



**KMW (Minor Suing Through the Mother and Next of Friend GWM ) v Mbote  
(Civil Appeal E115 of 2022) [2025] KEHC 7946 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7946 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E115 OF 2022**

**EN MAINA, J**

**JUNE 5, 2025**

**BETWEEN**

**KMW (MINOR SUING THROUGH THE MOTHER AND NEXT OF FRIEND  
GWM ) ..... APPELLANT**

**AND**

**MUTISYA MBOTE ..... RESPONDENT**

*(Being an appeal from the judgment of the Hon K. Kenei (RM)  
delivered on 28th April, 2022 in Machakos CMCC No 606 of 2020)*

**JUDGMENT**

1. Vide a Complaint filed on 22.09.2019, the cause of action arose on or about 7<sup>th</sup> December 2018 at about 6.00 pm where the minor was a lawful passenger onboard motor vehicle KCS 135 T at Konza City area along Nairobi Mombasa Highway when the defendant and/or his authorized driver carelessly and or negligently managed, drove the motor vehicle KCQ 611 E and collided with Motor vehicle KCS 135 T that it lost control, veered off the road thereby occasioning the minor severe bodily injuries as a result.
2. The Plaintiff claimed special damages of Kshs. 800, general damages for pain and suffering, costs of the suit and interest.
3. The Defendant filed a defence dated 16.07.2020 denying the contents of the Complaint and stated that of the accident occurred, it was caused by the contributory negligence of the driver of the motor vehicle KCS 135T. He prayed that the suit be dismissed with costs.
4. On 28.10.2021, the parties by consent agreed that liability be entered for the Plaintiff against the Defendant in the ratio of 80: 20% and file submissions on quantum.
5. In summary, the award of the Trial Court was as follows;
  - a. Liability 80:20% In favour of the Plaintiff



- b. General damages Kshs 320,000
  - c. Costs and interest
6. Being dissatisfied by this judgment the Appellant filed Memorandum of Appeal dated 29.06.2022 seeking to have the judgement on quantum set aside and the court re assess the general damages. The Appeal is founded on the grounds that;
- a. The learned trial magistrate erred in law and in fact in finding that the plaintiff was entitled to general damages of Kshs 400,000 which was inordinately on the lower side in view of the injuries suffered by the minor that it presented a miscarriage of justice.
  - b. The learned trial magistrate erred in law and in fact by failing to consider the appellant's submissions and judicial authorities on quantum thereby arriving at erroneous figure on quantum
  - c. The learned trial magistrate erred in law and in fact by failing to consider conventional awards for award of general damages in cases of similar injuries and awarded general damages for pain and suffering which is very low.
  - d. The learned trial magistrate erred in law and in fact by disregarding all the documents presented to court by the appellant to prove his case.
  - e. The learned trial magistrate erred in law and in fact when making an award by failing to consider the passage of time and incidence of inflation.
7. The Appeal was canvassed by way of written submissions.
8. The Appellant filed submissions on 27<sup>th</sup> May, 2024 and relied on the case of in *Selle & Another V Associated Motor Boat Co.* 09681 EA. 123 and quoted with authority for its persuasive value in *Bamabas Biwott v Thomas Kipkorir Bundotich* [2018] eKLR Civil Appeal No. 36 of 2013 where it was stated, thus;"
- “.. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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...”.
9. It was submitted that the plaintiffs claim a total sum of Kshs.800/- being special damages and the court find that the trial court erred in law and in fact by declining the appellants claim for Kshs. 800/- being special damages.
10. It was submitted that as per the filed P3 form and the other medical documents adduced before the trial court, the minor herein suffered grievous harm and the extent of his injuries ought to attract a higher compensation than what was awarded by the trial court.
11. The trial magistrate paid less attention to the head injuries by the minor and thus the reason it awarded a lower award and failing to recognize that the head injury may have as well affected the minor's intellect and behaviour may be bound to suffer partly as a result of the head injuries and partly as a side effect of the drugs he had to take.



