



**Njuguna & another v Njaramba (Civil Appeal E1189 of 2023)  
[2025] KEHC 7121 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7121 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E1189 OF 2023**

**AC MRIMA, J**

**MAY 30, 2025**

**BETWEEN**

**HARON KINUTHIA NJUGUNA ..... 1<sup>ST</sup> APPELLANT**

**BEATRICE WANJIKU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LILIAN MUMBI NJARAMBA ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. G. Omodho  
(Principal Magistrate) delivered on 8th September, 2023 in Nairobi  
[Milimani] Chief Magistrates Commercial Case No. E2875 of 2021)*

**JUDGMENT**

1. The Respondent herein, Lilian Mumbi Njaramba, filed Nairobi [Milimani] Chief Magistrates Commercial Civil Suit No. E2875 of 2021 [hereinafter referred as ‘the suit’] against the Appellants for general damages, special damages, costs and interests as a result of a road traffic accident that allegedly occurred on 3<sup>rd</sup> November 2020 along Digo road within Nairobi county.
2. It was the Respondent’s case that the Appellants motor vehicle registration number KBW 185L, [hereinafter referred to as ‘the vehicle’] was solely liable for the accident in issue as it was over speeding and veered off the road thereby hitting the Respondent. The Appellants vehemently denied liability by filing a Statement of defence dated 17<sup>th</sup> February 2022. The suit was canvassed by way of oral evidence. The Respondent testified without calling any witness and several documents were produced as exhibits by the consent of the parties. The Appellants did not call any witness, but produced a second medical examination report of the Respondent as their exhibit.
3. The parties filed written submissions and the trial Court rendered its judgment on 8<sup>th</sup> September 2023 in favour of the Respondent in the following terms: -



- a. Liability - 100%
  - b. General Damages – Kshs. 500,000/=
  - c. Special damages – Kshs. 6,150/=
  - Total Kshs. 506,150/=
  - d. Costs and interests
4. Aggrieved by the judgment, the Appellants filed a Memorandum of Appeal dated 9<sup>th</sup> October, 2023 and raised the following grounds: -
- i. That the learned Magistrate erred in law and fact in failing to consider and find that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants 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 consider and find that the Respondent allegedly sustained a degloving injury on the right foot, dislocation on the right 1<sup>st</sup> metatarsarso-phalangeal joint and pain on the right foot.
  - iii. That the learned Magistrate erred in law and fact in failing to consider and find that the Respondent has since recovered from the alleged injuries with no residual incapacity.
  - iv. That the learned Magistrate erred in law and fact in failing to consider and find that in assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike.
  - v. That the learned Magistrate erred in law and fact in failing to consider and find that in assessing compensatory damages, the law seeks at most to indemnify the victim for the loss suffered and not to mulct the tortfeasor for the injury he has caused.
5. The Appellants prayed that the judgment of the trial Court be set aside and costs be borne by the Respondent. In bolstering the appeal, the Appellants filed written submissions dated 6<sup>th</sup> December 2024 where they cited several decisions in support of their position.
6. Opposing the appeal, the Respondent filed his written submissions dated 3<sup>rd</sup> February 2025 relying on several decisions to persuade this Court to dismiss the appeal with costs for lack of merit.
7. As the first appellate Court, this Court is under a duty to revisit the evidence on the record, evaluate it and arrive at its own conclusion. The locus classicus case of *Selle and Another vs Associated Motor Boat Co. Ltd* (1968) (EA 123) is alive on this issue. Further, this Court appreciates the settled principle in *Mwanasokoni vs Kenya Bus Service Ltd* (1982-88)1KAR 78 and *Kiruga vs Kiruga and Another* that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings.
8. Having carefully considered the record, the parties' submissions and rival arguments, the following issues arise for determination: -
- i. Whether the trial Court erred in finding the Appellants wholly liable;
  - ii. Whether the assessment and award of damages was erroneous.
9. A consideration of the issues follows.



