



**Kenya Medical Properties Limited v Akasa (Civil Appeal 6 of 2023)
[2025] KEHC 9139 (KLR) (Civ) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9139 (KLR)

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

**CIVIL
CIVIL APPEAL 6 OF 2023**

**AN ONGERI, J
JUNE 26, 2025**

BETWEEN

KENYA MEDICAL PROPERTIES LIMITED APPELLANT

AND

MAURICE PHILEMON AKASA RESPONDENT

*(Being an appeal from the Judgment and decree of Hon. S. A. Opande
(PM) in Milimani CMCC No. 7357 of 2017 delivered on 28th July 2023)*

JUDGMENT

1. The Respondent in this appeal Maurice Philemon Akasa sued Appellant herein the Kenya Medical Properties (hereinafter referred to as the Respondent and the Appellant respectively) seeking general damages for pain and suffering and special damages for injuries the Respondent sustained on or about 26th October 2014 while on an inspection visit to premises the Respondent's property along Chyulu Road namely L.R No. 209/905 (hereafter referred to as the suit property) at Upper Hill area in Nairobi.
2. At the material time the Respondent was the purchaser of Apartment No. 1.1 in Block F.
3. The Respondent slipped on the slippery stair case above the ground floor within Block F and he sustained serious injuries.
4. The Appellant filed a defence dated 15th December 2017 denying the Respondent's claim.
5. The Respondent evidence was that he paid Kshs. 18Million for his apartment. When he went to check on it, he found it was not complete.



6. The Appellant told him they did not have money and he spent Kshs. 281,350/= to complete his apartment.
7. On the material day while getting out of the apartment, he slipped on first floor and rolled to the ground and broke his left leg on the lower bone. He also had knee injury.
8. PW2 Professor John Atinga attended to the Respondent. he said a plate was inserted on the knee to restore the knee joint.
9. The Appellant in their evidence that they were not aware of the accident and further that the Respondent had inspected the property and was satisfied that it was suitable for his occupation.
10. The Appellants witnesses said the sale agreement was signed on 13th June 2014 and the apartment was fully owned by the Respondent.
11. The trial court found the Appellant 100% liable under the Occupier's Liability Act and common law.
12. The trial court assessed damages as follows:-
 - (i) General damages for pain and suffering Kshs. 900,000/=
 - (ii) Costs of future medical expenses Kshs. 400,000/=
 - (iii) Costs of repair Kshs. 97,368.68
 - (iv) Medical expenses Kshs. 1,049,709.85
 - (v) Costs of the suit and interest at court rates
13. The Appellant has appealed against the judgment on the following grounds:-
 - i. That the learned trial Magistrate in the absence of any tangible evidence erred in law and in fact by compensating the Respondent.
 - ii. That the learned trial Magistrate misdirected himself in law and in fact in not taking cognizance and applying the established principles in compensating the Respondent.
 - iii. That the learned trial Magistrate erred in law and in fact in awarding excessive special damages, general damages and loss of future medical expenses considering the nature of evidence that was adduced.
 - iv. That the learned trial Magistrate erred in law and in fact in holding the Appellant 100% liable in the absence of any reliable evidence adduced.
 - v. That the learned trial Magistrate erred in law and in fact to determine that it lacked jurisdiction to hear and determine the matter.
 - vi. That the learned trial Magistrate erred in law and in fact in failure to determine that the Respondent had not adduced sufficient overwhelming evidence to warrant passing of the judgment again the Appellant.
 - vii. That the learned trial Magistrate erred in law and in fact by failure to accurately evaluate evidence adduced before him.
 - viii. That the learned trial Magistrate erred in law and in fact and misdirected himself by not accurately applying the established principles in awarding compensation.



- ix. That the learned trial Magistrate erred in law and in fact by proceeding to compensate the Respondent in the absence of any independent witness.
 - x. That the learned trial Magistrate misdirected himself in law and in fact by failure to note that the evidence adduced before him by the Respondent was not corroborated in any manner.
 - xi. That the learned trial Magistrate erred in law and in fact by failure to consider the Statement of Defence and submissions presented before him by the Appellant.
 - xii. That the learned Magistrate erred in law and in fact to note that the Respondent was the owner of the subject premises and as such the doctrine of occupiers liability or negligence did not apply in the event the Respondent was involved in any accident.
 - xiii. That learned Magistrate erred in law and in fact to determine that if any accident occurred, it was as a result of the Respondent's contributory negligence.
 - xiv. That the learned Magistrate erred in law and in fact in relying on direct evidence which was not properly ventilated before the court and which did not meet the set threshold as required in the law.
 - xv. That the learned Magistrate erred in law and in fact by stating that the Appellant had not contested the damages sought by the Respondent which fact is not true.
14. The appellants in their submissions challenged the lower court's judgment, arguing that the respondent was the legal owner of the apartment in question, having purchased it after a thorough inspection confirmed its good condition.
 15. They contended that the respondent's injuries, if any, occurred during unauthorized renovations conducted solely by him and his workers, without the appellant's knowledge or involvement.
 16. The appellants asserted that the doctrine of occupier's liability does not apply since the respondent was not a visitor but an owner familiar with the premises.
 17. They criticized the lower court for failing to consider key evidence, including the absence of any prior complaints about the property's condition or independent witnesses to corroborate the alleged accident.
 18. The appellants further said that the respondent's failure to report the incident to the police or the appellant's management further undermines his claims.
 19. The appellants argued that the lower court's reliance on balance of probabilities was misplaced, as the respondent provided no credible evidence linking his injuries to the appellant's negligence.
 20. They highlighted inconsistencies in the respondent's testimony, such as his admission that he was engaged in construction, not mere renovations, suggesting contributory negligence.
 21. Citing precedents, they distinguished cases where plaintiffs were visitors, not owners, and emphasize that the respondent's ownership status precludes liability under occupier's liability laws.
 22. The appellants urged the superior court to overturn the lower court's judgment, which they deem a miscarriage of justice, and to absolve them of liability, setting aside the awarded damages and costs.
 23. The appellants maintained that the appeal is merited and should be allowed in the interests of justice and the rule of law.



