



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mangenge v Masai & another (Civil Appeal E020 of 2022)  
[2025] KEHC 9669 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E020 OF 2022**

**TM MATHEKA, J**

**JUNE 20, 2025**

**BETWEEN**

**VICTORIA NTHENYA MANGENGE ..... APPELLANT**

**AND**

**ERIC NDUTU MASAI ..... 1<sup>ST</sup> RESPONDENT**

**FREDRICK MUSYOKI PHILIPH ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the Judgment of Hon. L.K Mwendwa (SPM) in the Senior Principal Magistrate's Court at Tawa, Civil Case No.158 of 2019, delivered on 17th November 2020)*

**JUDGMENT**

1. The Appellant filed suit in the lower Court seeking general damages special damages, costs of the suit and interest for personal injuries sustained from a road accident on 30/11/2018 at around Makokani near Tawa market area along the Masii- Tawa Road. She averred that she was lawfully and carefully inside her kiosk when motor vehicle registration No. KBW 203L was negligently, dangerously and or recklessly driven/controlled/managed that it veered off the road and hit her.
2. The Respondents filed a joint statement of defense whereby they denied all the allegations in the plaint and called for strict proof. They averred that if the accident occurred as alleged, it was solely caused by or substantially contributed to by the Appellant's negligence.
3. The Appellant replied to the defence where she joined issues with the Defendants/Respondents and reiterated the contents of her plaint.
4. On 01/09/2020, the parties recorded a consent on liability in the ratio of 90%:10% in favor of the Appellant and the matter proceeded for assessment of damages. The trial court awarded general damages of kshs 100,000/= and special damages of kshs 10,633/=.



5. Aggrieved by the award, the Appellant filed this appeal and raised the following grounds;
  - a. The learned trial magistrate grossly misdirected himself in treating the evidence and submissions on quantum before him and consequently coming to a wrong conclusion on the matter.
  - b. The learned trial magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented and filed by the Appellant.
  - c. The learned trial magistrate erred in law and fact in awarding a sum in respect of damages which was inordinately low in the circumstances occasioning a miscarriage of justice.
  - d. The learned trial magistrate erred in law and fact in failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
6. The parties elected to canvass the appeal through written submissions and appropriate directions were given. Accordingly, the parties complied and filed their respective submissions.

### **Submissions by the Appellant**

7. As to whether the award of kshs 100,000/= was inordinately low, the Appellant relied on the Court of Appeal decision in *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR which cited the case of *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A.m. Lubia and Olive Lubia* [1982 –88] 1 KAR 727 at p. 730 where Kneller J.A. said:-

“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 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.”
8. It was submitted that the Appellants injuries were undisputed and were as indicated on the medical report. That she was admitted at the hospital from 01/12/2018 up to 31/12/2018 and was re-admitted on the 14/02/2019 to 20/02/2019. That the medical report, treatment notes and the P3 form were produced undisputed as exhibits.
9. It was submitted that the trial court erred in both law and fact by awarding compensation for general damages that is too low and not commensurate to the injuries sustained. That the trial court made errors in law and fact by failing to consider the authority relied on by the plaintiff in her submissions.
10. It was submitted that the trial court misdirected itself in failing to evaluate the evidence presented by the Appellant, the nature and extent of the injuries sustained as well as comparable awards made by courts in similar cases in the past such as the one relied upon by the Appellant in the trial court.
11. Reliance was placed on *Simon Taveta v Mercy Mutitu Njeru Civil Appeal 26 of 2013* [2014] eKLR where the Court of Appeal observed:

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”



