



**Chepkech & another v Kwamboka (Civil Appeal E004 of 2022)
[2025] KEHC 7017 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E004 OF 2022
SM MOHOCHI, J
MAY 22, 2025**

BETWEEN

NOAH CHEPKECH 1ST APPELLANT

WILLIAM KIPKOSGEI 2ND APPELLANT

AND

BEATRICE KWAMBOKA RESPONDENT

*(Being an appeal from the Judgement of Hon E. G. Nderitu (CM)
delivered on 30th November, 2021 in Molo CMCC No. 310 of 2018)*

JUDGMENT

1. By a Plaintiff filed on 16th August, 2018 in Molo CMCC No. 310 of 2018 the Respondent sued the Appellants herein for general damages, special damages of Kshs. 36,990, costs of the suit, and interest for bodily injuries sustained as a result of a traffic road accident that occurred on 3rd May, 2016 along the Nakuru-Eldoret Road.
2. The Respondent claimed that she was on board Motor Vehicle Registration Number KBQ 832V Toyota Land Cruiser which was driven by the 2nd Appellant lost control veered off the road and rammed into Motor Vehicle Registration number KBN 445V/ZD5344 Trailer causing her to sustain serious injuries.
3. The Appellants in their joint response dated 9th December, 2019 denied the particulars of negligence attributed to them and stated that if the accident occurred the same was wholly caused by the negligence of the Respondent
4. At the hearing, the Respondent called one witnesses, while the Appellant also called one witness not call any witness. The Parties entered into a consent on liability the ration of 85:15 in favour of the Respondent as against the Appellants and adopted as partial judgment on 14th September, 2021.



5. The issue of quantum being the sole issue for determination, the Court in the judgement dated 30th November, 2021 awarded general damages of Kshs. 800,000 and special damages of Kshs. 33,604 subject to 15% contribution leaving the sum of Kshs 708,563.40.
6. The Appellants aggrieved, filed the instant appeal vide Memorandum of Appeal dated 6th January, 2022 on seven (7) grounds summarized as follows:
 - i. That the Learned Trial Magistrate erred in law and in fact in awarding general damages of Kshs. 800,000 which was excessive and unreasonably high and failed to consider awards in comparable cases.
 - ii. That the Learned Trial Magistrate erred in law and in fact in awarding special damages of Kshs. 33,604 yet the same had not been strictly proven.
7. The Appellants thus seek that the appeal be allowed with costs and the judgement of the Trial Court be set aside and or varied with the court entering judgment in favour of a lower award.

Appellant's Submissions

8. On the award for general damages, it was submitted that there being no dispute on the injuries sustained, comparable injuries should as far as possible be compensated by comparable awards. the Appellants proposed the sum of Kshs 300,000/= and cited inter alia the case of:
 - a. *Ndung'u Dennis vs Ann Wangari Ndirangu*[2018] eKLR, where the appellant sustained soft tissue injuries to the lower leg and soft tissue injuries to the lower back and an award of Kshs 300,000 was reduced to Kshs 100,000.
 - b. *Pascal Ouko* [2023] KEHC 24464 (KLR) where the award of Kshs. 211,550 was reduced to Kshs. 155,000 for chest contusion, blunt trauma to the back, scalp, neck, lower limbs, upper limbs and lacerations on the knee.
 - c. *Mugo Nyaguthii* [2023] KEHC 24186 (KLR) damages for Kshs. 800,000 were reduced to Kshs. 550,000 for upper facial bruise wound, swollen tender right thigh, right sub-troneheric and mid shaft femur fracture, upper thoracic spine spodylasis, lumber spine spodylasis, right hip joint osteoarthritis, soft skeletal tissue injuries.
 - d. *Justine Nyamwea Ochoki & Another v Francis Ndurya & Another* [2020] eKLR the Court reduced an award of Kshs. 500,000 to Kshs. 180,000 for the injuries in the nature of fracture of the chest bone, blunt object injury to the chest, bruises on the neck and permanent disability of 3%.
9. As regards special damages, the Appellant submitted that the Respondent in her testimony admitted to incurring Kshs. 12,186 and not the amount awarded by Court therefor ethe award should be reduced to Kshs. 12,186

Respondent's Submissions

10. The Respondent in opposing the appeal argued that injuries were well proved and that the award was not excessive and the Court in awarding damages did not consider all the injuries and ignored loss of normal lumba which would have called for a higher award. The award should be maintained as it is commensurate with the injuries sustained. Reliance was placed in:



- a. Nancy Oseko vs Board of Governors Maasai Girls High School [2011] eKLR the Plaintiff the Plaintiff was awarded Kshs. 2,500,000 for sustaining sustained chest injury, head compression, fracture of the thoracic spine No. 12 and loss of sensation and other soft tissue injuries
 - b. Naftali Njoroge Njau vs Polypipes (steel division) Ltd [2016] eKLR an award of Kshs. 3,000,000 million was given for injuries in the nature of multiple soft tissue injuries involving lumbosacral spine, posterior chest wall and legs and paraparesis
 - c. Geoffrey Maraka Kimchong vs Frechiah Hugi [2020] eKLR the Plaintiff suffered a cut wound on the cheek which was tender, blunt trauma to the pelvis which was tender, fracture of the right acetabulum and was awarded Kshs. 1,000,000
11. Regarding special damages, it was submitted the same was pleaded and proven by the receipts produced and the receipts on record.

