



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kamau v Simiyu (Civil Appeal E055 of 2022)
[2025] KEHC 8926 (KLR) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E055 OF 2022
RN NYAKUNDI, J
JUNE 24, 2025**

BETWEEN

STEPHEN KAMAU APPELLANT

AND

DENNIS MAINA SIMIYU RESPONDENT

*(Being an Appeal from the Judgement/Decree of Hon. N. Wairimu
(SPM) delivered on 25/03/2022 in Eldoret CMCC No. E1039 of 2019)*

JUDGMENT

Representation:

M/s Kimondo Gachoka & Co. Advocates

Mwinamo Lugonzo & Co. Advocates

Background

1. The background of this Appeal is that the Respondent herein instituted the parent suit vide an Amended Plaint dated 12th January 2020 in Eldoret CMCC No. E1039 of 2019 claiming for General Damages, Special damages of kshs. 6,000, costs of the suit and interest. The Respondent claimed that on or about the 4th November 2019 he was lawfully Riding Motorcycle Registration KMED 206T along the Moi Street at Patricia Round about when the Appellant or his driver, agent, servant and or employee negligently drove, managed and or controlled Motor Vehicle Registration Number KBB 207H that he caused the Motor Vehicle to knock down Motorcycle Registration KMED 206T which the Respondent was lawfully riding.
2. The Appellant denied the allegations levelled against it vide an Amended Defence dated 17th February 2020. The matter proceeded for hearing with the Respondent availing four (4) witnesses and the



Appellant did not tender any evidence. Judgement was delivered on 25th March, 2022 in favour of the Respondent against the Appellant in the following terms; -

- a. Liability in favour of the Respondent against the Appellant in the Ratio of 90:10
 - b. General Damages Kshs. 300,000/=
 - c. Special Damages Kshs. 6,000/=
 - d. Costs of the suit and interest to the Respondent.
3. The Appellant being aggrieved by the said Judgement instituted this appeal vide a Memorandum of Appeal dated 11/03/2022. The memorandum of Appeal was premised on the following 7 grounds;
- a. That the learned Magistrate's decision was unjust, against the weight of the evidence and was based on the misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - b. That the Learned Magistrate erred in law and misdirected herself when she failed to consider the provisions set out in the Insurance (Motor vehicle and Third Party Risks Amendment) Act, 2013, CAP 405.
 - c. The Learned Magistrate erred in law and in fact in awarding quantum of damages inconsistent with injuries pleaded and proved to have been sustained by the Plaintiff.
 - d. The Learned Magistrate having misapprehended and misunderstood the extent and severity of the injuries erred in law and fact by failing to rely on any authority to justify her award and thus arrived at an award that is so manifestly high as to be erroneous.
 - e. The Learned Magistrate erred in law and fact by disregarding the recent comparative authorities cited by the Defendants hence arriving at a manifestly high award.
 - f. The Learned Magistrate erred in assessing an award, hereunder, which was inordinately high and wholly erroneous estimate of the loss and damages suffered by the Plaintiffs
 - i. Liability 90% in favour of the Plaintiff as against the Defendants
 - ii. General Damages – Kshs. 300,000/=
 - iii. Special Damages – Kshs. 6,000/=Net Award – Kshs. 306,000/= plus costs and interest
 - g. That the Learned Magistrate's decision was unjust, against the weight of the evidence and was based on the misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
4. The Appellant sought the following orders from the Memorandum of Appeal;
- a. This Appeal be allowed with costs
 - b. The Judgement delivered on 25th March 2022 by Honourable N. Wairimu SPM be set aside and the award made therein be re-assessed.
 - c. That cost of this Appeal be borne by the Respondents.
5. The Appeal was canvassed by way of written submissions.



