



**Juma v Makanga (Civil Appeal E035 of 2024)  
[2025] KEHC 4220 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4220 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E035 OF 2024  
WM MUSYOKA, J  
APRIL 4, 2025**

**BETWEEN**

**JOHN OSCAR JUMA ..... APPELLANT**

**AND**

**CHRISPINE NAMUKUBA MAKANGA ..... RESPONDENT**

*(An appeal arising from the judgment of Hon. EC Serem, Resident Magistrate,  
RM, delivered on 1st July 2024, in Busia CMCCC No. E071 of 2022)*

**JUDGMENT**

1. The suit, at the primary court, was initiated by the respondent, against the appellant, for compensation, arising from a motor vehicle accident, which allegedly happened on 1<sup>st</sup> January 2022, along the road from Busia to Kisumu, at the Matayos area, involving the respondent and motor vehicle registration mark and number KBW 444K, which was allegedly owned or controlled by the appellant at the material time. The respondent was a pillion passenger on a motorcycle, which was cruising along the said road, when motor vehicle KBW 444K was allegedly so negligently driven, that it caused an accident, wherein the respondent sustained injury.
2. The appellant filed a defence, in which he denied everything pleaded in the plaint. In the alternative, he attributed negligence on the respondent.
3. Only the respondent testified. The medico-legal reports, relied on by both the parties, were placed on record by consent. Both sides filed written submissions. Judgement was delivered on 1<sup>st</sup> July 2024, where liability was settled at 100% against the appellant, general damages were awarded at Kshs. 700,000.00, while special damages were assessed at Kshs. 10,050.00, future medical expenses at Kshs. 100,000.00, and costs and interests.



4. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 23<sup>rd</sup> July 2024, are around failing to appreciate the evidence while assessing general damages, awarding general damages that were excessive, and failing to exercise discretion judiciously.
5. Directions, on the disposal of the appeal, were given on 20<sup>th</sup> January 2025, for canvassing of the appeal by way of written submissions. Both sides have filed written submissions.
6. The appellant has argued that the award of general damages was inordinately high, and proposes a figure of Kshs. 450,000.00. The decisions, in *Miriam Njeri Murimi vs. Kenya Broadcasting Corporation* [2009] eKLR (Sitati, J), *Mwavita Jonathan vs. Silivia Onunga* [2017] eKLR (Majanja, J) and *Jitan Nagra vs. Abidnego Nyandusi Oigo* [2018] eKLR (Majanja, J), are cited in support.
7. The respondent supports the award by the trial court, but urges me to enhance the damages to Kshs. 1,200,000.00, and cites *Francis Ndungu Wambui & 2 others vs. VK* (a minor suing through next friend and mother MCWK [2019] eKLR (Muchemi, J)).
8. The appeal turns only on assessment of general damages.
9. The injuries sustained by the respondent were particularised in the plaint, as communitated fractures of the right tibia and fibula. The same injuries were reflected in the medico-legal report, dated 19<sup>th</sup> February 2018, by Dr. Joseph C. Sokobe. The appellant subjected the respondent to a second medical examination, by Dr. James Obondi Otieno, who, in his report, described the injury as an open fracture of the right tibia and fibula.
10. At the trial, the respondent sought for Kshs. 1,200,000.00, and relied on *Francis Ndungu Wambui & 2 others vs. VK* (a minor suing through next friend and mother MCWK [2019] eKLR (Muchemi, J)); while the appellant sought for Kshs. 400,000.00 and relied on *Daniel Otieno Owino & another vs. Elizabeth Atieno Owuor* [2020] eKLR (Aburili, J). The trial court relied on *Godfrey Wamalwa Wamba & another vs. Kyalo Wambua* [2018] eKLR [2018] KEHC 8450 (KLR) (J. Kamau, J), to award Kshs. 700,000.00.
11. This was a case of a communitated fracture of the right tibia and fibula.
12. I have done a survey of recent decisions, where claimants had sustained comparable injuries. The awards fall in the range of Kshs. 500,000.00 to Kshs. 1,200,000.00. On the lower end, the fractures are unaccompanied by other injuries or are accompanied by minor soft tissue injuries; and on the higher side they are accompanied by more serious injuries, such as fractures of other bones or serious soft tissue injuries.
13. In *Ndwiga & another vs. Mukimba* [2022] KEHC 11793 (KLR) (Njuguna, J), the claimant had sustained tenderness and swelling of the left leg and a fracture of tibia and fibula left leg, and the court awarded Kshs. 500,000.00. In *Jitan Nagra vs. Abidnego Nyandusi Oigo* [2018] eKLR [2018] KEHC 3078 (KLR) (Majanja, J), that the appellant cites, the injury was a compound fracture of the tibia and fibula bones, plus a segmental distal fracture of the femur, and an award of Kshs. 450,000.00 was made. In *Kimathi Muturi Donald vs. Kevin Ochieng Aseso* [2021] eKLR (Chitembwe, J), the injuries were a fracture of the upper right tibia and a fracture of the floor of the socket of the left acetabulum, and the award was Kshs. 1,200,000.00.
14. In *Kiama vs. Mutiso* [2024] KEHC 5135 (KLR) (Majanja, J), the injuries suffered were a fracture of the left tibia bone (upper 1/3) and a blunt injury to the left leg and thigh, and the court awarded Kshs. 400,000.00. In *George Raini Atungu vs. Moffat Onsare Aunga* [2021] eKLR (Ougo, J), the injuries