Analysis and Determination

12. I have considered the record of appeal, the evidence, the submissions by the parties' respective counsel, the authorities relied on and the Applicable law. The Appellants are only challenging the quantum of damages. The sole issue for determination therefore, is whether the award by the Trial Court was inordinately too high or excessive.
13. This Court infers guidance from the case of *Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2)* [1985] KECA 137 (KLR) where the Court of Appeal 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 a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that 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. See *Ilanga v Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.
14. Further in the Court of Appeal case in *Butt v Khan* [1978] KECA 24 (KLR) it was stated that:-
- “... An Appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded 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. Similarly, in *Kemunto v Owino & 3 others* [2024] KEHC 3500 (KLR)
- “it is settled law that an award of general damages is discretionary and an appellate court can only interfere with such discretion, if the trial court took into account irrelevant factors or left out relevant factors or the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate.”
16. From the foregoing authorities, it is clear that an award of general damages being discretionary, a Court sitting on Appeal will only interfere with the award of the Trial Court if it is shown that the same was inordinately so high or low as to represent an entirely erroneous estimate or if it is established that the



Trial Court based its decision on wrong legal principles or on a misapprehension of the evidence or left out a relevant factor and took into account irrelevant factors.

17. The Appellants contend that the injuries were not that severe to attract the award given by the Trial Court. It was argued that the Trial Court did not base the award on comparable awards made in comparable injuries. The Respondent pleaded the following injuries.
 - a. Loss of normal lumbar curvature/lordosis with partial collapse
 - b. Fracture of Superior end plate of T12
 - c. Tenderness on the head, both upper and lower limbs
18. The medical report by Dr. Paul K. Rono dated 7th August, 2018 and one by doctor Mr. Z, Gaya dated 2nd May, 2017 the P3 Form and the medical record from St Lukes hospital were all produced by consent. The records confirmed the injuries which there seem to be no dispute.
19. The Trial Court in its judgement noted that severity of the injuries sustained and further noted that the authorities relied on by the Respondent reflected more serious injuries than the ones sustained by the Respondent herein. The Court also considered the value of money and the fact that although there was no permanent incapacity the must have been severe pain. Although the trial Court noted the authorities cited by the parties, it did not cite any comparable authorities in arriving at the award but nonetheless gave a basis for arriving at the figures.
20. Taking note of the decision of the Trial Court and the injuries sustained, parties need to be reminded that no similar injuries lead to the same after-effect due to various reasons including age of the victim, overall health, recovery period and the specific circumstances of the injuries. All these play a role in how an injury affects a person. Further awards in past decisions act as guidelines and each case rides on its own facts.
21. Be that as it may, looking at the injuries sustained and the two medical reports, the Respondent suffered no permanent disability and the fracture did not require any surgery only lumbar support by a corset. There were no future medical expenses pleaded and the Respondent was prescribed pain killers to manage the pain.
22. Money can never renew a battered physical frame it can only compensate the injured party fairly for the injuries sustained. The injured is entitled to what is reasonably fair so as to try and restore them to the position they were in prior to the injury. Therefore, damages should be commensurate as much as possible the injury suffered.
23. The authorities relied on by the Appellants at the Trial Court were a bit old and would therefore have not represented the value of the shilling at that point. However, the authorities relied on in appeal moreso Geoffrey Maraka Kimchong vs Frechiah Hugiru [supra] and Mugo Nyaguthii (supra) are more recent and reflect even more serious injuries than the ones sustained by the Respondent.
24. I therefore come to the conclusion that Kshs. 800,000 awarded was excessive in the circumstances and this Court has to interfere with the Trial Court's discretion on the assessment of general damages. Taking into account the accident occurred in 2016, the inflationary trend and the spending power, an award of KShs.450,000 would have been sufficient to compensate the Respondent for the pain and suffering.



Special Damages

25. The Respondent pleaded special damages of Kshs. 36,990. The Court awarded Kshs. 33,604 as the special damages proven. I have perused the Trial Court file since the Record of Appeal appear to be missing some of the receipts. From the list of documents filed on 16th August, 2018 and the Respondent availed the following receipts as proof
- a. Records of Motor vehicle Kshs. 550
 - b. Receipt No. 380960 dated 3/5/16 for Kshs. 2,350
 - c. Receipt No. 380966 dated 3/5/16 for Kshs. 2,318
 - d. Receipt No. 381322 dated 5/5/16 for Kshs. 10,000
 - e. Receipt No. 125375 dated 9/5/16 for Kshs 1,300
 - f. Receipt No. 382443 dated 9/5/16 for Kshs. 1,086
 - g. Receipt No. 394386 dated 6/7/16 for Kshs. 10,000
 - h. Receipt No. 383296 dated 13/5/16 for Kshs. 6,000
- Total Kshs. 33,604
26. The above figure is what was proved and therefore the award cannot be disturbed.
27. In the upshot, this Appeal partially succeeds to the extent that the Judgment of the Trial Court in so far as general damages of Kshs 800,000 is concerned is set aside and is substituted with a judgement of this Court in favor of the Respondent against the Appellants in the sum of KShs.450,000 subject to 15% contribution leaving the sum of Kshs. 382,500.
28. Each party shall bear its own costs.

It is so ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 22ND DAY OF MAY 2025.

MOHOCHI S.M.

JUDGE.