Appellants Written submissions

6. The Appellant filed his written submissions dated 27th August 2024. The Appellant through his Learned Counsel submitted that the Memorandum of Appeal contained 7 grounds of Appeal that can be summed up to one issue of quantum. The Learned Counsel submitted that the appellant wished to rely on his written submissions filed in the trial court and invite this court to consider them.
7. The learned Counsel submitted that on 04/11/2019, the Respondent was riding moto cycle registration number KMED 206T along Moi Street when it was involved in an accident with motor vehicle registration number KBB 207H.
8. The Appellant's counsel also submitted that according to the Plaintiff dated 12TH January 2020 indicated that the Respondent sustained the following injuries: Blunt injury to the head, chest, right shoulder, back, right leg and right foot; Bruises to the right foot and right leg.
9. It was also submitted by the Appellant's Counsel that the medical report from Dr. J.C. Sokobe dated 14th November 2022 and the treatment notes dated 4/11/2019 from Racecourse Hospital Medical report from the Appellant's dated 8/3/2024 lists the same injuries as those that are in the plaint. Moreover, it was also submitted that these injuries were categorized as soft tissue injuries and the lower court awarded Kshs. 300,000. Counsel stated that this was high considering the injuries sustained by the Respondent were soft tissue injuries and that the sum of kshs. 100,000 will be sufficient and reasonable compensation.
10. The learned counsel further submitted that this Honourable Court should consider the following cases in determination of this matter:
 - a. Ndungu Dennis Vs Ann Ndirangu & Another [2018] eKLR which awarded Kshs. 100,000/= for similar injuries would be adequate to compensate for the injuries suffered in this case.
 - b. HB (Minor suing through mother & next friend DKM) Vs Jasper Nchonga Magari & Another [2021] eKLR. The claimant sustained blunt object injury to the head and neck, thorax, abdomen and limbs. He was awarded kshs. 60,000/=.
11. It was the final submission of the Appellant's Counsel that the sum of kshs. 300,000 be substituted with Kshs. 100,000 and the Appellant prays for the costs of the appeal.

Respondent's Written submissions

12. The Respondent filed its written submissions dated 18th March 2024 in which its learned counsel submitted as follows;

VLiability

13. The Learned counsel for the Respondent submitted that it was not in dispute that the alleged accident occurred and that the Subordinate Court found the Appellant 90% liable for the accident whilst the Respondent was found 10% liable. He stated that they supported the subordinate court's finding on the issue of liability and its findings.
14. The learned counsel also submitted that the evidence of the Respondent and the Police officer was key in determining the issue of liability in the Parent suit and the Appellant did not tender any evidence on liability to challenge the Testimony of the Respondent and his witnesses. Counsel added that the evidence of the Respondent is found at pages 76-77 of the Record of appeal and the evidence of the Police Officer is found at pages 75-76 of the Record of Appeal.



15. The learned counsel further submitted that from the circumstances of the accident by the Respondent was lawfully riding motorcycle Registration KBB 207H along the Moi Road at the Patricia Round headed towards Eldoret direction from the Eastleigh Direction when the Appellant and or his driver, servant, agent and or employee abruptly came from the opposite Eldoret Main Stage Direction headed towards the Webuye Direction and without notice abruptly made a U-turn so as to avoid the Round About and knocked down Motorcycle Registration KMED 206T. The Motorcycle KMED 206T and Motor Vehicle Registration KBB 207H were coming from opposite directions.
16. It was submitted by the Respondent that he was lawfully riding Motorcycle KMED 206T when the Appellant and or their Agent, driver, servant and/or employee negligently made a U-turn so as to avoid the Roundabout and which resulted in the accident. He stated also that the Appellant's driver, servant, agent and or employee knocked down Motorcycle Registration KMED 206T which was lawfully on its lane heading towards the Eldoret Direction.
17. The Learned Counsel furthermore submitted that the Appellant and or their driver, agent, servant and or employee ought not to have made a U-turn at the place where the accident occurred as they did not have a right of way and had the Appellant not abruptly made a U turn the accident would not have occurred. Moreover, he stated that the lane which the accident occurred was the rightful lane of Motorcycle KMED 206T and the Motor Vehicle Registration KBB 207 H ought to have proceeded up to the Round About to make a turning and not to make a U turn in the middle of the road. It was also noted that the place where the accident occurred was only meant for oncoming traffic and Motorcycle Registration KMED 206T had a right of way.
18. The Respondent noted that on the circumstances of the accident was confirmed and corroborated by the Police Officer who stated that Motor Vehicle KBB 207H carelessly, negligently and recklessly abruptly and suddenly made a U turn in front of the Motorcycle KMED 206T thus knocking down the same. He also noted that the police officer stated that had the Motor Vehicle Registration KBB 207H not suddenly made a U turn the accident would not have occurred.
19. The learned Counsel for the Respondent submitted that the Trial Court was proper in finding the Appellant and or their driver, agent, servant and or employees 90% liable for the accident as follows: -
 - a. The Appellant and or their driver, agent, servant and or employee caused Motor Vehicle Registration KBB 207H to suddenly make a U turn in the road and knock down Motorcycle KMED 206T which was oncoming from the front.
 - b. Motorcycle Registration KMED 206T was on its lawful lane when Motor Vehicle Registration KBB 207H SUDDENLY made a U turn and entered the lane of the Motorcycle Registration KMED 206T thus knocking down the same.
 - c. The appellant and or their driver, agent, servant and or employee negligently, carelessly and violently and or recklessly rammed into Motorcycle Registration KMED 206T after suddenly making a U turn without any warning or caution.
 - d. The Appellant and or their driver, agent, servant and or employee did not take any evasive action so as to avoid the accident and intentionally rammed into Motorcycle Registration KMED 206T.
 - e. The appellant and or their driver, agent, servant and or employee did not swerve, Brake or control Motor Vehicle Registration KBB 207H so as to avoid the same from knocking down Motorcycle Registration KMED 206T.