12. It was submitted that an award of Kshs. 650,000/= is commensurate to the injuries suffered by the Appellant.

### **Submissions by the Respondents**

13. The Respondents identified the following as the issues for determination;
- a. Whether the trial magistrate grossly misdirected himself in ignoring the principles applicable and relevant authorities on quantum cited in the written submissions presented and filed by the Appellant.
  - b. Whether the damages awarded were inordinately low to occasion miscarriage of justice.
  - c. Whether the trial magistrate erred in law and fact by failing to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
  - d. Who should be awarded costs of the appeal?
14. On whether, the trial magistrate misdirected himself with respect to the the evidence and submissions on quantum, reference was made to page 2 and 3 of the judgment where the trial magistrate referred to the Appellant's evidence and submissions. It was submitted that the trial magistrate appreciated the Appellant's submissions and the award of damages was well reasoned and justified in the circumstances. That the medical evidence produced by the Appellant classified the injuries as soft tissue injuries and no disability was noted.
15. It was submitted that the Respondents relied on the following authorities which still hold true and relevant in this appeal;
- a. Kipkere Ltd v Peterson Ondieki Taii [2016] eKLR where the Respondent was awarded kshs 30,000/= for deep cut wound on the left leg, chest contusion and bruises on the left shoulder.
  - b. Easter Produce Ltd v Mamboleo Khamdi [2015] eKLR where the Respondent was awarded kshs 50,000/= for cut wound on the right middle finger and severe pains incurred during and after the injury.
  - c. Budd and Bloom v Lawrence Emusugut Obwa [2016] eKLR where the Respondent was awarded kshs 50,000/= for a deep cut wound on the left leg and soft tissue injuries on the leg.
16. It was submitted that the Appellant sought to mislead the trial court by citing an authority which did not have comparable injuries and which had more severe injuries. It was contended that parties have a duty to appropriately guide the court in the applicable law and relevant case law to the issue under consideration. Reliance was placed, inter alia, on Tarasila Wanja & Anor v Peter Kirimi Muthuri [2014] eKLR where the court stated;
- “I have considered the principles set out in the above mentioned case in respect of the award by the trial court and agree that in assessment of damages each case depends on its facts for there is no case that is similar to the other in terms of the injuries and agree that comparable injuries should attract comparable awards, however, in this case the appellant's counsel did not submit authorities relevant to the trial case and as such the court could not rely on the authorities which were not relevant...”
17. On whether the principles applicable and relevant authorities were ignored, reference was made to page 3 of the judgment where the trial magistrate indicated that he had considered the injuries sustained and



authorities relied upon by both parties. Reliance was placed on *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR where the Court of Appeal observed;

“The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.”

18. It was submitted that the award by the court is not meant to enrich the victim but to compensate for the injuries suffered and that the Appellant herein has been properly compensated. Reliance was placed on *Boniface Waiti & Anor v Michael Kariuki Kamau* [2007] eKLR where the court stated the principles which should guide the court in awarding general damages thus;
  - a. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries suffered.
  - b. The award should be commensurate to the injuries suffered.
  - c. Awards in decided cases are mere guides and each case should be treated on its facts and merit.
  - d. Where awards in decided cases are to be taken into consideration then the issue of own element of inflation has to be taken into consideration.
  - e. Awards should not be inordinately too high or too low.
19. As to whether the damages awarded were inordinately low, it was submitted that the award of kshs 100,000/= is commensurate for the injuries sustained by the Appellant to wit; blunt injury to the low back and cut wound right lower limb. Reliance was placed on the cases in paragraph 15 (supra) and this court was urged to uphold the award as it is not only sufficient but also based on the laid down principles applicable in awarding general damages.
20. As to whether the trial magistrate erred by failing to adequately evaluate the evidence and exhibits, it was submitted that the treatment notes, medical report and submissions were considered and the court arrived at a proper and just finding in the circumstances. This court was urged to dismiss the appeal with costs.

### **Duty of Court**

21. It is now settled that the duty of a first appellate Court is to analyze and re-evaluate the evidence on record in order to reach its own conclusions bearing in mind that it did not have the benefit of seeing or hearing the witnesses.
22. I have considered the grounds of appeal, the rival submissions and entire record, the only issue for determination is whether the award on general damages should be disturbed.

### **Analysis**

23. The issue of quantum was canvassed through written submissions in the trial court whereupon the parties agreed to annex the supporting documents to their respective submissions.
24. The injuries sustained were pleaded as follows;
  - a. Blunt injury to low back
  - b. Cut wounds right lower limb
25. AS a result of the injuries the Appellant was admitted in hospital for a total of 38 days as per the medical records . At the time of examination on 01/07/2019, the Appellant complained of pain on the right



