



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omery v Matara (Civil Appeal E877 of 2023)  
[2025] KEHC 4942 (KLR) (Civ) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4942 (KLR)

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

**CIVIL**

**CIVIL APPEAL E877 OF 2023**

**JN NJAGI, J**

**APRIL 24, 2025**

**BETWEEN**

**ROSE AKOYO OMERY ..... APPELLANT**

**AND**

**TIIDA WESLEY MATARA ..... RESPONDENT**

*(Being an appeal from the judgement and decree of Hon. L. B. Koech  
(Mrs), Principal Magistrate, in Nairobi Chief Magistrate Court  
at Milimani Civil Case No. E3373 of 2022 delivered on 4/8/2023)*

**JUDGMENT**

1. The appellant brought suit against the Respondent seeking general and special damages after she was injured in a road traffic accident involving a motor vehicle belonging to the respondent. The trial court awarded her Ksh.500,000/= in general damages. The appellant was aggrieved by the award and lodged the instant appeal. The grounds of appeal are that:
  1. The Learned magistrate erred in Law and in fact in failing to appreciate the relevant principles and case law in assessing damages and thereby arrived at a very low award on damages.
  2. The Learned Magistrate misdirected himself and failed to give any due and proper consideration to the pleadings and evidence on record and submissions and thereby made an erroneous judgement.
2. The respondent did not take part in the appeal.
3. The Appellant submitted that she sustained a fracture of the right tibia. That she suffered a lot of pain and discomfort as a result of the accident. That at the time of examination by her doctor, the



doctor noted that she was still limping and complained of pain on the right leg, difficulty in walking and inability to perform heavy duty. The doctor assessed the degree of permanent incapacity at 20%.

4. The appellant submitted that the award of Ksh.500,000/= made by the trial court was low in face of the serious injuries that she suffered. Her counsel urged the court to award a sum of Ksh.1,000,000/=.
5. This being a first appeal, it is trite law that the court ought to examine and re-evaluate the evidence on record, assess it and make its own conclusion. This position was taken in *Selle & Another –vs- Associated Motor Boat Co. Ltd.& others* (1968) EA 123 where the Court of Appeal held that:

“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.

6. It is well settled in law that a trial court has discretion in awarding damages and that an appellate court will only interfere with the award if it is shown that the award is inordinately high or low as to represent an entirely erroneous estimate or that the trial court proceeded on wrong principles, or that it misapprehended the evidence in some material respect and so arrived at a figure which was inordinately high or low (see *Bashir Ahmed Butt v. Uwais Ahmed Khan*. [1982-88] KAR 5).
7. The Court of Appeal in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001* [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

8. According to the medical report that was prepared by Dr. Okoth Okore, the respondent sustained a fracture of the right tibia. At the time of examination, the appellant complained of pain on the right leg, difficulty in walking and inability to perform heavy duties. The doctor assessed permanent incapacity was at 20%.
9. In the case of *Michael Njagi Karimi –v- Gideon Ndungu Nduribu & another* (2013) eKLR that was relied on by the appellant in support of an award of Ksh.1,000,000/=, the claimant had sustained fractures of the left femur, two fractures of right lower leg, fracture right upper hand and two fractures of right lower arm. Ksh.2,000,000/= was awarded in that case. It is clear that there was no comparison in the injuries sustained in that case with the injuries sustained by the appellant herein. In the cited case there were 6 fractures whereas in the instant case there was only one fracture. The authority cited by the appellant was therefore not relevant.



10. In making an award of Ksh.500,000/= the trial magistrte relied on the case of Ndwiga & another v Mukimba, Civil Appeal No.E006 of 2022 where an award of Ksh.1,200,000/= was reduced to Ksh 500,000/= for fracture of tibia and fibula. The trial court stated in its judgment that the injuries in that case were similar to those sustained by the appellant herein. This was however not the case as there was no disability in the cited authority whereas the appellant herein had been left with a 20% permanent disability. It is clear that the trial court failed to take into account a relevant factor in making an award of Ksh.500,000/=. That is sufficient reason for this court to interfere with the award.
11. I have on my part considered the awards in the following cases:Moses Kiragu Kairegi v Chinga Tea Factory [2018] eKLR where Mshila J. enhanced an award of Ksh.300,000/= to Ksh. 600,000/= where the claimant had suffered a fracture of the proximal 1/3 of the right tibia and the distal 1/3 of the fibula which had left him with 15% disability.Stephen Kamau Wanderi & Another –vs- Gladys Wanjiku Kungu [2006] eKLR where the Respondent was awarded Kshs.600,000/= for a compound fracture of the left tibia and fibula with permanent disability assessed at about 20%.Muchemi *v Tarus (Civil Appeal 93 of 2021)* [2022] KEHC 17143 (KLR) (22 November 2022) (Judgment) where an award of Ksh.1,200,000/= was reduced to Ksh.700,000/= in a case where the claimant had sustained fracture of the left tibia and fibula bone; blunt injury of the left ankle; cut wound on the back of the head and stiffness of the left knee. The injuries had left him with disability of 30%.*Kelvin v Runyambo (Civil Appeal E091 of 2021)* [2023] KEHC 25388 (KLR) (Civ) (17 November 2023) (Judgment) where an award of Ksh.1,000,000/= was on appeal reduced to Ksh.600,000/= in a case where the claimant sustained a mid-shaft fracture of the left tibia and fibula and suffered a swollen tender and painful leg. The doctor assessed the degree of permanent incapacity at 10%.
12. I am of the view that the awards in the above cases compare well with the injuries sustained by the appellant herein and are a good guide in determining an appropriate award to the appellant. Considering that the appellant sustained one fracture and was left with a permanent disability of 20%, I am of the view that an award of Ksh. 620,000/= would be sufficient compensation for the injuries suffered by the appellant. The award of the trial court is therefore set aside and substituted with an award of Ksh. 620,000/=.
13. The appellant to bear his own costs to the appeal.

Orders accordingly.

**DELIVERED VIRTUALLY, SIGNED AND DATED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL, 2025**

**J. N. NJAGI**

**JUDGE**

In the presence of:

..... for Appellant

Court Assistant -