- f. The Appellant and or their driver, servant, agent and/or employee did not take any appropriate action so as to avoid the accident and drove the Motor Vehicle Registration KBB 207H carelessly and recklessly without due care and attention.
 - g. The Appellant and or their driver, agent, servant and or employee did not give way to Motorcycle Registration KMED 206T which had a right of way at the place where the accident occurred.
 - h. The evidence of the Respondent and his witnesses was not challenged and or uncontroverted by any defence evidence.
20. It was the Learned Counsel final submission on this issue that the trial Magistrate's finding on liability was supported by the evidence of the Respondent and his witnesses which supported the conclusion and finding reached by the Trial Magistrate with regard as to who is to blame for the accident and that the Respondent did establish liability as against the Appellant specifically by the cogent evidence tendered.

Quantum of damages

21. The Learned Counsel for the Respondent submitted that the Trial court's finding on the quantum was not inordinately too low or so high so as to amount to a wholly erroneous estimate and the Appellate Court should not therefore disturb this award and that the award is also discounted by the liability of 10% leaving Kshs. 270,000/=. He noted that the Trial Magistrate followed the proper principals in making this award.
22. Learned counsel also submitted that from the medical documents the Plaintiff sustained the following injuries: -
- a. Blunt injury to the head
 - b. Blunt injury to the chest
 - c. Blunt injury to the right shoulder
 - d. Blunt injury to the back
 - e. Bruises and blunt injury to the right leg
 - f. Blunt injury and bruises to the right foot
23. Counsel further submitted that in the view of the injuries sustained the award of Kshs. 300,000 less 10% liability as General Damages made by the Trial Court sufficed as just and adequate compensation to the Respondent for the injuries sustained. The learned counsel made reference to the following authorities;
- a. Catherine W. Kingori Vs Gibson T. Gichubi, Nyeri HCCC No. 320 of 1998
 - b. Martin M. Mugi Vs AG, Naairobi HCCA No. 791 of 1999
 - c. Jyoti Structures Limited & Anor Vs Charles Ogada Ochola, Eldoret HCCA No. 32 of 2017
 - d. Edson Converters & Anor Vs Robert Khaemba Khamala, Eldoret HCCA No. 51A of 2018
 - e. [*Poa Link Services Co. Ltd & Anor Vs Sindani Boaz Bonzemo, Bungoma HCCA No. 17 of 2019*](#)
 - f. Emily Otieno & Anor Vs Wilberforce Mwangi, Eldoret HCCA No. E090 of 2022



- g. Great Rift Shuttle Vs Charles Mwangi, Eldoret HCCA No. E086 of 2022
24. It was the Learned Counsel's final submission that the Trial Magistrate did not error in making the award both on liability and quantum of damages and that the Trial Magistrate did not arrive at an erroneous decision and the trial Magistrate's decision was supported by the evidence on Record.

