



**Oyaro v Morris (Civil Appeal E054 of 2024)
[2025] KEHC 5361 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E054 OF 2024
AN ONGERI, J
APRIL 25, 2025**

BETWEEN

DADIUS MOSOTI OYARO APPELLANT

AND

GRACE KILOLA MORRIS RESPONDENT

*(Being an appeal from the judgment and decree of Hon. D. Wangeci
(SPM) in Voi CMCC No. 47 of 2021 delivered on 22nd July 2024)*

JUDGMENT

1. The Respondent filed Voi CMCC No. 47 of 2021 seeking general damages and special damages in respect of injuries she sustained in a Road Traffic Accident (RTA) which occurred on 28th October 2022 at the junction of Voi Taveta Road.
2. The Respondent sued the Appellant in that case seeking general damages and special damages for injuries the Respondent sustained in the said RTA.
3. The accident involved motor vehicle registration No. KDD 665K in which the Respondent was lawfully travelling as a passenger when the said motor vehicle lost control and veered off the road landing on a trench and as a result of the Road Traffic Accident, the Respondent sustained serious injuries.
4. The Appellant denied negligence and also occurrence of the said Road Traffic Accident and alleged that the Respondent gave false evidence to the police and uttered a false document namely a false police abstract obtained irregularly to advance a fraudulent claim.
5. The Respondent evidence was that the motor vehicle registration number KDD 665K Nissan Matatu was being driven from Wundanyi towards Mwatate when it lost control and landed in a ditch.



6. The Respondent testified as PW2 said she suffered the following injuries:-
 - i. Bruises and abrasions on the forehead.
 - ii. Blunt trauma to the chest.
 - iii. Blunt trauma to the abdomen.
 - iv. Blunt trauma to the right knee/leg.
 - v. Blunt trauma to the lower back.
 - vi. Wound care done.
 - vii. Complains of abdominal pains, headache and backache.
7. The trial court found the Appellant 100% liable in negligence and awarded general damages as follows:-

General damages for pain and suffering Kshs. 300,000/=

Special damages Kshs. 2,550/=

Total Kshs. 302,550/=
8. The Appellant has appealed to this court against both liability and quantum on the following grounds:-
 - i. That the learned trial Magistrate erred in law and in fact in his award arriving at unjust decision against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - ii. That the learned trial Magistrate erred in fact and in law reaching a decision that was thus unjust, against the weight of evidence and was misguided to awarding the Respondent an amount of general damages Kshs. 300,000/=:, special damages Kshs. 2,550/= plus costs and interest of the suit an amount that is considered excessive in a number of precedents regarding soft tissue injuries.
 - iii. That the learned trial Magistrate erred in fact and in law in awarding a huge award for the injuries sustained by the Claimant in this suit which were soft tissue injuries and not enough to attract the huge award that was given by the learned Magistrate.
 - iv. That the learned trial Magistrate erred in law and in fact disregarding the Defendant's submissions on the issue of calculation on quantum thus awarding an inordinately high amount.
9. The parties filed written submissions as follows:- The appellant submitted that the appeal challenges the judgment of Voi CMCC No. 047 of 2021 (delivered on 22/07/2024), where the appellant was held liable and ordered to pay Ksh. 300,000 in general damages to the respondent.
10. The appellant submitted that the award was excessive given the nature of the injuries (soft tissue injuries with no permanent disability).
11. That the appeal is only on quantum, contending that the trial court's award was inordinately high.
12. That the Respondent's injuries (pleaded in the plaint and medical report by Dr. Darius Wambua Kiema) included bruises, abrasions, and blunt trauma to the chest, abdomen, knee, and back.
13. That the medical report confirmed injuries were soft tissue with no permanent disability.



