



REPUBLIC OF KENYA



**Kamau & another v Korir (Civil Appeal E145 of 2024)
[2025] KEHC 11281 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E145 OF 2024**

**A MABEYA, J
JULY 31, 2025**

BETWEEN

DAVID NJOGU KAMAU 1ST APPELLANT

WILLIAM KAMAU 2ND APPELLANT

AND

KEVIN KIPNGETICH KORIR RESPONDENT

*(Being an appeal from the judgment and decree of Hon. A.K. Makoross
PM delivered on the 23/07/2024 in Tamu SPMCC No. E014 of 2023,
Kevin Kipngetich Korir v David Njogu Kamau & William Kamau)*

JUDGMENT

1. The respondents filed the primary suit before the trial court vide a plaint dated 2/12/2023 for general damages, future medical expenses of Kshs. 200,000/- and special damages of Kshs. 53,360/- for injuries sustained following a road traffic accident that occurred on or about the 14/11/2022.
2. The appellants entered appearance and filed a statement of defence dated 2/05/2023 in which they denied the respondent's claim and claimed contributory negligence on his part.
3. The matter proceeded to trial and by a judgment delivered on 23/07/2024, the trial court decreed that: -
 - a. Liability in the ratio of 85:15 in favour of the plaintiff.
 - b. General damages Kshs. 1,600,000/-
Less 15% contributory negligence Kshs. 240,000/-
 - c. Net award Kshs. 1,360,000/-
 - d. Add future medical expenses Kshs. 200,000/-



- e. Add special damages Kshs. 19,220
 - f. Costs of the suit
 - g. Interest on (b) (c) (d) and (e) at Court rates from the date of this judgement until payment in full.
4. Being dissatisfied with the said Judgment/decree, the appellants lodged this appeal vide the Memorandum of Appeal dated 19/07/2024 and raised seven (7) grounds of appeal as follows: -
- a. That the learned trial magistrate erred in law and in fact in failing to dismiss the respondent's suit in the lower court as he had not proved his case on quantum on a balance of probability.
 - b. That the learned trial magistrate erred in law and in fact in awarding the respondent general damages in the sum of Kshs. 1,600,000/- an amount which was excessive thus amounting to an erroneous estimate of loss or damage suffered by the respondent thereby making an exorbitant and oppressive award against the appellants'.
 - c. That the learned trial magistrate erred in law and fact by failing to take into account comparable reasonable awards for analogous injuries thereby arriving at an erroneous estimate of the compensatory award leading to an excessive award.
 - d. That the learned trial magistrate erred in law and in fact in over relying on the respondent's evidence most of which was speculative in nature thereby reaching an entirely erroneous finding.
 - e. That the learned trial magistrate erred in law and fact in failing to consider the appellant's submissions and legal authorities relied upon in support to the defence thereof hence arriving at an erroneous conclusion award on general damages for the injuries suffered by the respondent.
 - f. That the learned trial magistrate erred in law and fact by overly relying on the respondent's submissions and legal authorities which were not relevant and without addressing her mind to the circumstances of the case.
 - g. That the learned trial magistrate's decision, albeit a discretionary one, was plainly wrong.
5. On 14/11/2024, the appeal was admitted to hearing and the appellant directed to file and serve the Record of Appeal within 30 days. The matter was directed to be listed for directions on 13/2/2025 and the parties notified accordingly. On that date, none of the parties was present and the Court fixed the matter for directions on 24/3/2025.
6. On that date, only Counsel for the appellant appeared and informed the Court that the parties were discussing a settlement. The Court adjourned the matter to 29/4/2025 to enable the parties conclude their negotiations and record a settlement on that date.
7. On 29/4/2025, once again only the appellant was represented and there was no settlement. The Court gave directions for the filing of the Record of Appeal within 14 days in default the appeal stands dismissed. It also ordered for the exchange of submissions within a specified timeframe and fixed the matter for hi-lighting of submissions on 30/6/2025. On that day, none of the parties attended and the Court adjourned the matter for hi-lighting to 8/7/2025 when also, no one showed up. The Court then reserved the matter for judgment.



8. When the Court retired to writing the judgment, the appellants had not filed any submissions to prosecute their appeal. I have checked the Case Tracking System and note that the only thing filed on record is the Memorandum of Appeal that was filed on the 19/7/2024. Technically therefore, the appeal stood dismissed 14 days 14/5/2025.
9. The appellants' claim that the quantum awarded by the trial court was excessive thus amounting to an erroneous estimate to warrant interference by this court is a matter that cannot be determined without the appellants' submissions on record leave alone the record of appeal. The appellants must prosecute their appeal and argue it out on merit since its not automatic that this Court will find in their favour in the absence of any material placed before it on appeal.
10. Accordingly, as it is not the duty of the court to prosecute an appeal for any appellant, I find the appeal not prosecuted and hereby dismiss it with no order as to costs.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

