



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwadechu & another v Masabo (Civil Appeal E060 of 2023)  
[2025] KEHC 7146 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7146 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E060 OF 2023  
AN ONGERI, J  
MAY 30, 2025**

**BETWEEN**

**AGGREY MWADEGHU MSAGHA ALIAS AGGREY MSHAGA MWADESHU  
ALIAS MR. AGGREY MSAGHA MWADECHU ..... 1<sup>ST</sup> APPELLANT  
HUNDERSON MWAWASI MNYAMWEZI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ROSEMARY MKAWAJOMBA MASABO ALIAS ROSE MASaidu ALIAS ROSE  
MARY MASABO ALIAS ROSEMARY MASABO ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. C. K. Kithinji (PM)  
in Voi CMCC No. E186 of 2021 delivered on 19th October 2021)*

**JUDGMENT**

1. The Respondent filed Voi CMCC Case No. E186 of 2021 vide plaint dated 29<sup>th</sup> November 2021 against the two Appellants seeking general damages for pain and suffering, special damages and future medical expenses for injuries the Respondent sustained while lawfully travelling in motor vehicle registration KDC 3X6L.
2. The motor vehicle belongs to the 1<sup>st</sup> Appellant and at the material time it was being driven by the 2<sup>nd</sup> Appellant.
3. The motor vehicle lost control and overturned at Manyatta Area along Mombasa – Nairobi Highway.
4. The Respondent averred that the 2<sup>nd</sup> Appellant drove the motor vehicle negligently and it lost control and overturned and it caused the Respondent serious personal injuries.
5. As a result of the injuries, the Respondent who was 28 years old can no longer engage in any economic activities and her ability to compete effectively in the labour market has been severely curtailed.



6. The Appellants filed a statement of defence dated 31<sup>st</sup> January 2022 denying the Respondent's claim and stated that in the alternative, the Respondent contributed to the accident by failing to take precaution for her safety and failing to heed the instructions on safety precautions when travelling aboard motor vehicle registration number KDC 3X6L and also voluntarily assuming risk (volenti non fit injuria).
7. The Respondent's evidence was that on 7<sup>th</sup> July 2021 at 6:30a.m, she was travelling as a fare paying passenger in motor vehicle registration number KDC 3X6L from Mwatate to Mombasa.
8. The motor vehicle was moving at a very high speed and it lost control along Manyatta Area and overturned.
9. The Respondent sustained the following injuries:-
  - i. Right eyelid laceration with subconjunctival hemorrhage.
  - ii. Deep cut wound on right eyelid.
  - iii. Stable fracture of superior pubic ramus – right ischium and pubis.
  - iv. Blunt injury to the abdomen.
10. The Respondent still suffers the following complaints:-
  - i. Right eye pain.
  - ii. Sharp pain with limitation movement of left hip and leg.
  - iii. Back ache.
  - iv. Right knee pain.
  - v. Permanent incapacity – 7%.
11. The Appellant did not call any witnesses to testify in the case.
12. The trial court found that the Respondent's evidence was uncontroverted and unchallenged and held the Appellants 100% liable in negligence.
13. The trial court awarded damages as follows:-
  - i. General damages for pain and suffering Kshs. 2,000,000/=
  - ii. Future expenses Kshs. 36,000/=
  - iii. Special damages Kshs. 9,840/=
  - iv. General damages for loss of earning capacity Kshs. 100,000/=Total Kshs. 2,145,840/=
14. The Appellants have appealed against the said judgment on the following grounds:-
  - i. The learned trial Magistrate erred and misdirected herself by relying on wrong principles when assessing damages that were awarded to the Respondent.
  - ii. The learned trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of the law applicable in awarding damages.



