



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onyango & another v Nyaikamba (Civil Appeal E1095 of 2023)  
[2025] KEHC 6154 (KLR) (Civ) (7 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6154 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1095 OF 2023**

**JM NANG'EA, J**

**MAY 7, 2025**

**BETWEEN**

**CHADWICK ONYANGO ..... 1<sup>ST</sup> APPELLANT**

**IBRAHIM ABDULLAH ADAN ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ANTONINA NYAIKAMBA ..... RESPONDENT**

*(Being an appeal from Judgement and Decree of the Honourable Caroline Ndumia  
(SRM/Adjudicator) delivered on 25th August, 2023 in SCCC No. E2650 of 2023)*

**JUDGMENT**

1. The claim in the Small Claims Court was instituted over injuries the Respondent suffered in a road traffic accident which occurred on 28<sup>th</sup> April, 2023 whilst the Respondent was a passenger aboard motor vehicle registration number KCA 7X1U belonging to the 2<sup>nd</sup> Appellant and being controlled by the 1<sup>st</sup> Appellant.
2. The Respondent's claim is that on the fateful day the 1<sup>st</sup> Appellant recklessly drove or controlled the subject motor vehicle causing it to veer off the road and hit a pavement thereby causing the accident which occasioned him serious injuries.
3. The Appellants admitted the whole of the claim as per paragraph 3 of the Response to the Statement of Claim but rather inconsistently prayed that the claim be dismissed with costs. As the trial court and the parties appear to have proceeded on the understanding that the Claim was contested, the court will determine the appeal on merits.



4. The matter was heard by way of written submissions and the lower Court delivered judgment in favour of the Respondent in the following terms;  
Liability -100%against the Appellants  
General damages -Kshs. 350,000/=.  
Special damages of-Kshs. 3,550/=.  
The costs of the claim and interest from the date of delivery of the judgment.
5. The Appellants were dissatisfied with the outcome and preferred this appeal vide Memorandum of Appeal dated 15<sup>th</sup> September, 2023 on 5 grounds that can be summarized into one thus:  
That the Learned Magistrate erred in law and fact in finding that the Respondent was entitled to the total damages of Kshs. 353,550/= that were too high in the circumstances.
6. The Appellants pray that the Appeal be allowed, the judgment of the Trial Court be set aside and the costs of the Appeal to borne by the Respondent.

### **Appellant's Submissions**

7. The Appellants submit that the award was too high considering that the Respondent suffered only minor injuries and opine that a sum of Kshs. 100,000/= would be sufficient compensation. The Appellants rely on the case of *Ndungu Dennis v Ann Wangari Ndirangu & another* [2018] eKLR and *HB (Minor suing through mother and friend DKM) v Jasper Nchonga & Another* [2021] eKLR where awards of Kshs. 100,000/= and Kshs 60,000/= were allowed.

### **Respondent's Submissions**

8. The Respondent submits that the award was reasonable taking into account the incidence of inflation and places reliance on *Harun Muyoma Boge v Daniel Otieno Agulo MGR* [2015] eKLR where the court opined that the assessment of general damages is not an exact science and the court takes into account the nature and extent of injuries in relation to previous awards for similar or comparable injuries.

### **Analysis and determination**

9. This is an appeal from the *Small Claims Court*. Section 38 of the *Small Claims Court Act* provides that an appeal against a decision or order of the Small Claims Court lies to the High Court only on matters of law and the decision shall be final. Therefore, this court cannot interfere with factual findings of the Trial Court unless it is shown that the court considered irrelevant factors or disregarded relevant factors. (see *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123}. The Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
  - “i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - i. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and



- ii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
10. Having considered the record of appeal, the evidence adduced and the arguments proffered by the parties’ respective Counsel, the Appellants are only challenging the quantum of damages assessed and granted to the Respondent by the lower court. The primary issue for determination, therefore, is whether the award by the Trial Court was inordinately high as to represent an entirely erroneous estimate of damages awardable to the Respondent in the particular circumstances of this case.
11. The general guiding principle was highlighted by the Court of Appeal in the celebrated case of *Butt v Khan* [1978] KECA 24 (KLR) where the Court 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”
12. Further the Court of Appeal in *Kemfro Africa Limited t/a “Meru Express Services (19760” & Another v Lubia & Another* (No.2) [1985] KECA 137 (KLR) was of the view 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 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.”
13. I have looked at the injuries as particularized in the Statement of Claim, The Respondent’s medical examination form ( P3 Form) and his medical-legal report dated 23<sup>rd</sup> May, 2023. It is shown thereon that he suffered blunt soft tissue injuries on the face, chest and both upper limbs.
14. The Trial Court relied on the case of *Poa Link Services Co. Ltd & another v Sidhani Boaz Bonzemo* [2021] eKLR to make the disputed award. In the case, the court assessed general damages in the sum of Kshs. 350,000/= for blunt injury to the chest as well bruises to the lower abdomen; the right hip joint, thigh and knee. These injuries are soft tissue in nature as compared to the instant matter.
15. Having taken note of the injuries sustained by the Respondent; the medical opinion and case law that guided the Trial Court, I find that the amount of Kshs. 350,000/- assessed and granted in general damages is not inordinately high but is comparable to awards granted in similar cases as for instance in the case relied upon by the Trial Court.
16. To sample further comparable cases, in *Duncan Mwenda & 2 Others v Silas Kinyua Kitbela* (2018) eKLR, the claimant sustained severe head injury with intracerebral haematoma; damage to the exterior tendon of the left middle finger and soft tissue injuries on the chest wall .He was admitted in hospital for 5 months in an unconscious state . He complained of recurrent headache, chest pain, inability to extend the left middle finger and inability to hold tightly with the left hand. Like in the instant case the injuries, however, healed well without permanent disability. This court assessed and awarded general



damages of Ksh. 350,000 in that case in which the injuries sustained are even more severe relative to the instant case.

17. In *Catherine Wanjiru King'ori & 3 Others v Gibson Theuri Gichubi* (2005) the Claimant was granted Kshs. 300,000/= for soft tissue injuries to the left ankle, legs and chest.
18. For more or less similar injuries, the Claimant in Embu HCCA No. 71 of 2016 (*Bonface Mugendi & Another v Emilio Murimi Njue*) was awarded a similar sum of general damages.
19. The trial court's award is therefore within the range of previous awards of general damages in comparable cases and is not to be faulted.
20. The Appellants do not appear to be challenging the award of special damages which, in any event, the Respondent specifically pleaded and strictly proved as required in law.
21. For the foregoing reasons, I find that the appeal is not merited and is therefore dismissed with costs to the Respondent.

**J. M. NANG'EA,**

**JUDGE.**

**JUDGEMENT DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF MAY 2025 IN THE PRESENCE OF:**

The Appellants' advocate, Mr Kabita.

The Respondent's advocate, Ms Musavakwa

**J. M. NANG'EA,**

**JUDGE.**

