



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okumu v Sunday & another (Civil Appeal E022 of 2024)  
[2025] KEHC 2448 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2448 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E022 OF 2024  
DK KEMEL, J  
FEBRUARY 13, 2025**

**BETWEEN**

**NICHOLAS OUMA OKUMU ..... APPELLANT**

**AND**

**VALARY IRENE SUNDAY ..... 1<sup>ST</sup> RESPONDENT**

**EUNICE ODERA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment of Hon. B. Limo, Principal  
Magistrate delivered on 7th May 2024 in Siaya CMCC No. E10 of 2023)*

**JUDGMENT**

1. Vide a Complaint dated 13/2/2023, in Siaya CMMCC No. E010 of 2023, the Appellant sued the Respondents for both general and special damages plus costs and interest arising from an accident which took place on 26/12/2023 along Siaya –Nyandorera road involving the 2<sup>nd</sup> Respondent’s motor vehicle registration number KCT 196Z Toyota Axio and being driven and controlled by the 1<sup>st</sup> Respondent as agent and or servant who drove it recklessly and negligently that he caused it to ram onto a motorcycle registration number KMEZ 844W whereby the Appellant sustained injuries. Vide the judgement of Hon Limo (PM) dated 7/5/2024, judgement was entered for the Respondent against the Appellant as follows:
  - a. Liability 80: 20 between the Respondents and Appellant respectively (as agreed by consent).
  - b. General damages Kshs 700,000/=
  - c. Special damages Kshs 6000/-
  - d. Future medical expenses Kshs 150.000/-
  - e. Costs of the suit.



2. Dissatisfied with the decision of the trial magistrate, the Appellant has appealed to this court on the issue of quantum on the following grounds:

- i. The trial magistrate erred in law and in fact on the assessment of damages as to amount to an abuse and wrong application of principles of award/assessment of damages.
- ii. That the trial magistrate erred in law and in fact in awarding damages that were inordinately low as to amount to gross underestimation of the injuries sustained by the Appellant
- iii. The trial magistrate erred in law and in fact in failing to appreciate the medical evidence

Thus the Appellant prays that the appeal be allowed with costs, the award by the trial court be set aside and this honorable court do reassess the damages awarded.

3. The parties in the lower court entered into a consent on liability in the ratio of 80% to 20% in favour of the Appellant. Hence, the appeal is mainly on quantum of damages.

4. Being a first appeal, the court relies on a number of principles as set out in *Selle & Another vs Associated Motor Boat Company Ltd & others* [1968] 1EA 123:

“...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 into account of particular circumstances or probabilities materially to estimate the evidence.”

5. It is therefore behooves upon this court to relook, re-evaluate, reanalyze the evidence at the trial court and arrive at its independent conclusion, bearing in mind that it did not see the witnesses first hand.

6. PW1 Nicholas Ouma Okumu testified that he was 19 years old at the time of the accident. That on 26/12/2022 he was involved in a road traffic accident where the Respondents motor vehicle registration number KCT 196Z Toyota Axio hit him while he was riding motor cycle reg. no. KMEZ 844W Boxer along Nyandorera –Siaya road. That he sustained the following injuries: lacerations on the face, blunt injury to the forehead, blunt injury to the chest, blunt injury to the back, fracture to the right femur, fracture to the left femur(proximal), lacerations on the right knee, lacerations on the right ankle and fracture of femur. The Appellant’s list of document dated 13/2/2023 was produced as exhibits 1-8. The plaintiff case closed.

On cross-examination, he stated that he fractured both legs and that he had not healed though he does not have crutches

7. The parties entered into a consent on liability which was adopted as an order of the court in the ratio of 80:20 in favour of the Appellant.

8. The Respondents requested for a second examination of the Appellant by the Respondents doctor and a report filed and produced as Exhibit 1. Upon a second medical report by the Respondents doctor, a medical report was done by Dr. Tobias Otieno and produced as Exhibit 1. The said report confirmed the following injuries:

- i. Lacerations on the face
- ii. Blunt injury to the forehead
- iii. Blunt injury to the chest



