



REPUBLIC OF KENYA



**KENYA LAW**  
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**East Africa Institute of Certified Studies Limited & another v Jackton (Civil Appeal E014 of 2023) [2025] KEHC 3780 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3780 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E014 OF 2023  
AN ONGERI, J  
MARCH 12, 2025**

**BETWEEN**

**EAST AFRICA INSTITUTE OF CERTIFIED STUDIES  
LIMITED ..... 1<sup>ST</sup> APPELLANT**

**SMART COACH LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ELIAS MBEU JACKTON ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. A. M. Obura) (CM)  
in Voi CMCC No. E074 of 2022 delivered on 20th April 2023)*

**JUDGMENT**

1. The Respondent filed Voi CMCC No. E074 of 2022 seeking general damages and future medical costs in respect of a road traffic accident that occurred on 22<sup>nd</sup> December 2021 while the Respondent was travelling in motor vehicle registration No. KCV 850M make Toyota Hiace from Nairobi to Mombasa.
2. The Respondent's evidence in summary was that the driver of motor vehicle registration No. KCV 850M was overtaking motor vehicle registration No. KDC 079E when he saw an oncoming motor vehicle. He swerved back to his lane and he hit motor vehicle registration No. KDC 079E at the rear causing serious injuries to the Respondent.
3. The trial court found the Appellant 100% liable and assessed damages as follows:-
  - i. Special damages Kshs. 12,600/=
  - ii. Future medical expenses Kshs. 24,000/=
  - iii. General damages Kshs. 700,000/=



4. The Appellant is aggrieved with the judgment and has appealed on the following grounds:-
  - i. The learned trial Magistrate erred and misdirected herself by relying on wrong principles when assessing damages that were awarded to the Respondent.
  - ii. The Learned trial Magistrate erred and misdirected herself and failed to apply precedents and tenets/principles of the law applicable in awarding damages.
  - iii. The learned trial Magistrate erred and misdirected herself by in awarding a sum in respect of damages which was inordinately high in the circumstance which was excessive in the circumstances occasioning a miscarriage of justice.
  - iv. The learned Magistrate erred in law and in fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
  - v. The learned trial Magistrate erred and misdirected herself by ignoring the Defendant's submissions on record hence arriving a wrong decision in awarding damages.
  - vi. The learned trial Magistrate erred and misdirected herself by ignoring the evidence of witnesses on record especially the police officer hence arriving a wrong decision in awarding damages.
5. The parties filed written submissions as follows:- The Appellant submitted that the Respondent sustained the following injuries:-
  - a. Fracture of the right distal radius/ulna bones.
  - b. Bruises and abrasions both legs.
6. That the medical report of Doctor Darius Wambua dated 3<sup>rd</sup> March 2022 confirms the said injury and also the medical report of Doctor Jenipher Kahuthu dated 29<sup>th</sup> July 2022.
7. The Appellant submitted that an award of general damages of Kshs. 700,000/= was inordinately high in view of the above injuries.
8. The Appellant relied on the case of Power Lighting Company Ltd & Another =versus= Zakayo Saitoti Naingola & Another (2008) Eklr Which Was Cited In The Case Of Jennifer Mathenge =versus= Patrick Muriuki Maina (2020) eKLR where the court cited principles to be relied on in determining whether to interfere with an award of quantum of damages.
9. The Appellant urged the court to reduce the award to Kshs. 300,000/= as adequate and proportionate to the injuries suffered.
10. The Respondent on his part submitted that all the four grounds of appeal can be consolidated as a single ground and that is whether the award of general damages by the trial court was inordinately high.
11. The Respondent further submitted that it is trite law that the assessment of damages is a preserve of the discretionary powers of the trial court and the appellate court can only interfere with the same where the trial court applied the wrong principles, or took into account irrelevant factors, or failed to take into account relevant factors or misapprehended the evidence or where the award was manifestly too high or too low.



12. The Respondent relied on the case of Catholic Diocese Of Kisumu =versus= Tete Kisumu [\*CA No. 284 of 2001\*](#) (2004) eKLR where the Court of Appeal held as follows:-

“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.”
13. The Respondent further submitted that the basic principles applicable in the assessment of damages for bodily injuries are comparable injuries and also inflationary trends in the country.
14. The Respondent also relied on the case of Arrow Car Limited =versus= Elijah Shamalla Bimomo & 2 Others (2004) eKLR where the Court of Appeal stated as follows:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former court of Appeal of Eastern Africa to be that it 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 low or so inordinately high that it must be a wholly erroneous estimate of the damage. ...”
15. The Respondent submitted that the trial court relied on comparable authorities and awarded Kshs. 700,000/= which award is reasonable.
16. The issues for determination in this appeal are as follows;-
  - i. Whether the trial court was right in the assessment of general damages.
  - ii. Whether the appeal should be allowed.
17. On the issue of liability there is evidence that the driver of motor vehicle registration No. KCV 850M was overtaking when the accident occurred. The appellant did not contest the issue of liability.
18. The Appellant submitted that an award of general damages of Kshs. 700,000/= was inordinately high in view of the above injuries.
19. On the said issue of quantum the trial court relied on the following cases:-
  - i. Rose Makombo Masanju =Versus= Night Flora alias Nighties & Another (2016) eKLR where Kshs. 500,000/= was awarded for similar injuries.
  - ii. Francis Nzivo Munguti & Another =Versus= Jotham Wanyonyi Nakasana & Another (2020) eKLR where Kshs. 600,000/= was also awarded for fracture of the right radius/ulna and multiple soft tissue injuries.
20. The Respondent did not file any submissions and I find that this appeal is an attempt to submit on quantum at appeal stage.
21. The only time when the trial court can interfere with the discretion of the trial court in the award of damages is when the same is too high or too low as to warrant interference.



22. In the case of Hellen Waruguru Waweru (Suing as the legal representative of Peter Waweru Mwenja v Kiarie Shoe Stores Limited [2015] eKLR, the Court of Appeal held as follows:

“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.” (Also see *Butt v Khan* [1981] KLR 349).”

23. I find that this appeal lacks in merit and the same is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF MARCH 2025 IN OPEN COURT AT VOI VIRTUALLY.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistants: Maina/Millicent

