



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndabari v Waweru (Civil Appeal E016 of 2023)  
[2025] KEHC 8409 (KLR) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8409 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E016 OF 2023  
CW GITHUA, J  
JUNE 11, 2025**

**BETWEEN**

**BONIFACE CHEGE NDABARI ..... APPELLANT**

**AND**

**ISAAC MAINA WAWERU ..... RESPONDENT**

*(Being an appeal from the judgement and decree of Hon. E.M. Muriuki  
(SPM) in Murang'a CMCC 234 of 2019 dated 7th March, 2023)*

**JUDGMENT**

1. The appellant, Boniface Chege Ndabari was the defendant in a suit instituted by the respondent in the lower court in which he sought both general and special damages as a result of injuries sustained in a road traffic accident whose occurrence he blamed on the appellant's negligence.
2. In his plaint dated 26<sup>th</sup> July 2019, the respondent alleged that on or about 26<sup>th</sup> April 2019, he was at his place of work in an open air garage which was besides Mugoiri stage in Murang'a town repairing motor vehicle registration No.KAZ 874 Q when motor vehicle registration No.KCK 762J (the subject vehicle) veered off the road, found him in the garage and hit him occasioning him serious personal injuries.
3. According to the respondent, the accident was caused by the appellant's or his agent's reckless driving of the subject vehicle.
4. The appellant denied liability for the accident and case proceeded for full hearing. In a judgement delivered on 7<sup>th</sup> March 2023, the learned trial magistrate made a finding on liability against the appellant at 100% and awarded the respondent general damages in the sum of Kshs.400,000 and special damages amounting to Kshs.3.850.



5. The appellant was dissatisfied with the trial court's decision but in his memorandum of appeal dated 11<sup>th</sup> March 2023, it is not clear whether he was challenging the trial court's decision on quantum only or on both liability and quantum.
6. My conclusion above is based on the fact that in the body of the memorandum of appeal, the appellant advanced eight grounds of appeal which appear to challenge the trial court's decision on both liability and quantum but in his prayers, he only requested this court to set aside the trial court's judgement on quantum and proceed to assess afresh damages payable to the respondent. This notwithstanding, in order to deal conclusively with all issues which may be in dispute between the parties, I will address the twin issues of liability and quantum.
7. In his eight grounds of appeal, the appellant principally complained that the learned trial magistrate erred in law and fact by: misdirecting himself as to the exact cause of the accident and finding him 100% to blame for the accident; misdirecting himself as to the nature of the respondent's injuries and finding that he was entitled to Kshs.400,000 general damages and Kshs.3550 in special damages which amount was manifestly excessive; ignoring the principles applicable in assessment of damages and disregarding the authorities cited in his written submissions.
8. The appellant also faulted the trial court's decision for being unjust and against the weight of the evidence and the law and contended that the decision amounted to a miscarriage of justice.
9. By consent of the parties, the appeal was canvassed by way of written submissions. The appellant's submissions were dated 27<sup>th</sup> February 2023 and were filed by his advocates on record, Kimondo Gachoka & Company Advocates while those of the respondent dated 24<sup>th</sup> January 2025 were filed on 25<sup>th</sup> February 2025 by his advocates J.N. Mbuthia & Co. Advocates.
10. This being a first appeal to this court, I have carefully re-evaluated and re-analyzed the evidence adduced before the trial court as I am enjoined to do bearing in mind the duty of a first appellate court. The duty of a first appellate court is very well settled and has been articulated in many authorities which I need not rehash here. It will be sufficient to cite the Court of Appeal's decision in Abok James Odera T/A A. J. Odera & Associates V John Patrick Machira T/A Machira & Co. Advocate (2013) where the court emphasized that the primary role of a first appellate court was to :

“.....re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.....”
11. Having the above principle in mind and having considered the grounds of appeal, the evidence on record and the oral submissions filed by both parties, I find that the key issue arising for my determination in this appeal is whether the learned trial magistrate erred in his finding on both liability and quantum.
12. Starting with the finding on liability, the evidence on record shows that only the respondent testified on the circumstances in which the accident in question occurred. He testified as PW2 and adopted his written statement dated 26<sup>th</sup> July 2019 as his evidence in chief. For undisclosed reasons, the appellant failed to include the respondent's witness statement in the record of appeal but I was able to find it in the original record of the trial court.
13. In his statement, PW2 narrated how the accident happened. He recalled that on 26<sup>th</sup> April 2019 at around 3.30 p.m., he was repairing motor vehicle registration No.KAZ 874 Q in a garage near Mugoiri bus stage when the subject vehicle which was being driven from Kiriaini direction veered off the road,



went into the garage and hit him. He became unconscious and was rushed by well wishers to Murang'a Level 5 hospital for treatment. He sustained a fracture on his right leg, dislocation on the right shoulder and multiple tissue injuries.