12. The Appellant invited the trial magistrate to be guided by the decision of the court in the case of Joseph Kitheka Vs. Stephen Mathuka Pius [2000] eKLR Civil Suit NO. 1750 OF 1999, where the Plaintiff suffered fracture of the radius and ulna, and fracture of the tibia and fibula among other injuries. By a Judgment delivered on 29th September, 2000, Justice Kasanga Mulwa awarded the Plaintiff Kshs.1,280,000/= General Damages.
13. The Appellants submitted that a sum of Kenya Shillings Two Million Kshs 2,000,000/= would adequately compensate the Plaintiff herein for the injuries sustained by the minor herein and loss of future earnings by the minor and the fact that the head of the minor herein, a school going child was put at risk as a result of the accident herein.
14. The Respondent filed submissions on 23<sup>rd</sup> August 2024 and submitted that the trial court in awarding the general damages of Kshs.400,000.00 scrutinized the documents supporting the injuries pleaded and guided by various authorities, it made an award of Kshs. 400,000.00 which was within the range of the authorities it had referred to where comparable injuries were sustained. It cannot therefore be considered that the award of Kshs. 400, 000.00 was inordinately low.
15. While relying on the case of Reamic Investment Limited v Joaz Ameyia Samuel [2021] eKLR, where the court substituted the award of Kshs. 600, 000.00 with Kshs. 350, 000.00 for open left femur fracture, abrasion on the left knees, face, neck, right upper imp and left upper lip as well as a contusion on the anterior chest. It was submitted that the trial court's award was a true reflection of the nature of injuries sustained by the Appellant and based on the authority relied by the court.
16. On special damages, it was submitted that the Appellant had not availed supporting receipts to prove Kshs.800.00 and therefore the trial court was right not to award the same. Presumption of expense cannot be a basis to award special damages.
17. The Respondent prayed that the appeal be dismissed with costs to the Respondent and the judgment delivered by the lower court and the decree thereto be upheld and that the interests on the said awards judgment herein.

### **Determination**

18. The principles that should guide this court in an appeal of this nature are set out in a long line of precedents. In the case of Shabani -vs- City Council of Nairobi Civil Appeal No. 52 of 1984 [1985] KLR 516 for instance the Court of Appeal held as follows:-
  - “(1) 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 based on some wrong principle or on a misapprehension of the evidence”
19. An appellate court cannot interfere with the award of the lower court simply because it could have awarded a higher amount were it to assess the damages. See the case of Kilo -v- Omar & Another – Civil Appeal No. 49 of 1984 [1986] KLR 284 where the Court of Appeal stated:
  - “(1) 1] before an award for general damages can be set aside, it must be shown that there was an error in assessing the award and it is not sufficient merely to show that the court would have made a somewhat higher award.”
20. It is also trite that whereas each case is to be determined on its own merits, similar injuries ought to attract similar awards.



21. The Trial Court awarded Kshs.400,000 for general damages relying on similar cases particularly the case of *Civicon Limited vs Richard Njomo Omwancha & 2 others* (2019) eKLR.
22. According to the P3 form the appellant sustained a blunt injury to the head, bruises on the forehead, blunt injury to the right eye, fracture on the left femur and soft tissue injuries on the groin.
23. The appellant went ahead to invite the trial magistrate to be guided by the decision of the court in the case of *Joseph Kitheka Vs. Stephen Mathuka Pius* [2000] eKLR Civil Suit No. 1750 of 1999, where the Plaintiff suffered fracture of the radius and ulna, and fracture of the tibia and fibula among other injuries. By a judgment delivered on 29<sup>th</sup> September 2000, Justice Kasanga Mulwa awarded the Plaintiff Kshs.1,280,000/= General Damages.
24. The Appellant similarly invited the trial court to find guidance in the case of *Silphanus Kumbé Murondo v Lemek Mbaka Motegi & another* [2013] eKLR - Civil Appeal No. 253 of 2020 where the High Court of Kenya at Nakuru enhanced an award for general damages to Kshs.220,000/= for fracture of the 5<sup>th</sup> metacarpal, noting that the knowledge of a fracture of a bone will always live with the victim of the injury.
25. In the case of *John Kipkemboi & Another v. Morris Kedolo* (2019) eKLR where the court stated:
 

“The assessment of damages in personal injury case by court is guided by the following principles: -

  - 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained;
  - 2) The award should be commensurable with the injuries sustained;
  - 3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts;
  - 4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account; and
  - 5) The awards should not be inordinately low or high (See *Boniface Waiti & another Vs Michael Kariuki Kamau* (2007) eKLR.”
26. The Respondent on the other hand relied on the case of *Reamic Investment Limited v Joaz Amenya Samuel* [2021] eKLR, the court substituted the award of Kshs.600,000.00 with Kshs.350,000.00 for open left femur fracture, abrasion on the left knees, face, neck, right upper imp and left upper lip as well as a contusion on the anterior chest.
27. The court is inclined to agree with the Trial Court and looking at the nature of injuries and similar cases I find that and award of Kshs.400,000 was appropriate.
28. As regards special damages, it is trite law that it must be pleaded and proven, in this case the Plaintiff pleaded Kshs 800 and the trial court did not award the same having found that the amount had not been proved.
29. Consequently, the Appeal fails and is dismissed the award of the Trial Court is upheld as follows;
  - a. Liability 80:20% In favour of the Appellant
  - b. General Damages Kshs. 400,000.00



c. Less 20% Contribution Kshs. (80,000.00)

Total..... Kshs. 320,000.00

d. Costs and interest

30. The costs of this appeal shall be borne by the Appellant.

It is so ordered.

**RULING SIGNED, DATED AND DELIVERD VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF JUNE, 2025.**

**E.N. MAINA**

**JUDGE**

In the presence of:

Mr. Kerio Advocate for the Respondent

No attendance for Mr. Kaburu Advocate for the Appellant

Geoffrey – Court Assist