- iii. The learned trial Magistrate erred and misdirected herself in awarding a sum in respect of damages which was inordinately high in the circumstance which was excessive in the circumstances occasioning a miscarriage of justice.
  - iv. The learned Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
  - v. The learned trial Magistrate erred and misdirected herself by ignoring the Defendant's submissions on record hence arriving a wrong decision on quantum.
  - vi. The learned trial Magistrate erred and misdirected herself by ignoring the evidence of witnesses on record hence arriving on a wrong decision on quantum.
15. The parties filed written submissions as follows:- the appellant submitted that general damages of Kshs. 2,145,840 awarded by the trial court was inordinately high and urged the court to review the same and substitute it to Kshs. 1,000,000. In support cited the following cases;
- a. Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Naomi Galma Galgalo [2019] eKLR where the Plaintiff was awarded Kshs. 1,400,000 for pelvic fracture and open back facial bruises she complained of pain when walking or running and it was possible that she would have complication during pregnancy and delivery.
  - b. Ileri v Gioko (Civil Appeal E017 of 2022) [2024] KEHC 12543 (KLR) (16 October 2024) (judgement) where the court upheld an award of Kshs. 1,300,000 for; Fracture of the pelvis, fracture of the left ulna and radius, fracture of the right symphysis, fracture of the pelvic region, surgery and metal implant to the right tibia, pubic symphysis and left radius and ulna which had metal plating done. The permanent disability was assessed at 50%.
16. The respondents alternatively submitted that the appellant has failed to show any reason for the court to interfere with the trial court's award and urged that the trial court's award be affirmed. In support the respondent cited the following cases among others;
- a. Edwin Otieno Japaso v. Easy Coach Bus Company Limited [2016] eKLR where the appellant sustained a fracture dislocation of the right little finger, dislocation of the right hip with a fracture of the acetabulum, fracture of the pelvis involving both superior and inferior pubic rami bilaterally and lacerated wounds on both legs. The high court gave an award of Kshs. 2,000,000 for general damages for pain and suffering and loss of amenities.
  - b. Milicent Atieno Ochuonyo v Katola Richard [2015] eKLR where the plaintiff sustained pelvic injuries with fracture of right pubic ramus and diastasis of the symphysis pubis, small abdominal wall hematoma and minimal hemoperitoneum. The court award Kshs. 2,000,000 as general damages.
17. This being a first appeal, the duty of the first appellate court is as follows:- In *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this



court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

18. The issues for determination in this appeal are as follows:-
  - i. Whether the trial court was right in holding the Appellants 100% liable for the accident.
  - ii. Whether the award of damages was excessive.
19. On the issue of liability, the Respondent's evidence was uncontroverted and unchallenged.
20. The Respondent was a passenger in the Appellant's motor vehicle and there is no way she contributed to the accident.
21. I have evaluated the evidence before the trial court and I find that the trial court was right in holding the Appellant's 100% in negligence.
22. On the issue of assessment of damages, the trial court considered the following cases:-
  - i. George William Awuor =Versus= Beryl Awuor Ochieng (2020) eKLR where the Plaintiff age 21 years was awarded Kshs. 2,000,000/= and the amount was reduced to Kshs. 1,200,000/= on appeal for fractures of the femur and left tibia.
  - ii. Civicon Ltd =Versus= Richard Njomo Omwancha & 2 Others (2019) eKLR where the 3<sup>rd</sup> Respondent was awarded 1.3Million which was revised to Kshs. 500,000/= for fracture of 4 upper teeth, cut wound on the upper and lower lips, swollen tender upper lip, bruises on the chin and dislocation on the left shoulder bruises on the right knee, fractures of the right tibia and tabular with 30% disability.
  - iii. Jenifer Jebichi Komen =Versus= Norah Nambuye Wasike (2017) eKLR where the Plaintiff sustained fracture of the left acetulum, left lilac fracture, oblique fracture of the proximal and phalanx of the left 4<sup>th</sup> finger and was awarded Kshs. 1 Million which was reviewed to Kshs. 700,000/=
23. The Respondent in this case sustained the following injuries:-
  - i. Right eyelid laceration with subconjunctival hemmorrhage.
  - ii. Deep cut wound above right eyelid.
  - iii. Stable fracture of the superior pubic ramus-right ischium and pubis.
  - iv. Blunt injury to the abdomen.
24. Upon re-evaluating the evidence, this court finds no fault in the trial court's finding on liability. The Respondent's testimony was uncontroverted, and as a fare-paying passenger, she bore no contributory negligence.
25. However, on the issue of quantum, this court agrees with the Appellants that the award of Kshs. 2,000,000 for general damages was excessive.



26. I find that comparable cases involving pelvic fractures and related injuries, such as Board of Trustees Anglican Church of Kenya Diocese of Marsabit v Naomi Galma Galgalo(supra) (Kshs. 1,400,000) and Ileri v Gioko(supra) (Kshs. 1,300,000), support a lower award.
27. The injuries sustained by the Respondent, while serious, were less severe than those in cases where similar or higher amounts were upheld.
28. Consequently, this court sets aside the award of Kshs. 2,000,000 for general damages and substitutes it with an award of Kshs. 1,500,000.
29. The awards for future medical expenses (Kshs. 36,000), special damages (Kshs. 9,840), and loss of earning capacity (Kshs. 100,000) remain undisturbed. The total award is thus reduced to Kshs. 1,645,840.
30. The appeal is partially allowed as follows;
  - i. General damages for pain and suffering are reduced from Kshs. 2,000,000 to Kshs. 1,500,000.
  - ii. The remaining awards (future expenses, special damages, and loss of earning capacity) stand as granted by the trial court.
31. In the interests of justice, each party shall bear its own costs of this appeal.

**DATED, SIGNED AND DELIVERED THIS 30<sup>TH</sup> MAY 2025 IN OPEN COURT AT VOL.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistants: Millicent