14. As stated earlier, the appellant did not testify and did not call any witness to testify on how the accident occurred. His only witness was Dr. Jennifer Kabuthi who testified as DW1 on matters which were only relevant to the issue of quantum which I will deal with shortly.
15. Besides the evidence of PW2, there was on record a police abstract dated 17<sup>th</sup> May 2019 which confirmed occurrence of the aforesaid accident. PW2's evidence which was not controverted by any other evidence to the contrary was that the accident occurred because the appellant's vehicle veered off the road and hit him while he was going about his ordinary business in a garage off the road.
16. This in my view is sufficient evidence of negligence or reckless driving on the part of the appellant and or his servant or agent because vehicles do not in ordinary circumstances veer off the road to injure people in establishments off the road. This can only happen if the vehicle's driver was driving without proper care and attention and thereby lost control of the vehicle. From the evidence on record, the respondent did not do anything that would have contributed to the occurrence of the accident. In the premises, I find no reason to fault the learned trial magistrate's finding on liability and the same is upheld.
17. On quantum, the respondent pleaded at paragraph 5 of the plaint that he suffered the following injuries in the accident.
  - (a) Fracture on the right humerous bone and right tibia.
  - (b) Multiple bruises on the face, scalp, upper lip and left forearm.
  - (c) Soft tissue injuries on his anterior chest, right shoulder, right upper arm and right leg.
18. The above injuries particularly that related to fractures were denied by the respondent who through Dr. Jennifer Kabuthi's evidence (DW1) denied that the respondent sustained any fracture or dislocation as alleged. According to her medical report dated 29<sup>th</sup> November 2021, the respondent only sustained severe soft tissue injuries to the right upper limb; right lower limb and other soft tissue injuries.
19. It is important to note that from DW1's medical report, DW1 examined the respondent on 29<sup>th</sup> November 2021 which was about two and a half years after the accident. Her report contrasts sharply with the treatment notes from Murang'a Level 5 Hospital dated 28<sup>th</sup> July 2019 and the P3 form dated 9<sup>th</sup> May, 2019 which confirmed that in addition to soft tissue injuries, the respondent also sustained fractures on right humerus and right tibia.
20. The injuries noted in the respondent's treatment notes and in the P3 form were confirmed by the medical report authored by Dr. P.K. Mwangi dated 24<sup>th</sup> June 2019. According to the report, on examining the respondent, Dr. Mwangi noted multiple scars on different areas of the respondent's body including his face, right shoulder, upper arm, left forearm and right leg. He also noted palpable callus on the right humerus bone and right leg on the fracture site (at the middle one third).
21. His prognosis was that the respondent had sustained fractured bones on the right upper arm and right leg in addition to soft tissue injuries. In his opinion, the affected bones will suffer early osteoarthritis.
22. The law is that general damages for personal injuries are at large and are at the discretion of the trial court which discretion must of course be exercised judiciously taking into account the nature and extent of the injuries sustained and awards previously made for comparable injuries.



23. As a general rule, an appellate court ought to be slow in interfering with awards made by the trial court unless it was satisfied that the trial court erred when assessing the damages in question by either applying wrong legal principles or by considering extraneous matters or failing to consider relevant ones. The court can also disturb the award if it was convinced that it was excessive or inordinately high or low as to amount to an erroneous estimate of the damage suffered.
24. The Court of Appeal in *Douglas Kalafa Ombeva V David Ngama* (2013) eKLR set out the principles upon which it would interfere with an award of damages made by the High Court which principles apply to the High Court when determining appeals from subordinate courts. The court expressed itself as follows;
- “ .... In law, sitting on appeal, we are duty bound to be slow in interfering with the assessment made by the trial Judge as in doing so the trial Judge is exercising discretionary powers. We can, however, interfere only where the trial Judge either considered matters that he ought not to have considered or did not consider what he should have considered or misapprehended certain aspects of the case, or on looking at the award in itself the award is either too low or too high that it must have reflected improper award.”
25. The same court in *Catholic Diocese of Kisumu V Sophia Achieng Tete* (2004) eKRL emphasized the limited mandate of an appellate court and stated thus ;-
- “ .....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 difference 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”.
26. Upon my own appraisal of the evidence on record particularly the treatment notes from Murang'a Level 5 Hospital, the P3 form and the medical report by Dr. P.K. Mwangi, it is clear that the respondent established on a balance of probabilities that he had sustained severe multiple soft tissue injuries and fractures on his humerus (right upper arm) and right tibia (right leg). It is important to note that these reports were authored by doctors who had examined the respondent soon after the accident as opposed to DW1 who examined him over two and a half years later when the fractures may have united.
27. Given the above injuries, I find that an award of Kshs.400,000 general damages cannot be said to have been inordinately high or excessive as to warrant this courts' intervention. The amount was reasonable as it was within the range of awards made for comparable injuries. For instance, in *Kiama V Mutiso* [2024] KEHC 5135, this court set aside the trial court's award of Kshs 700,000 general damages for pain and suffering for a fracture of the left tibia and other soft tissue injuries and substituted it with an award of Kshs. 400,000.
28. In *Nguku Joseph & Another V Gerald Kihui Maina* [2020] eKLR, this court awarded Kshs. 500,000 for a claimant who had suffered a fracture of the right humerus and other soft tissue injuries.
29. In view of the foregoing, I find no good reason to interfere with the trial courts award on quantum and the same is hereby confirmed.
30. As regards special damages, the same were not seriously contested on appeal and in any event, they were specifically pleaded and proved. The same will remain undisturbed.



31. For all the above reasons, I have come to the conclusion that this appeal lacks merit and it is hereby dismissed in its entirety with costs to the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the presence of:

Mr. Ndonga holding brief for Mr. Mbuthia for the Applicant

No appearance for the appellant

Ms. Susan Waiganjo, Court Assistant

