



REPUBLIC OF KENYA



KENYA LAW
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**Mwanthi & another v Beneti (Civil Appeal E052 of 2022)
[2025] KEHC 9509 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E052 OF 2022**

EN MAINA, J

JUNE 26, 2025

BETWEEN

MATHEW MULI MWANTHI 1ST APPELLANT

PRISCA MUNYOTI MUYODI 2ND APPELLANT

AND

MARWA SAMUEL BENETI RESPONDENT

*(Being an Appeal against the Judgment of the Honourable M. Oponga
(SRM) in Kangundo SPMCC no. 250 of 2019 delivered on 22/03/2022)*

JUDGMENT

1. This appeal arises from an award of damages to the Respondent against the Appellants following a motor accident involving their vehicle Reg No KCE 336Z and a motor cycle Reg No KMCD 252T.
2. Briefly, the Respondent's case was that on or about the 14th October 2019 along Kangundo- Nairobi road at Mobina area, the Appellant's driver and or agent so carelessly and or negligently drove, managed and or controlled motor vehicle registration number KCE 336Z Toyota Van in that he failed to give way and or slow down to give way to motor cycle registration number KMCD 252T Tiger which was on the highway coming from the opposite direction and had indicated to enter Mobina petrol station, thereby ramming into the left front side of the said motor cycle as a consequence of which the Respondent who was lawfully travelling as a fare paying passenger in motor vehicle registration number KCE 336Z Toyota Van sustained serious bodily injuries.
3. After considering the evidence and submissions by both sides the trial Magistrate apportioned liability against the Appellants at 100% and awarded the Respondent Kshs 120,000 as general damages for pain suffering and loss of amenities, Kshs 4,600 special damages, costs of the suit and interest.



4. Aggrieved by the judgment, the Appellants lodged this appeal on grounds that: -
- “ a. The learned trial magistrate erred in fact and in law in finding the appellants 100% liable for the accident.
 - b. The learned trial magistrate erred in law and in fact by failing to exonerate the appellants from any wrong doing in view of the actions of the respondent.
 - c. The learned trial magistrate erred in fact and in law in finding that the respondent was entitled to general damages of kshs120,000
 - d. The learned trial magistrate grossly misdirected herself in treating evidence presented before her both on liability and quantum and consequently coming to a wrong conclusion on the same.
 - e. That the learned trial magistrate erred in awarding a sum in respect of damages which was inordinately high in the circumstances was excessive occasioning miscarriage of justice.
 - f. The learned trial magistrate failed to adequately evaluate the evidence provided both on liability and quantum thereby arriving at a decision unsustainable in law.”
5. The appeal was canvassed by way of written submissions.

Submissions

6. Learned Counsel for the Appellant submitted that the appellant was not in any manner liable for the accident; that the Respondent did not prove negligence against the Appellant on a balance of probabilities and that her case to the required standard of proof and in the unlikely event that this court finds that the Appellant contributed to the accident, liability should be apportioned equally between the parties.
7. Counsel reiterated that awards must be within consistent limits and awards must be made taking into account comparable injuries. That the award of kshs120,000 was exaggerated in comparison to the injuries sustained. Counsel urged the court to re-evaluate the issues of liability and quantum and thus uphold the appeal.
8. For the Respondent it was submitted that the trial court was correct in finding the Appellants wholly liable for the accident; that the award was reasonable and commensurate with the current awards for similar injuries and that the award of Kshs120,000 is reasonable in light of the seriousness of the injuries.

Analysis and determination

9. I have carefully considered the evidence adduced in the court below, the rival submissions of the learned counsel for the parties, the cases cited and the law.
10. This appeal revolves around the issue of liability and the quantum of damages.



11. In respect to the issue of liability the Court of Appeal stated as follows in the case of Michael Hubert Kloss & another v David Seroney & 5 others [2009] KECA 146 (KLR) -

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley v Gypsum Mines Ltd (2)* [1953] A.C. 663 at p. 681 as follows:

‘To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it...The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...’”

12. In this case, the Respondent testified that on the material day he was a lawful fare paying passenger in the Appellant’s vehicle; that he was seated at the front and that the accident occurred when the driver drove at excessive speed and failed to give way to the motor cycle which had its right hand side indicator on to signify that it intended to turn to the right. As a result, the vehicle rammmed into the left side of the motor cycle.
13. The Appellants called two witnesses, a police officer who confirmed the occurrence of the accident and produced a sketch plan showing that the rider was turning to the right side to enter a petrol station. They also called the driver of the motor vehicle KCE 336T who attributed the accident to the rider of the motor cycle KMCD 252T and stated that the rider emerged from an oncoming canter in an attempt to overtake it and crossed to his side to go into the petrol station.
14. It is therefore not in doubt that the accident occurred and that as a result the Respondent who was a lawful passenger in the Appellant’s vehicle suffered injuries. Being a passenger, the Respondent could not possibly have contributed to the collision between the two vehicles and hence no contributory negligence can attach to him.
15. From the evidence it is apparent that the one who was to blame was the driver of the Appellant’s vehicle. The sketch plan produced by no other than the police officer called by the Appellants corroborates the Respondent’s testimony failed to give way to the rider who was turning to the right side. The damage occasioned to the motor cycle also betray that fact. In my view the driver’s allegation that the rider emerged from the rear of a canter is not borne by evidence and does not rebut that of the Respondent. In the premises I find no reason to warrant me to disturb the finding of the learned magistrate on the issue of liability and the appeal on that ground fails.
16. In regard to the quantum of damages, I am guided by the decision of the Court of Appeal in the case of *Catholic Diocese of Kisumu v Sophia Achieng Tete Civil Appeal No. 284 of 2001* [2004] 2 KLR 55 that-

“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.”

17. In this case, as set out in the medical report of Dr. Muoki on 18th November 2019, the P3 form and medical notes prepared at Kangundo Level 4 Hospital the Respondent sustained soft tissue injuries, to wit, pain and tenderness on the chest, swelling and bruises on the lower limb and swelling and bruises on the right lower limb.
18. In the case of Southern Engineering Co. Ltd v Musungi Mutia [1985] KLR 730, the court held that:

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual judge or magistrate, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case.”
19. In this case I have considered the decisions cited and it is my finding that the injuries in this case are similar to those comes suffered by the Plaintiff in the case of Lamu Bus Services & another v Caren Adhiambo Okello [2018] KEHC 7380 (KLR) and where a comparable award was made. Accordingly, I find the award of general damages herein reasonable and decline to interfere.
20. The upshot is that this appeal is hereby dismissed and judgment is entered for the Respondent against the Appellants as follows-
 - a. Liability at 100%.
 - b. General damages for pain, suffering and loss of amenities- kshs120,000.
 - c. Special damages-kshs4,600.
 - d. Costs of this appeal and of the suit in the case below.
 - e. Interest on special damages from the date of filing suit.
 - f. Interest on general damages from the date of judgment in the court below.

Orders accordingly.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF JUNE 2025.

E. N. MAINA.

JUDGE

In the presence of:

Miss Nanjira HB for Kavita Advocate for the Appellants.

Miss Omari Advocate for the Respondent.

Geffrey Court Assistant.

