



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamola v Munyoki (Civil Appeal E031 of 2023)  
[2025] KEHC 2334 (KLR) (3 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2334 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CIVIL APPEAL E031 OF 2023  
LW GITARI, J  
MARCH 3, 2025**

**BETWEEN**

**DICKSON MUSYOKA KAMOLA ..... APPELLANT**

**AND**

**ERICK KIOKO MUNYOKI ..... RESPONDENT**

**JUDGMENT**

1. The Appeal arises from the proceedings and Judgment in the Chief Magistrate’s court at Kitui Civil Case No. E078/2020 where the appellant had filed a suit vide a plaint dated 5/09/2020 claiming general, damages special damages and cost of the suit. In the suit the appellant had sued the respondent as the driver/owner of motor vehicle registration number KCP 449Z after he was involved in a road traffic accident. The appellant had claimed that on 24/11/2019 he was travelling as a lawful passenger in motor vehicle registration number KCP 449Z along Kitui – Kanyonyo road when the motor vehicle was recklessly and carelessly driven that the same was allowed to veer off the road and hit a wall. As a result of the accident, the plaintiff sustained severe bodily injuries. He blamed the respondent for the occurrence of the said accident for driving the said motor vehicle negligently.
2. The particulars of the negligence were stated as follows:
  - a. Driving the said motor vehicle in excessive high speed in the circumstances
  - b. Driving the said motor vehicle without due care and attention.
  - c. Driving the said motor vehicle so dangerously and/or negligently and without regard to the passengers onboard and particularly the plaintiff.
  - d. Driving the said motor vehicle recklessly and in total violation of the Traffic Rules.
  - e. Failure to slow down, stop, brake swerve and/or take any other reasonable step to avoid the said accident.



- f. Driving defective motor vehicle.
  - g. Causing the accident.
3. The appellant also stated that he would rely on the doctrine of *res ipsa loquitur*. The appellant claimed that he sustained the following injuries:
- (i) Fracture of the right tibia
  - (ii) Headache
  - (iii) Upper lip cut
  - (iv) Dizziness
  - (v) Left supraorbital cut
  - (vi) Right shoulder pain
  - (vii) Right thigh pain
  - (viii) Painful right proximal leg
  - (ix) Swollen right proximal leg region
  - (x) Bruises on the right proximal leg region
  - (xi) Left shin pain
  - (xii) Left ankle pain
  - (xiii) Right ankle pain
4. The respondent filed a defence and denied ownership of the said motor vehicle as well as liability and blamed the appellant for negligence and prayed that the suit be dismissed. The learned Magistrate heard the dispute and in a Judgment dated 13/04/2023 held the respondent 100% on the liability and awarded the appellant Kshs. 330,000.00 as general damages and Kshs. 5,550.00 special damages.
5. The appellant was dissatisfied with the Judgment of the learned Magistrate on the following grounds in the memorandum of Appeal dated 14/05/2023.
1. The learned Magistrate erred in law and in fact by awarding low general damages to the appellant not commensurate with the extent of injuries sustained and proved before the court.
  2. The learned Magistrate erred in law and in fact by not fully considering and/or appreciating all the facts presented before him by the appellant.
  3. In all the circumstances of the case, the findings of the learned Magistrate in quantum were characterized with misapplication of the law and fact and wrong exercise of discretion.
  4. The learned Magistrate erred in law and in fact in relying on authorities not in parity with the facts of the instant case before him.
6. The appellant prays that the appeal be allowed, the Judgment and decree of the learned Magistrate be substituted and or varied. That this court be pleased to assess general damages and special damages. That he be awarded costs. The appeal was canvassed by way of written submissions.



