing to consider and find that a police abstract is not conclusive proof of liability
  - vii. That the Learned Magistrate erred in law and fact in failing to consider and find that the police officer was not present at the scene of the accident at the time the alleged accident occurred



neither did he witness the occurrence of the alleged accident which goes against evidentiary rules of direct evidence thereby rendering his testimony as hearsay.

8. The appeal therefore seeks to have the trial court's judgment set aside accordingly. Costs of the appeal are likewise sought.

### **Submissions**

- This matter was canvassed by way of written submissions by counsel for both parties. Counsel for the appellant submitted on liability advancing the argument the appellant could not be blamed for liability when the respondent had not produced any evidence that the appellant was to blame by way of occurrence book or sketch maps from the scene of the accident. That the police officer who testified at the trial did not witness the accident hence his evidence was hearsay; and that there was no conclusive evidence to determine who was to blame for the accident and therefore both parties should be held equally liable and liability ha apportioned. He relies on the court of appeal case of Farah V Lento Agencies(2006)1 KLR. He argues further that the respondent did not discharge the burden of proof in accordance with sections 107, 108 and 109 of the *evidence Act* and cites the authority of Mumbi M'Nabea v David M Wachira (2016) eklr among others. He urges the court to set aside the 100% liability finding and prays that the same be apportioned in the ratio of 50%:50%.
9. On general damages, the Appellant contends that the amount of kshs.210,000 awarded by the trial court was excessive noting the nature of injuries sustained to wit; multiple bruises on the face, blunt injury to the trunk, Deep cut wound on the left hand and deep cut wound on the left leg. He relied on the authority of Alphonse Odero Augo and others v Sinohydro Corporation Limited (2017)eklr among others and proposes an award of Kshs. 100,000.
  10. He urges the court to allow the appeal and to find that the costs of the suit should be borne by respondent as guided under section 27(1) of the *Civil Procedure Act*.
  11. The respondent agrees with the finding of the trial court on liability and argues that the trial court took into consideration the extensive evidence adduced by the respondent and was properly guided by the provisions of the law. He makes reference to the record of appeal at page 81 where the trial court noted that the appellant did not call any witness in the test suit which was CMCCE 237 of 2022 to explain to the court circumstances of the accident. That the court was left to rely on the plaintiff's evidence which was uncontroverted. He submits that the respondent discharged her burden of proof at the trial and guided by the authority of Adhiambo Okayo v Kenya women Finance trust KSM CA Civil Appeal no. 19 of 2015(2016)eKLR
  12. Counsel submits that the trial court did not err or fail to ascertain that the injured parties were in the subject accident. That the chronology of the events of the accident was not only clearly pleaded but were also illustrated through the witness testimonies and documents adduced for veracity. That the appellant had equal opportunity including the chance to cross examine the witnesses. That the trial court was able to consider the entire evidence on a balance of probabilities and found that the respondent case was not built on mere allegations but was tenable.
  13. Counsel submits therefore that there was concrete evidence that the respondent was not only involved in the accident but also that she sustained injuries as evidenced by police abstract report from Juja Police Station dated 6<sup>th</sup> June 2022 and medical examination report dated 28<sup>th</sup> June 2022, P3 form and others adduced at the hearing.
  14. Counsel argues that the respondent adduced sufficient evidence and that the police abstract was only additional evidence. He relies on the authority of HCCA Simon Mumo Malonza vs British American



Tobacco (K) where court held that the absence of a police abstract does not in any way negate the evidence adduced at the trial court but that it is appropriate to prove the identity of the vehicle and location of the accident. He urges court to find that the respondent the appeal.

15. Analysis

The court has considered the original record, the record of appeal and the submissions on record plus the authorities cited in support thereof. As a first appellate court, the duty of this court is to re-evaluate the evidence and draw its own conclusions, but always bearing in mind that it did not have the opportunity to see or hear the witnesses testify. The Court of Appeal in *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) 1 KAR 278 echoed the above principle in the following manner:

“A court of appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.”

16. Upon review of the memorandum of appeal and submissions on record, it is apparent that while the Appellant purported to mention in passing by way of his submissions; that the trial court erred in finding him entirely liable for the material accident; from a study of both the grounds of appeal and the Appellant’s submissions, the court did not come across any particular arguments advanced in challenging the finding of liability and hence the court sees no reason to review the same. Consequently, this court will limit itself to the issue of quantum.

17. As earlier mentioned, the present appeal is primarily challenging the finding on liability and the awards made under the heads of general damages for pain, suffering and loss of amenities; and special damages. The court will first address the issue of liability.

18. This matter was brought before this court pursuant directions by the presiding judge Thika that the same to be consolidated with Thika HCCA E323 of 2023 (formerly Kiambu 363 of 2023) which was pending judgement before this court under the Judiciary Service Week Program. Upon perusal of the Lower Court files Gatundu CMCC E237 of 2022 and Gatundu CMCC E236 of 2022 (the subject of this appeal,) this court noted that the parties through their counsel entered into consent on liability: ‘that reliance be placed on the evidence adduced in court and on the submissions filed and the outcome on liability be taken up as the liability in this case.’

