



**Veew Distributors & another v Okeyo (Civil Appeal E1073 of 2023)  
[2025] KEHC 9127 (KLR) (Civ) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9127 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1073 OF 2023**

**AN ONGERI, J**

**JUNE 26, 2025**

**BETWEEN**

**VEEW DISTRIBUTORS ..... 1<sup>ST</sup> APPELLANT**

**ROBERT THUO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MALVIN ERICK OKEYO ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. J. W. Munene (RM/Adjudicator) in Nairobi  
Milimani Small Claims Court Case No. E016 of 2023 delivered on 21st July 2023)*

**JUDGMENT**

1. The Respondent Malvin Erick Okeyo was the Claimant in Nairobi Milimani Small Claims Court Case No. E016 of 2023 where he was claiming general damages for pain and suffering and special damages for injuries the Respondent sustained on 6<sup>th</sup> December 2022 while he was riding motor cycle number KMFT 029M along Kangundo Road when it was hit by the 2<sup>nd</sup> Appellant's motor vehicle registration number KAU 548Y which was being driven by the 1<sup>st</sup> Appellant at the time.
2. The Respondent's evidence at the trial court was that the motor vehicle was reversing and it joined Kangundo Road suddenly without indicating and it hit motor cycle registration KMFT 029M and the Respondent was injured.
3. The police blamed the motor vehicle for the accident and the trial court found the 1<sup>st</sup> Appellant 100% liable for the accident.
4. The trial court assessed general damages at Kshs. 500,000/= and special damages at Kshs. 25,050/=.
5. The Appellants have appealed against quantum on the following grounds:-



- i. The learned Adjudicator/Magistrate erred in law and in fact in awarding excessive damages not commensurating with the injuries pleaded and without any legal and or evidential justification.
  - ii. The learned Adjudicator/Magistrate erred in law and in fact by not considering the written facts, evidence, submissions made and case law filed by the Appellants.
  - iii. The learned Adjudicator/Magistrate erred by failing to apportion liability between the Appellants and the Respondent.
6. The parties filed written submissions as follows:-
  7. The Appellant's submissions challenged the judgment of Honourable J.W. Munene delivered on 21st July 2023 in Milimani SCCC No. E016 of 2023.
  8. The appellant submitted that the appeal is based on three main grounds: excessive damages awarded without legal or evidential justification, the trial magistrate's failure to consider the Appellants' evidence and submissions, and the omission to apportion liability between the parties.
  9. On liability, the Appellants argued that the Respondent failed to prove negligence on their part.
  10. That the Respondent's testimony was contradictory—he claimed to have seen the Appellants' vehicle reversing and switched lanes to avoid it, yet still alleged the vehicle hit him.
  11. The Appellants contend that the Respondent had ample opportunity to avoid the accident but negligently failed to brake or take evasive action.
  12. They cited case law (*Multiple Hauliers (E.A) Ltd v Justus Mutua Malundu & 2 others*) emphasizing that all motorists owe each other a duty of care and must maintain safe braking distances.
  13. The Appellants further argued that the police abstract blaming their driver was inconclusive without supporting evidence, as held in *Kennedy Nyangoya v Bash Hauliers and Mwema Musyoka v Paulstone Shamwama Sheli*. They urge the court to apportion liability at 50:50.
  14. Regarding quantum, the Appellants asserted that the trial court erred in awarding Kshs. 500,000 for a fracture of the left tibia, contending that the Respondent only suffered a sprain of the left ankle.
  15. They highlighted discrepancies in the medical evidence: the Respondent's doctor (PW2) admitted he neither examined the X-rays nor the Respondent, while the Appellants' doctor (DW1) confirmed a sprain after reviewing the X-rays.
  16. The Appellants argued that even if a fracture were proven, the award was excessive compared to precedents (*Vincent Mbogholi v Harrison Tunje Chilyalya, Ndwiga & another v Mukimba*), where more severe injuries attracted similar or lower awards. They propose Kshs. 150,000 for a sprain or Kshs. 300,000 if a fracture is upheld.
  17. On special damages, the Appellants argued that the Respondent failed to strictly plead and prove the claimed Kshs. 25,050, as required by law (*African Line Transport Company v Sylvester Keitany*).
  18. They noted that receipts only totaled Kshs. 20,050 and urge the court to set aside the award.
  19. In conclusion, the Appellants prayed for the appeal to be allowed, liability apportioned 50:50, general damages reduced to Kshs. 150,000 or Kshs. 300,000 (depending on the injury finding), and special damages dismissed.
  20. The appellants also seek costs of the appeal and the lower court suit.