### **Appellant's Submissions.**

7. He submits that the issue for determination is whether the learned Magistrate applied the correct principles of law and available facts when exercising discretion in assessment of the damages payable to the appellant. It is submitted that the appellant discharged his burden of proof as required of him under Section 107 of the *Evidence Act* (Cap 80 Laws of Kenya). He contends that the respondent did not adduce any evidence on how the accident occurred to contravene the evidence on how the accident occurred. He relies on Odunga J (as he then was) in *Linus Kiongo & 3 Others v Town Council of Kikuyu* [2012] eKLR where the Judge held that where a party fails to adduce evidence in support of his case, the parties' pleadings remain statements of facts since in so doing the party fails to substantiate its pleadings. He also relies on *Civil Appeal No. 705/2003 Boniface Waite & Another v Michael Kamau*. (no citation given) where the Judge stated that passengers do not indicate the manner of driving and she found the driver 100% to blame for the said accident. He also relies on *William Kabogo Gitau v George Thuo & 2 Others* [2010] 1 KLR 526 it is submitted that the learned Magistrate did not take into consideration the facts of the case.
8. On General Damages, the appellant submits that he sustained serious bodily injuries as particularized on the plaint and had proposed an award of Kshs. 1,200,000/=. He relied on the case of *Charles Mwanja & Another v Batty Hassan* [2008] where the plaintiff suffered fracture of the right tibia and fibula in addition to soft tissue injuries to the face and on both hands and was awarded Kshs. 800,000/= by the lower court and was on Appeal.
9. He also relies on *Francis Ndungu Wambui & 2 Others v VK (a minor suing thro' next friend and mother MCWK)* 2019 where the lower court awarded Kshs. 1,000,000/- in the Lower Court and was upheld on appeal. The appellant submits that the award of Kshs. 330,000/= was too low and could not adequately compensate him. That the authorities cited by the appellant were relevant and comparable to the injuries sustained by the appellant. He prays that the award be adjusted upwards based on the inflation trend of the Kenya Shilling.

### **Respondent's Submissions.**

10. No submissions were filed by the respondent.

### **Analysis And Determination.**

11. I have considered the proceedings before the learned Magistrate and the submissions. The issue that arises for determination is whether the learned Magistrate applied the correct principles of law and available facts in assessment of damages payable to the appellant. This is a first appeal and the duty of this court is to revisit the evidence which was tendered before the trial court, analyze it, evaluate it and come up with its own independent decision in the matter. See the holding in *Selle & Another v Associated Motor Boat Company Limited* [1968] E.A 123

“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 demeanor of a witness is inconsistent with the evidence in the case generally.”

12. See also *Mwanasokoni v Kenya Bus Services Ltd* [1982-88] 1 KAR 278 for the same proposition. The appellant’s appeal are on the quantum of damages. The principles upon an appellate court will interfere with an award of damages have been laid down by this court and the court of Appeal. In this case of *Kemfo Africa t/a Meru Exporters Services & Another v A.M Lubia & Another* [1982-88] 1 KAR 727. The court stated that:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by trial Judge was held by the former court of appeal of Eastern t 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.”

13. These are the principles which this court must apply in determining this appeal which is challenging the award of the quantum of damages. The courts have also held that the assessment of the quantum of damages is an exercise of courts’ discretion. In *Loice Wanjiku Kagunda -vs Julius Gachau Mwangi C.A 142/2003 (UR)* the court stated that;

“We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence appellate court should not interfere with an award of damages unless it is satisfied that the Judge acted on wrong principles of law, or has misapprehended the facts or for those other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on wrong principles (see *Manga v Musila* [1984]KLR 25.)”

14. The Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982 – 88] KAR had stated as follows with regard to the issue of appeal on quantum of damages:

“An appellate court will not disturb an award of general damages unless it is so inordinately high or low to represent an entirely erroneous estimate. It must be shown that the Judge proceed 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...”

15. The principles for compensation of personal injury are principally three-fold. That is;

- i. Compensation for the personal injury suffered – See Lord Dunedin in *Admiralty Commissioners v Valeria (Owners)* [1922] 2A. C 242, 248.
- ii. Comparative awards for comparative injuries – See *Kagaragani v Aya* [1985] KLR 273 where the court of Appeal (*Hancox, Nyarangi JJA and plat Ag. JA*) it was held;

“In awarding damages for personal injury, the courts should consider that there is need to develop consistency in the awards and that the awards should be within the limits of decided cases and avoid the effect of making insurance cover and fees unaffordable for the public.”