19. The trial court therefore adopted the finding on liability as held in Gatundu CMCC E237 of 2022.

“On the issue of liability, the court was told of how the accident took place. According to the Plaintiff, he was riding a motor cycle when carrying his wife. As he got to the Oasis area, the vehicle approaching from the opposite direction left its lane and drove to his lane hitting him. The Investigating Officer told the court that the debris on the road led him to conclude that the accident was on the side of the rider and hence the reason he blamed the driver for the accident. The issue of insurance was brought up, where the investigating officer indicated was not taken to him but dismissed it saying that the absence of an insurance certificate could not have contributed to the occurrence of the accident.

The defendant did not call any witness to explain to the court the manner in which the accident took place. The only account there is before court is that given by the Plaintiff, which does not appear far-fetched. It is not controverted, I shall take it as the circumstances surrounding the occurrence of the accident. I hence find the defendant’s driver fully to blame for the occurrence of the accident.”



This court considers the above holding by the trial court to be sound and finds no basis to interfere with it.

The court will next address the issue of the award made on general damages.

20. The main contention raised concerning the general damages in particular, is that the same is inordinately high considering the injuries sustained, and was awarded on the basis of wrong principles and without proper consideration of the evidence on record as well as comparable awards made.
21. In that respect, the Court of Appeal in *Catholic Diocese of Kisumu v Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55* set out the circumstances under which an appellate court can interfere with an award of damages, in the following terms:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

22. The same court previously stated in *Bashir Ahmed Butt v Uwais Ahmed Khan [1982 – 1988] I KAR 5* that:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low”.

23. As earlier set out, the Respondent’s injuries as particularized in the amended plaint are which injuries are confirmed by the medical evidence constituting the Respondent’s bundle of documents were:

multiple bruises on the face, blunt injury to the trunk, Deep cut wound on the left hand and deep cut wound on the left leg.

1. This court is of the view that the referenced authorities cited by the Respondent involve injuries of a slightly more severe nature than those suffered here, while those cited by the Appellant entailed less serious injuries in comparison.

The court has considered relevant authorities and contemporary awards for the nature of injuries sustained by the respondent. In *Cheruiyot & another v Onyisi [2024] KEHC 9684 (KLR)* The court stated;

“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. I have found the following cases quite helpful in terms of comparison:-

- i. In *Kenya Power & Lighting Co. Ltd vs Mary Akinyi, HCCA No. 72 of 2007*, the court upheld the award of Kshs. 350,000/- as general damages for a deep cut



wound on the calf muscles of the left leg, laceration on the right knee and right shoulder and contusion on the chest.

- ii. In *Poa Link Services Co. Ltd & Another vs Sindano Boaz Bonzemo* (2021) eKLR, the court upheld the general damages of Kshs. 350,000/- for the plaintiff, who had sustained blunt injury to the chest, bruises to lower abdomen, bruises of the right hip joint, bruises of the thigh; and bruises on the knee.
- iii. In *Samwel Martin Njoroge Kamunyu vs Mildred Okweya Barasa* (2020) eKLR, the plaintiff sustained; two deep cut wounds on the forehead horizontally, bruises and lacerations on the right cheek, blunt injury to the shoulder and chest, blunt injury to the pelvis, deep cut wounds on right and left legs. The High Court awarded of Kshs 300,000/= as general damages.
- iv. In *Marube & Another V Nyambogo* (civil Appeal E011 of 2023) [2024] KEHC 3395 (KLR) (12 March 2024) (Judgment), the court upheld the award of Kshs 350,000/= for the following injuries; blunt trauma to the neck, chest contusion, bruises on the right upper limb, bruises on the left upper limb, bruises on the left lower limb, bruises on the right lower limb and cut wounds on the right lower limb
- v. In *Veronicah Mkanjala Mnyapara v Charles Kinanga Babu* (2020) eKLR, the court upheld an award of Kshs. 300,000/= for the plaintiff who had sustained a deep cut wound on the forehead, chest contusion, bruises on the face, bruises on both hands, dislocation of the left wrist joint, bruises on both ankle joints and dislocation of the left ankle joint.

Having considered the authorities above and the nature of the injuries suffered by the Respondent, it is my finding that the Kshs 300,000/= awarded as general damages by the trial court was reasonable and I so uphold.”

Based on the above, I find that the award of Kshs. 213,000 by the Lower Court to be reasonable and should not be disturbed.

### **Determination**

25. Consequently, the judgment on appeal shall now read as follows:

- a. General damages for pain, suffering and loss of amenities Kshs. 210,000/=
- b. Special Damages Kshs. 3,550/=



Total Award Kshs. 213,550/=

- c. The Respondent shall have costs of the suit and interest on general damages at court rates from the date of judgment until payment in full, and interest on special damages at court rates from the date of filing suit until payment in full.
- d. The Appellant shall have the costs of the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

**HON. T. W. Ouya**

**JUDGE**

For Appellant.....Mudeisi

For Respondent.....Mwenja

Court Assistant.....Jackline

