



REPUBLIC OF KENYA



**JAK (A Minor Suing Through His Mother and Next Friend Natalie Kavata) v Mwangi & another
(Civil Appeal E183 of 2023) [2025] KEHC 2636 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2636 (KLR)

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

CIVIL

CIVIL APPEAL E183 OF 2023

AC MRIMA, J

MARCH 6, 2025

BETWEEN

JAK APPELLANT

**A MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND NATALIE
KAVATA**

AND

GRACE WANGARI MWANGI 1ST RESPONDENT

DAVID KIRITU NJEGE 2ND RESPONDENT

*(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Nairobi
(Hon. Bernard Kasavuli) Delivered on 08/03/2023 in Nairobi CM Civil Case No. E4609 of 2020)*

JUDGMENT

1. The appeal subject of this judgment arises from the judgment and decree in Nairobi [Milimani] Chief Magistrates Commercial Courts CMCC No. E4609 of 2020 [hereinafter referred to as 'the civil suit']. In the civil suit, the Appellant herein who is a child suing through his next friend, sued the Respondents for both general and special damages in respect to a road traffic accident in which the Appellant allegedly sustained injuries.
2. The 1st Respondent was the registered owner of the subject Motor Vehicle registration number KCS 454N [hereinafter referred to as 'the vehicle'] which allegedly hit the Appellant whereas the 2nd Appellant was the beneficial owner of the vehicle.
3. The claim was determined vide a judgment rendered on 8th March 2023 in which the Respondents were held wholly liable for the accident and the Appellant was awarded General damages of Kshs. 120,000/



= and special damages of Kshs. 3,500/= . It was the quantum part of that judgment that aggrieved the Appellant thereby filing the instant appeal.

4. Directions were taken and the appeal was to be heard by way of written submissions. Both parties complied. In his submissions, the Appellant argued that according to the injuries as stated in the Medical report prepared by Dr. Wokabi dated 25th February 2020 which was produced in evidence, the award was quite low and called for an upward review. The Appellant further relied on the submissions filed in the trial Court and referred to the decisions in Civil Appeal 20 of 2015 Easy Coach Ltd v Emily Nyangasi [2017] eKLR and Civil Appeal No. 114 of 2017 Gnm v Alex Wachira Mwaura & Another in support of the quest for more general damages.
5. On the plea for enhanced special damages, the Appellant submitted that he had proved such to the tune of Kshs. 34,500/= but a paltry sum of Kshs. 3,500/= was made.
6. The appeal was opposed. The Respondents submitted that the awards made were fair and reasonable. They relied on Kenya Broadcasting corporation v Geoffrey Wakio [2019] eKLR and Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR in buttressing the position that interference with the award for damages is only warranted if the award is so inordinately high or low as to amount to an erroneous estimate of the damages; and that the award for damages should be that comparable to the injuries. They further explained that blunt head injury or abrasion generally refers to slight external damage and referred to the CT scan whose results indicated full consciousness and normal brain function.
7. On the aspect of special damages, the Respondents quoted the case of Zacharia Waweru Thumbi v Samuel Njoroge Thuku (Civil Appeal 445 of 2003) eKLR where the Court held that special damages must be both pleaded and proved.
8. Having carefully considered this matter, this Court is alive to the duty imposed on a first appellate Court It is to subject the whole of the evidence to a fresh and exhaustive scrutiny and make own conclusions, bearing in mind that I did not have the opportunity of seeing and hearing the witnesses first hand as was stated in *Selle & another v Associated Motor Boat Co. Ltd. & others* [1968] EA 123 as follows: -

.... I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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 account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally....
9. The above also reiterated in *Abdul Hammed Saif v Ali Mohamed Sholan* [1955], 22 E.A.C.A. 270, *Mary Wanjiku Gachigi v Ruth Muthoni Kamau* (Civil Appeal No. 172 of 2000; *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* (Civil Appeal No. 345 of 2000; *Virani T/A Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd* (Kisumu High Court CC No. 88 of 2002) among many others.
10. As this Court has been called upon to interfere with the award on general damages, it is not lost that that assessment of damages is generally a difficult task. A Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for



similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion. (See *Butler v Butler* [1982] KLR 277.)

11. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* [1988]1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -

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.

[Also see *Arrow Car Limited v Bimomo & 2 others* [2004] 2 KLR 101 and *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* [2013] eKLR].

12. Returning to the matter at hand, this Court has carefully considered the exhibits on the injuries sustained by the Appellant. In essence, the Appellant sustained loss of consciousness and a blunt abrasion to the head. The trial Court awarded Kshs. 120,000/= as general damages. It is that award which the Appellant contended was minimal and vouched for Kshs. 700,000/= instead.
13. By pacing the Appellant's proposal on one hand and the Respondent's arguments and the judgment on the other hand, coupled with decisions relating to similar injuries, this Court finds that the award made by the trial Court is fair and reasonable in the circumstances. The Learned trial Court did not err in making the impugned award. The appeal against the award, therefore, fails.
14. As for special damages, there is evidence that the sum of Kshs. 38,550/= was proved. This Court, therefore, sets aside the amount of Kshs. 3,500/= awarded and substitutes it with an award of Kshs. 38,550/=.
15. Having dealt with all the grounds of appeal, this Court now makes the following final orders: -
 - a. The appeal partly succeeds with the final award enhanced to Kshs. 158,550/-.
 - b. The Appellant will have the costs in the primary suits whereas parties will bear their respective costs on appeal as the appeal has partially succeeded.
16. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss. Amboko, Learned Counsel for the Appellant.

Miss. Wangare, Learned Counsel for the Respondent.

Michael – Court Assistant.