Analysis and Determination

25. In the sense this appeal is purely centered on the issue of damages in which the trial court exercise discretion but the Appellant is aggrieved that in doing so, there was misapprehension of the principles now well settled in determining the fair and proportionate quantum. Damages as used in law is nothing but a sum of money claimed as compensation or awarded by a court of competent jurisdiction as compensation for the plaintiff or claimant for the harm, loss, or injury suffered as a result of the tortious Act, commonly referred to as negligence committed by the respondent or defendant for that matter or his or her agent within the authorization of the law. The learned author McGregor on Damages defines the concept as the "the pecuniary compensation obtainable by success in an action, for a wrong which is either a tort or a breach or contract, the compensation being in the form of a lump sum, which is awarded unconditionally. (See Chapter 1 page 3) T
26. The purpose of damages, in any claim before a court of law is to put the plaintiff, petitioner, or claimant in the position he or she would have been in if the acts of the tort of negligence, or breach of contract, or defamation had not been committed. The letter and the spirit of the law is that damages are never awarded to enrich the plaintiff, the petitioner, or the claimant far beyond is actual losses. The comparative law which is not far fetched from our domestic jurisprudence explains this principle in the case of Royal Dutch Airline & Another b Farmex Ltd (1989-90) 2 GLR, 623 @625 which states: "On the measure of damages for breach of contract, the principle adopted by the court was restitution in integrum. i.e if plaintiff has suffered damage not too remote- he must as far as money could do it be restored to the position he would have been in had that particular damage not occurred. What was required to put the plaintiffs in the position they would have been in was sufficient money to compensate them for what they had lost.."
27. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanor of the witnesses and hearing their evidence first hand. The foregoing duty was succinctly stated by the Court of Appeal in the case of Selle v Associated Motor Boat Company Ltd (1968) EA 123 and Peters v Sunday Post Limited [1985] EA 424).
28. The appeal herein is only on quantum. The Appellant proposed the sum of Kshs 100,000/= and cited, among other cases, Ndungu Dennis v. Ann Wangari Ndirangu & Another (2018) eKLR, HB(Minor suing through mother & next friend DKM) v Jasper Nchonga Magari & Another (2021) eKLR. An award of Kshs 100,000 and Kshs. 60,000 was given in that cases respectively.
29. In her judgment, the learned trial magistrate awarded the Respondent a sum of Kshs 300,000/=, less 10% contribution, amounting to Kshs 270,000/=.
30. Let me point out that it is a fact that no injuries are exactly the same for any given case and an award of damages is within the discretion of the trial court. Further, the Court of Appeal in Catholic Diocese of Kisumu v Tete [2004] eKLR , had this to say:-

“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 difference 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 or leaving out of account some relevant one or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate.”

31. As a general rule, comparable injuries should receive comparable awards which should be within the limits set by similar decided cases. In *Kigaragari vs. Aya* (1982-1988) 1 KAR 768 it was held as follows: -

“Damages must be within limits set out by decided cases and also within limits that the Kenyan economy can afford. Kenyan awards are inevitably passed on to the members of the public, the vast majority of whom cannot afford the burden, in the form of increased costs of insurance cover or increased fee.....”

32. In *Joseph Mwangi Kiarie & Another Vs Isaac Otieno*, H.C.C.A NO. 30 OF 2018, in which the award of Kshs. 300,000/= was reduced to Kshs. 180,000/=, for soft tissue injuries. In *Michael Odiwuor Obonyo Vs// Clarice Odera Obunde*, H.C.C.A. NO. 01/2020, the award of Kshs. 500,000/= was reduced to Kshs. 200,000/= for soft tissue injuries.

33. The award of Kshs. 300,000/= is therefore substituted with an award of Kshs. 200,000/=.

34. Turning to special damages, Kshs. 6,000/= was pleaded and strictly proved as was held in the case of *Hahn vs. Singh, Civil Appeal No. 42 of 1983* [185] KLR 716, the Court of Appeal held as follows;

“Special damages must not only be specifically claimed (pleaded) but also strictly proved... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

35. In the end the court the award on damages and liability is entered in the following terms;

- i. General Damages..... Kshs. 200,000/=
- ii. Special Damages..... Kshs. 6,000/=
- iii. TotalKshs. 206,000/=
- iv. Less 10% Kshs. 20,600/=
- v. Sub-total Kshs. 185,400/=
- vi. Plus, costs and interest

36. Orders accordingly.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 24TH DAY OF JUNE 2025.

.....

R. NYAKUNDI

JUDGE

xxxx@.co.ke xxxx@yahoo.com