- iv. Blunt injury to the back
  - v. Fracture to the right femur
  - vi. Fracture to the left femur(proximal)
  - vii. Lacerations on the right knee
  - viii. Lacerations on the right ankle
9. The appeal was canvassed by way of written submissions. The parties duly complied.
  10. The Appellant relied on the cases of Makueni HCCA No. 22 of 2018 Real Tilak Enterprises vs. Paul Muia Kilonzo where the Plaintiff sustained a broken right thigh(femur) and a fracture on the right tibia fibula and metatarsal; he was awarded general damages of kshs 2,500,000/= in the year 2019.
  11. Further, the Appellant submitted that in Chuka HCCA No. 8 of 2020 Gerald Muthengi Ndatho vs. Helen Chebet the plaintiff sustained fracture of the left femur, fracture of left distal radius and soft tissue injuries to the head and wrist. She was awarded Ksh 1 500 000/= as general damages in 2022.
  12. On appeal the Appellant also submitted on the case of Bungoma Civil Appeal No. E072 of 2022 Kyoga Hauliers Kenya Limited vs Grace Leila Munyendo where the plaintiff sustained injuries substantially similar to the appellant and was awarded Kshs 2,500,000/= as general damages in the year 2024. In conclusion, he prayed for an award of between Kshs 1,500 000/- and 2 500 000/= for general damages.
  13. On the other hand, the Respondent submitted that the appeal be dismissed stating that the assessment of damages is discretionary upon the trial court. He relied on Simon Taveta vs. Mercy Mutitu Njeru (2014) eKLR, CACA NO. 26 OF 2013.... that an appellate court must be satisfied that the trial court in assessment of damages took into account an irrelevant fact or left out a relevant fact or that the award was inordinately low or high to be an erroneous estimate.
  14. I have considered the proceedings of the trial court together with the rival submissions and find the issue for determination is whether the award of general damages awarded by the learned trial magistrate was inordinately low in the circumstances.
  15. It is noted that the Appellant sustained injuries such as lacerations on the face, blunt injury to the forehead, blunt injury to the chest, blunt injury to the back, lacerations on the right elbow, fracture of the right femur, fracture of the left femur (proximal), lacerations on the right knee, and lacerations on the right ankle. The medical report produced by the Respondents doctors indicated that the Appellant sustained a 10% permanent disability as a result of the injuries. Learned counsel for the Appellant sought for the award of damages to be given in the region of Kshs 1,500, 000 to 2, 500, 000.
  16. It is trite that the assessment of quantum of damages is always at the discretion of the trial court and that an appellate court should be slow to interfere with the same unless it is shown that the trial court considered irrelevant factors or omitted relevant factors as to lead to an erroneous estimate of damages. In Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenya) v Kiarie Shore Stores Limited [2015] eKLR it was held thus: - "As a general principle, assessment of damages lies in the discretion of the trial court and an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous estimate. It must be shown that the Judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure, which was either inordinately high or low. The Court must be satisfied that either the Judge, in assessing the damages, took into account an irrelevant factor or left out of account a



relevant one or that, short of this, the amount is so inordinately high that it must be a wholly erroneous estimate of the damages.”

17. In *Simon Taveta vs. Mercy Mutitu Njeru*, Civil Appeal 26 of 2013 [2014] eKLR the Court of Appeal held thus: -“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”

18. Also in the case of *Kemfro Africa Ltd t/a Meru Express service, Gathogo Kanini Vs Am Lubia and Olive Lubia*[1987] KLR 30 the Court of Appeal held;

“ The principles to be observed by the appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are that it must be satisfied that either the judge, in awarding the damages, took into account an irrelevant factor, or left out of account a relevant one, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of of the damages.”

19. I have considered the Appellants injuries and compared the same with past authorities in which the claimants suffered almost similar injuries as follows: -

In *Joseph Mwangi Thuita vs. Joyce Mwole* [2018] eKLR, the plaintiff was awarded Kshs. 700,000 as general damages for fractured right femur, compound fracture (r) tibia and fibula, shortening right leg and episodic pain (r) thigh with inability to walk without support.

In *Jackson Mbaluka Mwangangi vs. Onesmus Nzioka & Another* [2021] eKLR Odunga J. (as he then was) awarded Kshs 600,000/- for general damages where the Appellant sustained blunt injury to the right shoulder and fracture of the left femur.

In *David Mutembei vs. Maurice Ochieng Odoyo* [2019] eKLR, the court reduced an award of Kshs. 1,600,000/= to Kshs. 800,000/= on appeal, where the Respondent sustained a fracture of the right femur and a proximal fracture of the left tibia.

20. I note that the Appellant herein suffered more serious injuries as listed in paragraph 8 above, leading to a 10% disability. In a more recent case by this court in *Bungoma Civil Appeal No. E072 of 2022 Kyoga Hauliers Kenya Limited vs Grace Leila Munyendo* where the plaintiff sustained injuries substantially similar to the appellant was awarded Ksh 2, 500 000/= as general damages in the year 2024.

21. It is trite that similar injuries must attract an almost similar award of damages. I also note that most of the awards which were similar to those of the trial court, the claimant had suffered fractured single thigh but however, in this instant case, both of the Appellants thighs suffered fractures, and at his age of 19 years he would be forced to live with the 10% disability for the rest of his life. I find that the Appellant’s claim that the amounts awarded is inordinately low to be legitimate thereby warranting this court to interfere with the trial court’s award.

22. Based on the foregoing, this court is satisfied that the trial court left out this relevant fact, that the fractures were on both legs/thighs, that there was 10% disability and that the Appellant was a young man and had his whole life affected by the said injuries. I thus find the award of Kshs 700,000/= for general damages as inordinately low in the circumstances. I therefore set it aside and replace it with an award of Kshs 1,800,000/=. As the appeal is only on quantum of general damages for pain and suffering as well as loss of amenities, the awards on the other heads of damages namely, future medical expenses and special damages shall remain undisturbed.



23. The upshot of the foregoing observations is that the appeal has merit. The same is allowed. The judgement on quantum of damages for pain and suffering and loss of amenities is hereby set aside and substituted with an award of Kshs 1, 800, 000/-. All the other heads of damages such as future medical expenses, special damages as well as the agreed liability shall remain intact. The Appellant is awarded the costs of the appeal.

Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025**

**D. KEMEI**

**JUDGE**

In the presence of:

Kapare.....for Appellant

M/s Barasa.....for Respondents

Ogendo.....Court Assistant

