



**Khetia Draper Ltd v Chesoli (Civil Appeal E079 of 2022)
[2025] KEHC 3718 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E079 OF 2022
SC CHIRCHIR, J
MARCH 20, 2025**

BETWEEN

KHETIA DRAPER LTD APPELLANT

AND

PETER WASWA CHESOLI RESPONDENT

(An appeal from the judgment and decree of Honorable Caroline Cheruiyot delivered on 16/9/2022 in Kakamega Civil Suit No. E153 OF 2021)

JUDGMENT

1. This an appeal against the award of Kshs.231,615/= awarded by the trial court at kakamega. It is alleged that on or about 19/6/2021 the appellant's driver, agent and /or servant so negligently and carelessly drove, managed and or controlled motor vehicle registration number KDB 255L along Mumias-Kakamega Road at Maondo area that he caused the motor vehicle to hit the respondent motor cycle registration number KMFG 524L occasioning serious injuries to the plaintiff. The plaintiff was the Rider of the Motor cycle. Liability was settled by consent of the parties in the ratio 90:10 against the appellants. The Appeal is therefore against the award on general damages only.
2. The Appellant has set out 5 grounds of Appeal, which can be summed under paragraph 4 as : that the award on damages was so inordinately high in the circumstances that it represented an entirely erroneous estimate vis-à-vis the respondent's claim
3. The Appeal was canvassed by way of written submissions

Appellant's submissions

4. It is the Appellant's submissions that in arriving at an award of ksh. 250,000 the trial magistrate relied on unrelated decisions; that no permanent injury was sustained by the respondent and that the doctor did confirm that the respondent had healed from the injuries.



5. The Appellant then proposes an award of ksh. 100,000 based on a number of past decisions where the awards range from ksh. 100,000 to ksh. 140,000.
6. The Appellant agrees with the trial court on the award of special damages of ksh. 7,350.

Respondent's submissions

7. The respondent submits that no valid reason has been advanced to justify the interference with the trial court's award. The respondent has relied on three past decisions where the courts awarded damages ranging from ksh. 200,000 to ksh. 250,000.

Analysis and determination

8. This is a first Appeal and the mandate of this court is well settled. It is to review the evidence available, evaluate it and arrive on its own conclusion. However I must bear in mind the fact that I never saw or heard the witnesses first- hand.
9. Assessment of damages is an act of discretion by the trial court and there are established principles upon which an appellate court can interfere with the said discretion. In the case of [Charles Oriwo Odeyo v Apollo Justus Andabwa & Ano](#) (2017) eKLR it was held:

“On the issue of damages , it is now settled that the award of damages is within the discretion of the Trial court and the Appellate court would only interfere on particular grounds. These grounds were and are

- (a) that the court acted on wrong principles or that the award is too excessive or so low that no reasonable tribunal would have awarded , or
- (c) that the court has taken into consideration matters which it ought not to have or left out matters it ought to have considered and in the result arrived at a wrong decision(see [Butler v Butler](#) (1984) KLR 225”

10. After considering the evidence and parties submissions the trial magistrate came to the following conclusion:

“... the authorities relied on by the plaintiff and defendant all have similar injuries which are soft tissue in nature however the defendant's authority is not as recent as compared to the plaintiff's and the proposed quantum of Kshs. 50,000/= as general damages is inordinately low considering the recently decided case and bearing in mind the nature of injuries that were sustained by the plaintiff were moderately severe and not just soft tissue injuries.

... I therefore award the plaintiff an amount of Kshs. 250,000/= as general damages.”

11. I entirely agree with the trial magistrate on her observation of the injuries. In particular , a degloving injury is a severe soft tissue injury . The injury has been described as follows:

“degloving injuries are usually due to trauma sustained parallel to the body , shearing of skin and soft tissue from the underlying muscle and bone” (see: National Institute of Health found on <https://pubmed.ncbi.nlm.nih.gov/>); or as follows: “ Degloving injury is a type of severe injury that happens when the top layers of your skin and tissue rip off from the underlying muscle , connective tissue or bone” (See:Healthline found on <https://www.healthline.com>)



12. I have considered the Authorities cited by the Appellant on this Appeal . The injuries were minor to moderate soft tissue injuries , none of which involved the degloving of the skin and all the four decisions relied on were made between the years 2019 and 2022. The propose figure therefore does not take into account factors of inflation.
13. In *Francis Ndungu Wambui v Purity wangui Gichobi*(2019) eKLR, the court of Appeal reduced an award of ksh. 450,000 to ksh. 250,000 where the claimant had sustained deep lacerations on the medial side of the leg and degloving injury to the right thumb. In *Ogembo & Ano v Maisa* (2023) KEHC 436(KLR)the injuries consisted of soft tissue injuries and two degloving injuries. The high court awarded ksh. 300,000 on Appeal.
14. Going by the above cited cases , and taking into account the factors of inflation the award of ksh. 250,000 can not be said to have been “inordinately high so as to represent an entirely an erroneous estimate” of the injuries sustained by the respondent herein, to warrant any interference by this court.
15. The Appeal has no merit. It is hereby dismissed with costs to the respondent

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 20TH DAY OF MARCH, 2025.

S. CHIRCHIR

JUDGE.

In the presence of :-

Godwin Luyundi- Court Assistant

Mr. Nyolei for the Respondent