- were a Chest contusion, fracture of the left radius and ulna, a pelvic contusion, a contusion to the right leg, and fractures of the right tibia and fibula bones, and Kshs. 650,000.00 was awarded.
15. In *Kimita vs. Travel Budget Express & another* [2024] KEHC 6435 (KLR) (Nzioka, J), the injuries suffered were fractures of the distal end of the left tibia and fibula bones, severe soft tissue injury of the left tissue injuries, cut wound on the zygomatic area leading to severe soft tissue injuries, deep cut wound on the left arm leading to soft tissue injuries, fracture of the right tibia, compound fracture of the left tibia, and deep cut wound on the chin; and the court awarded Kshs. 800,000.00. In *China Railway No. 10 Engineering Group Co. Limited vs. Osugo* [2024] KEHC 2662 (KLR) (Chigiti, J), the injuries sustained were head injury with cut wound on the scalp, blunt trauma on the neck, chest contusion, right shoulder dislocation, bruises on the lower back and right tibia and fibula fractures; and an award of Kshs. 800,000.00 was made.
  16. Assessment of damages is at the discretion of the court, founded largely on comparable awards for comparable injuries. I note that *Francis Ndungu Wambui & 2 others vs. VK* (a minor suing through next friend and mother MCWK [2019] eKLR (Muchemi, J), that the respondent relies on, and relied on at trial, is not comparable for the injuries were different, being soft tissue injuries to the right shoulder and right hip joint, and a mild head injury. *Jitan Nagra vs. Abidnego Nyandusi Oigo* [2018] eKLR [2018] KEHC 3078 (KLR) (Majanja, J) relied on by the appellant is quite dated. *Godfrey Wamalwa Wamba & another vs. Kyalo Wambua* [2018] eKLR [2018] KEHC 8450 (KLR) (J. Kamau, J), that the trial court relied on, the claimant had numerous injuries, in addition to the fractures of the tibia and fibula bones, being a compound fracture of the right distal tibia and fibula, a cut wound on the scalp, a cut wound on the chest and a cut on the lower lip.
  17. I find guidance in *Ndwiga & another vs. Mukimba* [2022] KEHC 11793 (KLR) (Njuguna, J), *Kiama vs. Mutiso* [2024] KEHC 5135 (KLR) (Majanja, J), *George Raini Atungu vs. Moffat Onsare Aunga* [2021] eKLR (Ougo, J), *Kimita vs. Travel Budget Express & another* [2024] KEHC 6435 (KLR) (Nzioka, J) and *China Railway No. 10 Engineering Group Co. Limited vs. Osugo* [2024] KEHC 2662 (KLR) (Chigiti, J), and find and hold that the award made by the trial court was slightly on the higher side.
  18. Consequently, I shall set aside, as I hereby do, the award made by the trial court and substitute it with an award of Kshs. 600,000.00 general damages. The appeal herein is disposed of in those terms. Each party shall bear their own costs. Orders accordingly.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 4<sup>TH</sup> DAY OF APRIL 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Emily Nyangano, instructed by Omay & Company, Advocates for the appellant.

Ms. Winnie Anono, instructed by Mukisu & Company, Advocates for the respondent.