14. The appellant cited the principles from the case of Power Lighting Co. Ltd v Zakayo Saitoti Naingola (2008) where the court said that damages must be compensatory, not excessive and further that awards should align with precedent and inflation.
15. That comparative case law supports lower awards (Ksh. 40,000–80,000) for similar soft tissue injuries:
16. The appellant relied on the following cases;
 - i. HB (Minor) v Jasper Magari where Ksh. 60,000 upheld on appeal for soft tissue injuries.
 - ii. Eva Karemi & 5 Others v Koskei Kieng where Ksh. 40,000–70,000 was awarded for similar injuries.
 - iii. Two Homa Bay High Court cases where Ksh. 80,000 awarded for comparable injuries.
17. The appellant seeks reduction of general damages to Ksh. 80,000.
18. The appellant urged the court to allow the appeal, set aside the trial court’s award, and substitute it with Ksh. 80,000, plus costs.
19. The Respondent submitted that she was injured in a road accident on 2.10.2021 while traveling in the Appellant’s vehicle.
20. A test suit (Wundanyi SPMCC No. E056 of 2021) established the Appellant’s 100% liability, which was adopted in this case.
21. The respondent further submitted that the discretion of the Trial Court by the appellate court can only interfere if the trial court;
 - i. Applied wrong principles,
 - ii. Considered irrelevant factors,
 - iii. Ignored relevant evidence, or
 - iv. Made an inordinately high/low award (Catholic Diocese of Kisumu v Tete).
22. That respondent’s injuries included bruises, blunt trauma (chest, abdomen, knee, back), headaches, and abdominal pain.
23. That the award of Kshs. 300,000 was supported by the following precedents;
 - i. Joseph Wahinya v Benson Lucheveli (2022): Kshs. 200,000 for similar injuries (adjusted for inflation).
 - ii. East Africa Institute v Francis Saha Lewis (2024): Kshs. 300,000 upheld for comparable injuries.
 - iii. Poa Links Services Ltd v Sindani Boaz (2021): Kshs. 350,000 for similar trauma.
24. The respondent further submitted that the appellant did not prove that the trial magistrate misapplied principles or acted unreasonably.
25. That the mere fact that the award differed from the Appellant’s proposal does not make it excessive.
26. The respondent said that the appeal lacks merit and should be dismissed with costs.
27. The Respondent argued that the trial court’s award was reasonable, precedented, and within judicial discretion, urging the appellate court not to disturb it.



28. The first appellate court acts as the last court of facts and must ensure a proper re-evaluation of evidence while correcting any errors in the trial court's judgment. The first appellate court must re-examine the entire evidence (oral and documentary) and arrive at its own independent conclusions on facts and law. It cannot simply rely on the trial court's findings but must apply its own mind.
29. The issues for determination in this appeal are as follows:-
- i. Whether the trial court was right in finding the Appellant 100% liable in negligence.
 - ii. Whether the award of damages was excessive.
30. On the issue of liability the Respondent was a passenger in motor vehicle registration No. KDD 665K and there is no way he would have contributed to the accident.
31. On the issue of quantum of damages, I have considered the submissions by both parties.
32. The Appellant submitted on the cases of Homabay Civil Appeal No. E111 of 2021 James Kwanga Rege =Versus= LA (a minor suing through her father and next friend GAA) where the Plaintiff suffered soft tissue injuries, an award of Kshs. 400,000/= was reduced to Kshs. 80,000/=
33. The Appellant also relied on the case of Homabay HCCA No. 113 of 2021 where an award of Kshs. 300,000/= for soft tissue injuries was reduced to Kshs. 80,000/=
34. I have also considered the authorities relied on by the respondent and I find that the injuries were slightly more serious than in the current case.
35. I have considered the nature of the injuries sustained by the respondent and I find that they were minor soft tissue injuries with no cuts or fractures or incapacity.
36. The Respondent suffered the following injuries:-
- i. Bruises and abrasions on the forehead.
 - ii. Blunt trauma to the chest.
 - iii. Blunt trauma to the abdomen.
 - iv. Blunt trauma to the right knee/leg.
 - v. Blunt trauma to the lower back.
 - vi. Wound care done.
 - vii. Complains of abdominal pains, headache and backache.
37. I find the award of Kshs. 300,000/= excessive in the circumstances and I reduce the same to Kshs 130,000/=.
38. Since the appeal partially succeeded, each party to bear its own costs of this appeal.

DATED, SIGNED AND DELIVERED THIS 24TH APRIL 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-



Court Assistants: Maina/Millicent