- leg and the doctor's finding were that there was a healed scar on the right leg. His opinion was that the Appellant suffered severe soft tissue injuries but complete healing was anticipated.
26. The treatment notes from Makueni County Referral Hospital categorized the injuries as 'soft tissue' and the P3 form indicates that the Appellant suffered grievous harm. The discharge summaries show that she was hospitalized for a total of 38 days.
  27. It is trite that the appellate court will not disturb the trial court's award of damages unless the said award is so inordinately high or so inordinately low as to represent an entirely erroneous assessment. It must be shown that the trial court proceeded on wrong principles or that it misapprehended the evidence in some material respect to arrive at a figure which was either inordinately high or low.
  28. One of the principles in assessment of damages is that comparable injuries should attract comparable awards. I have looked at the injuries sustained by the Appellant and I am alive to the fact that no two cases can be completely similar. I have also looked at *Easy Coach Ltd v Emily Nyangasi* [2017] eKLR which the Appellant relied on in the trial court and which she says is comparable to her injuries.
  29. In the said case, an award of kshs 700,000/= was upheld by the appellate court and the injuries suffered were; Facial injuries, Injury to chest, injury to back, injury to right hand with cut wound, injury to right leg with cut wounds. The learned Judge observed that; "The most serious injuries were on the right hand which healed with a 10cm scar with keloid formation on the elbow and on the right leg which was treated through grafting and healed with 18cm scar right thigh, 26cm scar right leg, 28 cm scar right leg below the knee and 12 cm scar right foot with keloid formation."
  30. Evidently, the Respondent in the said case had to deal with the cosmetic effects of the keloid scars and as such, it is my view that the case is distinguishable and not comparable.
  31. The unfortunate situation in these matters is that parties sometimes fail to cite current authorities, authorities that speak to the similarity of their cases and a court is sometimes forced to check out for authorities of similar cases.
  32. I have looked at other cases like *Channan Agricultural Contractors Ltd v Fred Barasa Mutayo* [2013] eKLR, where an award of kshs 250,000/= was reviewed downwards o kshs 150,000/= for 'moderate soft tissue injuries that were expected to heal in eight months time.' There is also *Purity Wambui Muriithi v Highlands Mineral Water Company Ltd* [2015] eKLR where an award of kshs 700,000/= was reviewed downwards o kshs 150,000/= for injuries to the left elbow, pelvic region, lower back and left knee. It is noteworthy that these two cases were decided over seven years ago.
  33. The injuries in the cases cited by the Respondents are also comparable but they were decided approximately 10 years ago.
  34. Further, there is *Ndung'u Dennis v Ann Wangari Ndirangu & Anor* [2018] eKLR where the Respondent sustained soft tissue injuries to the lower right leg and to the back. An award of kshs 300,000/= general damages was reviewed downwards to kshs 100,000/=.
  35. There is *Justine Nyamweya Ochoki & Anor v Jumaa Karisa Kipingwa* [2020] eKLR where the plaintiff suffered blunt injuries to the chest, left wrist and lower lip. An award of Kshs 300,000/= was reduced to Kshs 150,000/= on appeal.
  36. Further, in *Kiruma v [Chege \(Civil Appeal 95 of 2021\)](#)* [2024] KEHC 5998 (KLR) (23 May 2024) (Judgment), the appellate court upheld an award of kshs 250,000/= for bruises on the right hand, left knee, right side of the chest and on the right ear and the prognosis by the doctor was that "the respondent suffered multiple severe soft tissue injuries that were in the process of healing with



permanent ugly scars.” The Respondent in this particular case sustained soft tissue injuries with a resultant cosmetic effect which in my view justifies the slightly high award.

37. Looking at the trial court judgment, it is clear that the trial magistrate considered and analyzed the medical evidence presented as well as the authorities cited by the parties in their submissions. However the trial court did not consider the fact that the appellant spent a considerable 38 days admitted in hospital for complications related to the injuries sustained in the said accident. That amounted to misapprehension of the evidence as that ought to have been taken into consideration. I find Justine Nyamweya Ochoki & Anor v Jumaa Karisa Kipingwa (above), and Channan Agricultural Contractors Ltd v Fred Barasa Mutayo, (above) where an award of kshs 250,000/= was reviewed downwards o Kshs 150,000/= for ‘moderate soft tissue injuries that were expected to heal in eight months time persuasive.
38. It is my view, taking into account the periods of admission in hospital and the pain and suffering caused by the injuries the sum of Ksh 150,000 would have been a reasonable compensation.

### **Disposition**

39. In the circumstances the appeal is allowed. The Judgment of the trial court on award of general damages is set aside and substituted with the award of Ksh 150,000, plus costs and interest
40. The rest of the awards remain the same.

**DATED SIGNED AND DELIVERED THIS 20<sup>TH</sup> JUNE 2025.**

**MUMBUA T MATHEKA**

**JUDGE**

Ms Nafula for the Appellant

Ms Mutua for the Respondent

Right of Appeal 30 days during which there will be stay of execution

Appellant’s Advocates

B.M Mung’ata & Co. Advocates

Respondents’ Advocates

Kinyanjui Njuguna & Co. Advocates

