



REPUBLIC OF KENYA



**Salome & another v Kadenge (Civil Appeal E1293 of 2023)
[2025] KEHC 7999 (KLR) (Civ) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7999 (KLR)

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

CIVIL

CIVIL APPEAL E1293 OF 2023

AC MRIMA, J

JUNE 5, 2025

BETWEEN

JACKSON MULINGE SALOME 1ST APPELLANT

REWEL KARIUKI 2ND APPELLANT

AND

COLLINS KADENGE RESPONDENT

(Being an appeal from the judgment and decree of Hon. Ruguru, N. [Principal Magistrate] on the part of quantum of damages delivered on 23rd December 2022 in Nairobi [Milimani] Commercial Chief Magistrate's Civil Case No. E1105 of 2018)

JUDGMENT

1. The appeal subject of this judgment is only on quantum of damages. Through a Complaint dated 23rd March 2022, Collins Kadenge, the Respondent herein, sued Jackson Mulinge Salome and Rewel Kariuki, the Appellants herein, for inter alia general damages for pain and suffering and loss of amenities and special damages after having been involved in a road traffic accident on or about the 3rd May 2015. That was vide Nairobi [Milimani] Commercial Chief Magistrate's Civil Case No. E1105 of 2018 [hereinafter referred to as 'the suit'].
2. In the partially-impugned judgment delivered in the suit, the trial Court found the Appellants wholly to blame for the accident and assessed damages as follows: -
 - a. General Damages..... Kshs. 1,500,000/=
 - b. Special Damages..... Kshs. 20,250/=
 - c. Future medical expenses Kshs. 500,000/=



- d. Unpaid medical expenses Kshs. 177,081/=
- Total Kshs. 2,197,331/=
3. The Respondent was also awarded costs and interests.
 4. Aggrieved by the quantum in respect of the general damages, the Appellants, prayed that the award be set aside and be substituted with a fair and reasonable assessment commensurate with the injuries sustained. In buttressing the appeal, the parties filed their respective submissions where the Appellants proposed damages between Kshs. 250,000/= and Kshs. 350,000/= while the Respondent supported the trial Court's assessment. Several decisions were referred to in support of the rival positions.
 5. Having carefully perused the record, the parties' submissions and the decisions referred to, this Court is now called upon to determine whether the Appellants' concerns are valid. As the appeal is on quantum of damages, this Court reiterates that assessment of damages is generally a difficult task. A Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries and the principles as developed by the Courts. However, what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case and an appellate Court must be slow to interfere with such an exercise of discretion. (See *Butler vs. Butler* (1982) KLR 277.)
 6. The Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727 discussed the principles to be observed when an appellate Court is dealing with an appeal on assessment of damages. The Court expressed itself clearly thus: -

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.
 7. This position was restated by the Court of Appeal in *Arrow Car Limited -vs- Bimomo & 2 others* (2004) 2 KLR 101 and also in *Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd* (2013) eKLR.
 8. It is the above legal threshold that will guide this Court in determining this appeal. The trial Court in arriving at the impugned quantum considered the gravity of the injuries as captured in the treatment notes, the P3 Form and the two medical reports, the manner in which the Respondent recuperated over years, the resultant permanent disability including the wound which was yet to heal and called for intensive treatment which would, in any event, become cancerous and the decisions by both parties. The Court then went further to distinguish the decisions and cautiously arrived at the impugned sum.
 9. The Court in *Charles Oriwo Odeyo vs. Apollo Justus Andabwa & Another* [2017] eKLR set out the guiding principles in assessment of damages in personal injury cases to include: -
 - a. Award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
 - b. The award should be commensurable with the injuries sustained.
 - c. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.



- d. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
- e. The awards should not be inordinately low or high.
11. In adding its voice to the matter, the Court of Appeal in Southern Engineering Company Ltd. vs. Musingi Mutia Civil Appeal No 46 of 1983 (1985) eKLR appreciated the position that it was inevitable that there would be a disparity in awards made by different Courts for similar injuries bearing in mind that no two cases are precisely the similar. The appellate Court then called upon Courts to establish existence of similar fact case scenarios and the peculiarity of the cases before arriving at a reasonable award.
12. In this appeal, the Appellants relied on the decision in Samuel Ndirangu Nganga vs. Lucy Wambui Wachira [2013] eKLR in proposing the sum of upto Kshs. 350,000/= as a fair and reasonable compensation. The Appellant submitted extensively on this head and referred to several decisions.
13. The Respondent was examined by Dr. Wokabi on two occasions and two Medical reports were produced in evidence. The first report is dated 21st July 2015 and the other one is dated 2nd August 2019, being an update of the first one. According to the reports and the other relevant documents on record, there is no doubt that the Respondent sustained compounded fractures of the tibia/fibula as well as heavy abrasions and serious soft tissue injuries. The fractures were yet to heal 5 years later, as well as the wound which was likely to become cancerous and that the Respondent could still not step flat on the foot further to the permanent disability.
14. This Court has carefully considered the decisions referred to by the parties and noted that those referred to by the Appellants refer to far less serious injuries compared to those sustained by the Respondent. On the other side, the decisions referred to by the Respondent have more comparable injuries. From the said decisions among other like ones, it comes out that, depending on the peculiar circumstances of a case, the awards in respect to the injuries akin to those sustained by the Respondent herein may range from Kshs. 1,000,000/= where there was no any resultant incapacity. In the present case, the Respondent sustained 18% permanent incapacity.
15. Therefore, in consideration of the totality of the injuries in this case, this Court finds and hold that the award of Kshs. 1,500,000/= on general damages was fair and reasonable and not excessive as submitted. It is hereby affirmed.
16. It is on the basis of the foregoing that this Court finds the appeal not merited. Consequently, the following final orders hereby issue: -
- (a) The appeal be and is hereby dismissed and the judgment of the trial Court affirmed.
- (b) Costs of the appeal to be borne by the Appellants.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss. Nanjira, Learned Counsel for the Appellant.

Mr. Nyoro, Learned Counsel for the Respondent.



Amina/Abdirazak – Court Assistants.