21. The respondents opposed the appellant's appeal, arguing that the trial court's judgment was sound and based on proper legal principles.
22. They emphasized that the appellant failed to call any witnesses to rebut the respondent's evidence regarding the accident, leaving the respondent's account uncontroverted.
23. Citing Section 108 of the *Evidence Act* and supporting case law, they contend that the burden of proof lay with the appellant, whose failure to adduce evidence rendered the respondent's claims unchallenged.
24. On liability, they asserted that the respondent proved his case on a balance of probabilities, warranting the 100% liability finding by the trial court.
25. Regarding damages, the respondents defend the award of Kshs. 500,000 as reasonable, given the respondent's documented injuries—including a fractured left tibia, swelling, and bruises—as confirmed by medical reports from Mama Lucy Kibaki Hospital, the P3 form, and an independent doctor's assessment.
26. They argued that the trial court correctly relied on these treatment records, which were consistent and unchallenged, while dismissing the contradictory opinion of the appellant's doctor, who lacked firsthand examination and relied on disputed history.
27. They cited precedents where similar injuries attracted comparable awards, noting that the trial court considered inflation and prevailing judicial trends.
28. On special damages, the respondents refute the appellant's claim that they were unpleaded or unproven, pointing to explicit references in the statement of claim and supporting receipts.
29. They urged the court to dismiss the appeal as baseless and a delay tactic, seeking costs and interest from the date of the trial judgment.
30. Finally, they maintained that the trial court's decision was well-reasoned, grounded in evidence, and consistent with legal principles, warranting no appellate interference.
31. This being an appeal from the Small Claims Court, the same is allowed if based on points of law.
32. The issues for in this appeal are as follows:-
  - i. Whether the trial court was right in holding the 1<sup>st</sup> Appellant 100% liable in negligence.
  - ii. Whether the award of damages was excessive.
  - iii. Whether the appeal should be allowed.
33. The Appellant submitted that the court did not write proceedings. I find that the Small Claims Court is not bound by strict rules of evidence or procedure.
34. This appeal arises from the judgment of Hon. J.W. Munene (RM/Adjudicator) in Nairobi Milimani Small Claims Court Case No. E016 of 2023 delivered on 21st July 2023, wherein the Respondent, Malvin Eric Okeyo, was awarded general damages of Kshs. 500,000 and special damages of Kshs. 25,050 for injuries sustained in a road traffic accident involving the Appellants' motor vehicle.
35. The Appellants challenged the trial court's decision on liability and quantum, contending that the award was excessive, the evidence was contradictory, and liability ought to have been apportioned.



36. On the issue of liability, the trial court found the 1st Appellant 100% liable for the accident, a finding grounded on the Respondent's uncontroverted testimony that the Appellants' vehicle reversed suddenly onto Kangundo Road without indication, colliding with the Respondent's motorcycle.
37. The police abstract corroborated this account, attributing blame to the Appellants' driver. The Appellants' argument that the Respondent contributed to the accident by failing to brake or take evasive action is unpersuasive, as no evidence was adduced to rebut the Respondent's version of events.
38. In *Kennedy Nyangoya v Bash Hauliers* [2019] eKLR, the court emphasized that a police abstract, though not conclusive, is prima facie evidence of the facts recorded unless contradicted.
39. In the current case, the Appellants failed to discharge the burden of proving contributory negligence, and the trial court correctly held them fully liable.
40. Regarding quantum, the Appellants dispute the award of Kshs. 500,000 for general damages, arguing that the Respondent only suffered a sprain, not a fracture, and that the award was excessive.
41. The medical evidence presented by the Respondent included a P3 form and treatment notes from Mama Lucy Kibaki Hospital, which documented a fractured left tibia, swelling, and bruises.
42. While the Appellants' doctor, DW1, opined that the injury was a sprain, this opinion was based on a review of X-rays rather than a physical examination of the Respondent.
43. In contrast, the Respondent's doctor, PW2, relied on contemporaneous medical records.
44. The trial court's preference for the Respondent's medical evidence was justified, as it was consistent and unchallenged.
45. The award of Kshs. 500,000 is commensurate with precedents for similar injuries.
46. In *Vincent Mbogholi v Harrison Tunje Chilyalya* [2018] eKLR, the High Court upheld an award of Kshs. 450,000 for a tibia fracture, while in *Ndwiga & Another v Mukimba* [2022] KEHC 11793 (eKLR), a comparable award was made for similar injuries.
47. The trial court's decision aligns with these authorities and reflects inflationary trends.
48. The Respondent sustained the following issues:-
  - i. Fracture – left tibia.
  - ii. Swollen painful and tender left leg.
  - iii. Bruises right leg.
49. I find that despite minor discrepancies in the nature of injuries, the Respondent sustained bruises and a fracture and the guiding principles are comparable cases and inflationary trends.
50. The trial court relied on the case of *Ndungwa and Another =Versus= Mukimba* (Civil Appeal E006 of 2022) KEHC 11793 (eKLR) where similar amounts were awarded.
51. In the case of *Mbogo & Another v Shah* (1969) EA 93, it was held, inter alia, that;

“ An appellate court will interfere if the exercise of the discretion is clearly wrong because the judge has misdirected himself or acted on matters which he should not have acted upon or failed to take into consideration matters which it should be taken into consideration and in doing so arrived at a wrong conclusion. It is trite law that an appellate court should



not interfere with the exercise of the discretion of a judge unless satisfied that the judge in exercising his discretion has misdirected himself and has been clearly wrong in the exercise of the discretion and that as a result there has been injustice.”

52. On special damages, the Respondent pleaded and provided receipts totaling Kshs. 20,050, falling short of the claimed Kshs. 25,050.
53. As held in African Line Transport Company v Sylvester Keitany, special damages must be strictly pleaded and proved. The trial court’s award is therefore reduced to Kshs. 20,050, being the amount substantiated by evidence.
54. In conclusion, the appeal is partly allowed only in respect of special damages which are reduced by Kshs. 5,000.
55. The trial court’s findings on liability and quantum were grounded in evidence and consistent with applicable legal principles.
56. The award of damages was neither excessive nor unjustified, and the Appellants’ attempt to apportion liability was unsupported by evidence.
57. Accordingly, the appeal is dismissed on liability and quantum with costs to the Respondent.
58. The judgment of the Small Claims Court in Milimani SCCC No. E016 of 2023 delivered on 21<sup>st</sup> July 2023 is upheld except with respect to special damages.

**DATED, SIGNED AND DELIVERED THIS 26<sup>TH</sup> 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