(iii) Compensation figures should be so high as to threaten the Economy. Firstly, in Mohamed Mahmoud Jabane -vs- High Shine Butty Tongoi CA No. 2 of [1986] KLR Vol. 1. The Court of Appeal stated as follows:

“The correct approach in award of damages are:

1. Each case depends on its own facts.
2. Awards should not be excessive for the sake of those who have to pay premiums, medical fees or taxes (the body politic).
3. Compensable injuries should attract comparable awards.
4. Inflation should be taken into account.
5. Loss of future earnings has to be pleaded.
6. Loss of earnings power is part of the general damages.

16. The other relevant principles were those articulated by the Court in Southern Engineering Co. Ltd v Musinga Muhia [1985] KLR 730:

“It is trite Law that the measurement of the quantum of damages, is a matter for the discretion of the individual judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country. (In Butt v Khan [1982 – 1988]1 KAR). “It is inevitable in any system of Law that there will be disparity in awards made by different Courts for similar injuries, since no two cases are precisely the same either in the nature of the injury or in age, circumstances of or other conditions.”

17. I have considered the contention by the appellant on the quantum of damages. The law as settled in the various authorities on awarding the quantum of damages for personal injuries, there should be consistency in the awards and they should be within limits of the decided cases. The appellant had pleaded the above injuries and at the hearing he produced a medical report by Doctor Dennis Nyariki. The doctor stated that the appellant sustained the injuries listed above from his plaint with Right oblique impacted fracture libia. His prognosis and conclusion are that the injuries healed with no major complication. The degree of injury was assessed as main. The report shows that the appellant suffered both soft tissue and internal injuries fractures. He also relied on a report by Dr. Lilian Rihika/ Doctor Daniel Somba, Consultant Radiologist, who concluded that “An oblique impacted fracture of the proximal metaphysis of the right tibia”. The knee and ankle joints are preserved. Before the learned Magistrate the applicant relied on the case of Charles Mwanja & Another v Batty Hassan [2008] where the plaintiff was awarded Kshs. 800,000/=.

18. I have looked at the authority and noted that the plaintiff in the matter had suffered more severe injuries requiring post healing treatment by way of skin grafting which would costs about Kshs. 120,000/=. In my view the appellant in the matter suffered more severe injuries which were not comparative to those sustained by the appellant herein. The second authority Tomas Ndungu Wambui & 2 Others v VK Civil Appeal No. 62/2017 [2019] eKLR. In the case, the respondent had suffered soft tissue injuries to the upper limbs, compound fracture of distal libia fibula shaft as well as loss of consciousness for more than thirty (30) minutes after the accident. It was noted that due to the severity of the fracture he is at risk of secondary stress fracture on the same site. In view the injuries were not comparative to those sustained by the appellant in this appeal.



19. The learned Magistrate relied on Daniel Otieno Owino & Another v Elizabeth Owour [2020] eKLR and awarded damages of Kshs. 330,000.00. I am of the view that the learned Magistrate exercised her discretion judiciously by holding that the authorities cited by the claimant were not comparable. The authority cited by the learned Magistrate which I have perused, the plaintiff had sustained:
- a. A fracture on the right leg
  - b. Chest injuries
  - c. Injury on the eye bridge
  - d. Injury on the left leg
  - e. Injury on the left eye
20. The Plaintiff was awarded Kshs. 600,000/=. On appeal, the lower court award was set aside and the High Court awarded Kshs. 400,000/=. It is my view that the learned Magistrate properly addressed the principles cited above on the awarding of general damages for personal injuries. As held above, assessment of damages is a matter of exercise of discretion by the trial court; an appellate court is not supposed to substitute a figure of its own from that awarded by the court below simply because it would have awarded a different figure; it can only do so if it is satisfied that the trial court applied wrong principles by taking into account irrelevant matters, leaving out of account some relevant matters, misapprehended the evidence and arrived at a figure inordinately low or high as to represent an erroneous award.
21. See Court of Appeal in Catholic Diocese of Kisumu v Sophia Achieng [2004] 2 KLR 55. The learned Magistrate considered the injuries sustained by the appellant and relied on a relevant precedent in arriving at the award. The learned trial Magistrate properly exercised her discretion and applied the correct principles in the circumstances.
22. For these reasons, I find that the appeal is without merits and is dismissed. I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 3RD DAY OF MARCH 2025**

**HON. LADY JUSTICE L. GITARI**

**JUDGE**

