



REPUBLIC OF KENYA



KENYA LAW
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**Sammy v Nguya & another (Civil Appeal E1249 of 2023)
[2025] KEHC 8098 (KLR) (Civ) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8098 (KLR)

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

CIVIL

CIVIL APPEAL E1249 OF 2023

WM MUSYOKA, J

JUNE 10, 2025

BETWEEN

BRIAN MUNGUTI SAMMY APPELLANT

AND

STANLY WACHIRA NGUYA 1ST RESPONDENT

CITY STAR SHUTTLE LIMITED 2ND RESPONDENT

*(Appeal from the judgement and decree of Hon. Habrovinah Nyamweya,
Resident Magistrate/Adjudicator, in Nairobi SCCC No. E5221 of 2023)*

JUDGMENT

1. The suit at the trial court was initiated by the appellant. It arose out of road traffic accident on 8th August 2023. The appellant was allegedly walking off Kangundo Road, Nairobi, when he was knocked down by a motor vehicle owned or controlled by the respondents, being registration mark and number KCE 377E. He suffered injuries. He blamed the respondents for the accident, alleging negligence. He sought compensation.
2. The respondents denied liability. They averred that if there was an accident at all, the same was contributed to by the negligence of the appellant.
3. It would appear that an interlocutory judgement was entered on liability from what I see from the record of the trial court. Judgement was delivered based on written submissions, for no formal hearing was conducted, according to that record.
4. In the judgement, liability was settled at 100%, against the respondents, and compensation was ordered at Kshs. 400,000.00 general damages, Kshs. 6,550.00 special damages, with costs and interests.



5. The appellant was aggrieved. He felt that the award of general damages was on the lower side. His memorandum of appeal is dated 17th November 2023.
6. The appeal was canvassed by way of written submissions, following directions given on an unknown date in 2024. Both sides filed submissions.
7. The appellant submits that an award of Kshs. 1,000,000.00 would have sufficed. He cites *Peris Wanjiru Kahiga vs. Moses Kabata Mwangi* [2021] eKLR (Mshila, J), *Reuben Mongare Keba vs. LPN* [2016] eKLR (Okwany, J), *Kiautha vs. Ntarangwi* [2022] KEHC 1059 (KLR) (Muriithi, J) and *Benuel Bosire vs. Lydia Kemunto Mokora* [2019] eKLR (Majanja, J).
8. The respondents support the judgment of the trial court and rely on *Reamic Investment Limited vs. Joaz Amenya Samuel* [2021] eKLR (Ougo, J), *Jitan Nagra vs. Abidnego Nyandusi Oigo* [2018] eKLR (Majanja, J) and *Jesca Kajumwa Masela vs. Razick Aziz Obuba* [2021] eKLR (Chepkwony, J).
9. According to the plaint and the medical report by Dr. Habakuk Larry Omondi, the appellant sustained a fracture of the neck of the femur, a degloving injury of the gluteal region, anal cleft laceration with prolapse of the rectum and soft tissue injuries. The principal injuries were the femur fracture and the degloving injuries.
10. In its judgement, the trial court relied on *Daniel Otieno Owino & Another vs. Elizabeth Atieno Owuor* [2020] eKLR [2020] KEHC 4895 (KLR) (Aburili, J) where the claimant had sustained compound fractures of the tibia/fibula bones of the right leg, cut wounds and soft tissue injuries, and an award of Kshs. 400,000.00 was made. There was also *Washington Mukunya Karanja & another vs. Margaret Wambui Maina* [2020] KEHC 3900 (KLR)(Mwongo, J), where the injuries were an alveolar fracture of the incisor teeth, swelling on the upper part of the mouth, soft tissue injuries on the right leg, and a superficial wound, and Kshs. 300,000.00 was awarded.
11. The authorities relied on by the trial court, to assess general damages at Kshs. 400,000.00, had nothing to do with the key injuries, suffered by the respondent, in this case; being the fracture of the femur and the degloving injury.
12. Four of the authorities cited by the appellant, in his written submissions, relate to a fracture of the femur and degloving injuries. In *Peris Wanjiru Kahiga vs. Moses Kabata Mwangi* [2021] eKLR (Mshila, J), there was a fracture of the left femur, a degloving injury of the leg, a dislocation of left hip joint, and an award of Kshs. 1,000,000.00 was made. In *Kiautha vs. Ntarangwi* [2022] KEHC 1059 (KLR) (Muriithi, J), the injury was a mid-shaft fracture of the femur, and soft tissue injuries on various parts of the body, and Kshs. 800,000.00 was awarded. In *Benuel Bosire vs. Lydia Kemunto Mokora* [2019] eKLR (Majanja, J), there was a compound fracture of the mid-shaft femur, degloving injuries of the left thigh and popliteal arc and a laceration of the left leg, and an award of Kshs. 700,000.00 was made.
13. Two of the authorities cited by the respondents relate to a fracture of the femur and a degloving injury. The injuries in *Reamic Investment Limited vs. Joaz Amenya Samuel* [2021] eKLR (Ougo, J) are not comparable to those in the instant case. In *Jitan Nagra vs. Abidnego Nyandusi Oigo* [2018] eKLR (Majanja, J), there was a left femur fracture, with soft tissue injuries and Kshs. 350,000.00 was awarded. In *Jesca Kajumwa Masela vs. Razick Aziz Obuba* [2021] eKLR (Chepkwony, J), there was a degloving injury of the left foot, with fractures of the proximal phalanx of the left leg and a fracture of the metatarsal on the left foot, and Kshs. 500,000.00 was awarded.
14. The appellant relies on 2019, 2021 and 2022 decisions, while the relevant ones by the respondent date to 2018 and 2021. The authorities by the appellant relate to both a fracture of the femur and



a degloving injury of the leg, while those by the respondent relate to these injuries but sustained separately.

15. I have looked up some decisions where there were comparable injuries.
16. In *Gianchore Tea Factory Co. Ltd vs. Peter Ogamba Otao* [2021] KEHC 8189 (KLR) (Maina, J), the injuries were a right femur fracture, a degloving injury on the left leg and soft tissue injuries, and an award of Kshs. 650,000.00 was made. In *Transbionics Limited vs. Micheni* [2023] KEHC 18332 (KLR) (Njuguna, J), the claimant had a fracture of the femur mid-shaft, a degloving injury of the right thigh and soft tissue injuries, and an award of Kshs. 1,200,000.00 was given.
17. In *Ndavi vs. Mwangangi* [2024] KEHC 8106 (KLR) (Ougo, J), the injury was a fracture of the right femur, a degloving injury to the right leg and soft tissue injuries, Kshs. 700,000.00 was awarded. In *Kamau vs. Mugo & Another* [2024] KEHC 3992 (KLR) (C Kariuki, J), the claimant suffered a displaced fracture of the left femur, a degloving injury of the left foot and soft tissue injuries, and Kshs. 500,000.00 was awarded.
18. From my review of the decisions on comparable injuries, I note that the awards of general damages range from Kshs. 500,000.00 to Kshs. 1,200,000.00 in the recent past. An award of Kshs. 400,000.00 was, no doubt, on the lower side. I will allow the appeal. I shall substitute the award of general damages, of Kshs. 400,000.00, as I hereby do, with a sum of Kshs. 700,000.00. The appellant shall have the costs.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 10TH DAY OF JUNE 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Caroline Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Odhiambo, instructed by Wanzau Odhiambo & Associates, Advocates for the appellant.

Messrs. Kimondo Gachoka & Company, Advocates for the respondents.