24. The respondents' submissions in response to the appeal dated 25/10/2024 stated that the trial court's decision was sound and should be upheld.
25. That the appeal arises from a judgment delivered on 28th July 2023, where the respondent was awarded damages for injuries sustained after slipping on a slippery staircase in a common area of an apartment complex owned by the appellant.
26. The respondent, a purchaser of one of the apartments, suffered a 20% permanent disability due to the accident.
27. The respondents contended that the appellant, as the occupier of the premises, owed a duty of care under the Occupiers Liability Act, which it breached by failing to ensure the safety of the common areas.
28. Further, that the trial court correctly found the appellant 100% liable, as the respondent proved his case on a balance of probabilities.
29. The appellant's claim that the accident occurred within the respondent's private apartment was unsupported by evidence, as it failed to produce CCTV footage or security records to substantiate its defense.
30. On the issue of damages, the respondents argue that the trial court's award was reasonable and based on proper legal principles.
31. The respondent submitted that the injuries sustained—a fractured left knee and 20% permanent disability—justified the compensation granted.
32. They said that the appellate court should not interfere with the award unless it was based on a misapplication of the law or a grossly erroneous estimate, neither of which applies here.
33. Regarding jurisdiction, the respondents asserted that the appellant admitted the trial court's jurisdiction in its pleadings and cannot now contest it.
34. Finally, the respondents asked for the costs for the appeal, arguing that costs should follow the event, as the appeal lacks merit the respondent should be compensated for defending it.
35. In conclusion, the respondents urged the court to dismiss the appeal with costs, as the trial court's findings on liability, damages, and jurisdiction were correct and well-founded in law and evidence.
36. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether it would support the findings of the trial court. 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.”

37. The issues for determination in this appeal are as follows:-
 - i. Whether the Respondent proved that the Appellant was liable under the Occupier’s Liability Act and Common Law.
 - ii. Whether the award of damages was excessive.
38. In determining this appeal, the court is guided by the well-established principles governing first appeals as set out in *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123, where it was held that a first appellate court is duty-bound to re-evaluate the evidence afresh and draw its own conclusions while bearing in mind that it did not have the advantage of observing the witnesses testify.
39. On the issue of liability, the trial court found the Appellant wholly liable under the *Occupiers’ Liability Act* and common law principles.
40. The *Occupiers’ Liability Act* (Cap. 34, Laws of Kenya) imposes a duty on an occupier to take reasonable care to ensure that lawful visitors are reasonably safe while on the premises.
41. This principle was affirmed in *Kariuki v Kariuki* [2019] eKLR, where the court emphasized that an occupier must ensure that common areas are safe for use.
42. The Respondent’s evidence was that he slipped on a slippery staircase in a common area of the building, which was still under the Appellant’s control at the time of the accident.
43. The Appellant’s argument that the Respondent was the owner of the apartment and therefore the doctrine of occupiers’ liability did not apply is misconceived.
44. Ownership of a single unit does not absolve the developer from liability over common areas, as held in *Nyaga v Kariuki* [2017] eKLR, where the court distinguished between private ownership of a unit and shared responsibility for common spaces.
45. The trial court correctly found that the Appellant, as the developer and occupier in control of the premises, owed the Respondent a duty of care.
46. The Appellant’s contention that the Respondent failed to prove negligence is unfounded. The Respondent adduced evidence through his testimony and that of PW2, Professor John Atinga, confirming the injuries sustained due to the fall.
47. The absence of independent witnesses does not negate liability, as the Respondent’s testimony was credible and corroborated by medical evidence.
48. In *Kigaragari v Aineah* [1985] KLR 485, the court held that a plaintiff’s testimony, if consistent and believable, can suffice to prove a case on a balance of probabilities.
49. The Appellant’s failure to produce CCTV footage or maintenance records to rebut the Respondent’s claim further weakens its defence.
50. Regarding damages, the trial court awarded Kshs. 900,000/- for pain and suffering, Kshs. 400,000/- for future medical expenses, Kshs. 97,368.68 for repairs, and Kshs. 1,049,709.85 for medical expenses.



51. The Appellant argued that these awards were excessive, but the court finds them reasonable in light of the injuries sustained—a fractured left knee requiring surgical intervention and resulting in a 20% permanent disability.
52. Comparable awards were upheld in *Butali v Ngoye* [2017] eKLR (Kshs. 800,000/- for a tibia fracture) and *Javan Nyarangi Ombajo v Simon Nyabena Onger* [2020] eKLR (Kshs. 1,000,000/- for a knee injury with permanent disability).
53. Special damages were strictly proved through receipts, as required by law.
54. The Appellant’s belated challenge to jurisdiction is without merit, as it actively participated in the trial without objection.
55. The doctrine of estoppel applies, as held in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1.
56. In conclusion, the appeal lacks merit. The trial court properly evaluated the evidence and applied the correct legal principles. The Respondent proved his case on a balance of probabilities, and the damages awarded were justified.
57. The appeal is dismissed with costs to the Respondent.
58. The judgment and decree of the lower court are upheld.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JUNE 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Appellant

.....for Respondent

