



REPUBLIC OF KENYA



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**Wenzamba alias Benard Wesanza Mukabane v Kedi (Civil Appeal
E059 of 2023) [2025] KEHC 8745 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E059 OF 2023
JRA WANANDA, J
JUNE 20, 2025**

BETWEEN

**BENARD WENZAMBA ALIAS BENARD WESANZA
MUKABANE APPELLANT**

AND

HILLARY PYATICH KEDI RESPONDENT

*(Appeal from the Judgment dated 17/03/2023 delivered in Eldoret Small
Claims Court Civil Case No. E345 of 2022 by Hon. T.W. Mbugua-Adjudicator)*

JUDGMENT

1. This Appeal arises from the Judgment delivered in the said Small Claims Court case in which the Respondent (as the Claimant) sought Judgment against the Appellant seeking damages for injuries sustained from a road traffic accident that occurred on 30/07/2022.
2. The background of the case is that by the Statement of Claim filed through Messrs Mwinamo Lugonzo & Co. Advocates which was later amended, the Respondent pleaded that on or about 30/07/2022, he was lawfully travelling as a pillion passenger aboard the motor-cycle registration number KMCY 364Y along the Eldoret-Webuye Road when at Pipeline area, the Appellant's motor vehicle registration number KBG 806L which was being negligently and carelessly driven, lost control and collided with the said motor-cycle as a result of which the Respondent sustained serious injuries. He set out the injuries allegedly suffered and particulars of special damages aggregating to Kshs 8,250/-. The Respondent thus prayed for Judgment against the Appellant for general and special damages, costs of the suit and interest.
3. The Appellant, in his Response filed through Messrs Kimondo Gachoka & Co. Advocates, generally denied the allegations made by the Respondent, and in the alternative, pleaded that if any accident



- occurred, then the negligence causing it was on the part of the Respondent and gave particulars of such negligence. He also denied ownership of the vehicle and any allegations of negligence on his part.
4. The matter then proceeded for trial in which only the Respondent testified. For the Appellant, his Advocate, was by consent, allowed to produce his Witness Statement, driving licence and an Agreement entered into between the Appellant and the Respondent, which the Advocate then did.
 5. The Respondent, in his evidence-in-chief before the trial Court, in which he testified as CW1, adopted his Witness Statement and testified that he sustained injuries on his back, hand, leg and chest. He then produced medical documents from the Moi Teaching and Referral Hospital (MTRH), Radiology request, Police Abstract, Medical Report, Receipts, Motor Vehicle ownership records and a demand letter. In cross-examination, he stated that the accident occurred on 30/07/2022 as they were heading to Maili Nne and that he was a pillion passenger on the motor-cycle when the motor vehicle joined the highway from the gate at Pipeline and rammed into the motor-cycle. He conceded that he did not have a helmet on.
 6. By its Judgment delivered on 17/03/2023, the Adjudicator found liability at 100% in favor of the Respondent and awarded him general damages of Kshs. 400,000/-, special damages of Kshs 7,250/-, costs and interest.

Appeal

7. Aggrieved by the Judgment, the Appellant instituted this Appeal vide the Memorandum of Appeal dated 13/04/2023. The grounds listed are as follows:
 - a. That the learned trial magistrate erred in law and in fact by awarding Kshs. 400,000/- as general damages which award is inordinately high in view of the injuries sustained.
 - b. That the learned trial magistrate misdirected herself by failing to take into account the well-established principle requiring comparable awards to be made for comparable injuries sustained thereby falling into an error by awarding Kshs. 400,000/- which is manifestly excessive.
 - c. That the sum of Kshs. 400,000/- as general damages, which award is excessive in view of the injuries sustained by the Respondent thereby deviating from the principle of stare decisis requiring comparable awards being made for comparable injuries sustained.
 - d. That the learned trial magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering at Kshs. 400,000/- which is very high all circumstances and injuries considered.
 - e. That the learned trial magistrate erred in law and in fact by disregarding and failing to appreciate the judicial authorities on quantum cited by the Appellant in their written submissions thereby making an award on general damages that is unreasonably high in the circumstances and connotes an erroneous estimate of the award on general damages that is unreasonably high in the circumstances and connotes an erroneous estimate of the award on general damages in view of the injuries sustained by the Respondent.
8. The Appeal was canvassed by way of written Submissions. The Appellant filed the Submissions dated 24/10/2024 while the Respondent filed the Submissions dated 15/02/2024.