## **Liability:**

10. The Appellants submitted that the trial Court erred in finding them wholly liable for the accident when there was no evidence to that end. They urged that the Respondent did not prove her case since no police witness testified and produced any incriminating evidence. The Appellants, therefore, urged this Court to allow the appeal on liability.
11. The Respondent opposed the appeal. She submitted that she had proved her case as required in law and essentially supported the Court's finding on liability. She prayed that the finding of the trial Court on liability be upheld.
12. This Court has had the liberty to go through the record. The Respondent filed a statement which she adopted during her oral testimony. Several documents including a Police Abstract were produced as exhibits. The Respondent was also cross-examined on how the accident occurred. The Respondent was forthright on what happened. She categorically stated that she was off the road when the Appellant's vehicle which was driven at a high speed veered off the road and hit her. Apart from filing the Statement of Defence, the Appellants did not tender any evidence in support of their case. They mainly focused on the quantum aspect of the claim.
13. Whereas it is settled in law that a claimant must prove his/her/its case regardless of whether the Respondent adduces any evidence, there was credible evidence in this case to shift the evidential burden of proof to the Appellants. The Respondent's evidence was very consistent and withstood the cross-examination. That evidence was corroborated by the Police Abstract which found the Appellants at fault. To that end, the evidential burden of proof shifted to the Appellants who were to controvert the Respondent's case. That did not happen since the Appellants did not call any evidence to that end. Therefore, as the vehicle veered and hit the Respondent who was lawfully off the road, and without any contrary evidence, it will be remiss of this Court to find the Respondent at fault at all.
14. The foregoing is reinforced by the decision in *Masembe v Sugar Corporation and Another* [2002] 2 EA 434, where the Court had the following to say: -

... when a man drives a motor car along the road, he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound not to go faster than will permit his car at any time to avoid anything he sees after he has seen it... A reasonable person driving a motor vehicle on a highway with due care and attention, does not hit every stationary object on his way, merely because the object is wrongfully there. He takes reasonable steps to avoid hitting or colliding with the object.
15. Further, in *Mary Njeri Murigi vs. Peter Macharia and Another* (2016) eKLR, the Court held that: -

... A person who is driving a vehicle is under a duty of care to other road users. The vehicle is a lethal weapon and due care is expected of the driver who is in control thereof.
16. The trial Court was, therefore, correct in finding the Appellants wholly liable for the accident. To that end, the appeal on liability fails.

## **Quantum:**

17. The Appellants submitted that the award of Kshs. 500,000/= was inordinately high proposed the sum of Kshs. 250,000/= as reasonable award in the circumstances.
18. The Respondent maintained that the award was fair and reasonable in view of the injuries she sustained.



19. Ordinarily, a Court is supposed to give a reasonable award that is neither extravagant nor oppressive while considering factors such as previous awards for similar injuries and the principles as developed by Courts. The Court in *Butler vs Butler* (1982) KLR 277 outlined that what constitutes a reasonable award as discretionary upon the Court and will depend on the peculiar facts of each case and that an appellate Court must be slow to interfere with such an exercise of discretion. [See also *Odinga Jacktone Ouma vs Moureen Achieng Odera* (2013) eKLR, *Kemfro Africa Ltd V A.M Lubia and Another* (1988)1 KAR 727, *John Evan Gicheru vs Andrew Morton and Another* (2005) eKLR, *Arrow Car Limited Vs Bimono and 2 others* (2004) 2 KLR 101 and in *Denshire Muteti Wambua vs Kenya Power and Lighting Company Ltd* (2013) eKLR].
20. The injuries sustained by the Respondent were affirmed in the two medical reports, the medical notes and the P3 Form as dislocation of the right metatarsophalangeal joint, degloving injury on the right foot and pain on the right foot. Relying on several decisions, the Appellants prayed for the sum of Kshs. 350,000/= before the trial Court which sum they reduced on appeal to Kshs. 250,000/=. Having reviewed the decisions relied by the Appellants in support of the appeal, it comes out that awards on similar injuries have been varying over time. For instance, an award of Kshs. 250,000/= was made in 2019; Kshs. 350,000/= in 2021, Kshs. 300,000/= in 2023 and Kshs. 500,000/= in 2024. Therefore, the award of Kshs. 500,000/= cannot be faulted. It is hereby upheld with the result that the appeal on quantum is likewise disallowed.
21. Having rendered on the twin issues of liability and quantum, this Court hereby makes the following final orders: -
- (a) The appeal is wholly dismissed.
  - (b) The Appellants shall bear the costs of the appeal.
- Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

Miss. Mumbi, Learned Counsel for Respondent.

Miss Mundeizi, Learned Counsel for the Respondent.

Amina/Abdirazak – Court Assistants.