Appellant's Submissions

9. Counsel for the Appellant cited the principles applicable in assessing damages and instances when an appellate Court may interfere and urged that awards must be within consistent limits and must be made taking into account comparable injuries or similar injuries. He cited the case of *Denshire Mutoti Wambua vs Kenya Power & Lighting Co. Ltd* [2013] eKLR and also the case of *Michael Okello vs Priscila Atieno* [2021] eKLR, among others. He faulted the trial Court for awarding to the Respondent the sum of Kshs 400,000/- in general damages without any concrete evidence and explanation as to how the figures were arrived at. He also pointed out that Dr. Joseph Sokobe's medical report dated 03/08/2022 indicated that the Respondent sustained blunt trauma to the eye, dislocation of the right shoulder joint, and blunt injuries to the chest back, left thigh and left knee which the Court described as "moderate severe soft injuries". He pointed out that the Respondent presented various authorities in which the Plaintiffs sustained fractures and dislocations and in which the awards made ranged at between Kshs 400,000 - 450,000/- yet the Respondent only sustained a dislocation amounting to a "severe soft tissue" injuries. For comparable cases, he cited the case of *Maina Onesmus vs Charles Wanjohi Githome* [2018] eKLR, and the case of *Edward Mutevu Maithya Vs Edwin Nyamweya* (2022) eKLR and urged that the award of Kshs 400,000/- is way too excessive for the injuries sustained.

Respondent's Submissions

10. While the issue of liability is not in contention in this Appeal, Counsel for the Respondent still proceeded to make submissions thereon, including submitting on the validity of an Agreement which had allegedly been entered into between the Appellant and the Respondent on compensation, and also on the manner in which the accident occurred and which, in his view, supports the finding that the Appellant was liable. As these matters are issues in this Appeal, I will overlook them.
11. On damages, he recited the injuries indicated in the medical documents to have been suffered by the Respondent and urged that, the award of Kshs 400,000/- as general damages sufficed as just and adequate compensation. He cited authorities which, according to him, were comparable, namely, *Nairobi HCCC No. 2425 of 1990 - Irene Egira Nthiga vs Nairobi Bus Union Ltd*, *Mombasa HCCC No. 228 of 1987 - Amrateen D. Shah vs Joseph Mackio Nyangawo*, and *Eldoret HCCA No. E043 of 2021 - Moses Ndumia vs Rebecca Aswa Mwirisha*.

Determination

12. The issue in this Appeal is evidently only one, namely, "whether the award of general damages by the Small Claims Court was inordinately too high and manifestly excessive." The Appeal is therefore only in respect to quantum.
13. As this is an Appeal from a decision of the Small Claims Court, the Appeal can only be entertained on points of law. This is the import of Section 38 of the *Small Claims Court Act*, which provides as follows:
 38. Appeals
 - (1) A person aggrieved by the decision or an order of the Court may Appeal against that decision or order to the High Court on matters of law.
 - (2) An Appeal from any decision or order referred to in subsection (1) shall be final.
14. In respect to Appeals that are, by law, limited to points of law only, *Nyamu J*, in the case of *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR), while dealing with a second Appeal, which is also



ordinarily allowed only on points of law, and thus similar to those contemplated under Section 38 aforesaid, stated as follows:

“In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

15. In respect to the principles guiding an appellate Court on whether to interfere with an award of quantum, the Court of Appeal, in the case of *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & Another (No 2) [1985] eKLR*, held as follows:

“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 that 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

16. Similarly, in the case of *Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR*, the Court of Appeal also pronounced itself as follows:

“... it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled

17. The Court of Appeal reiterated the above principle in the case of *Dilip Asal v Herma Muge & Another [2001] eKLR [2001] KLR*, as follows:

“..... Assessment of damages is essentially an exercise of discretion and the grounds upon which an appellate Court will interfere with the manner in which a trial Court assessed damages relate to issues of an error of principle.”

18. An appellate Court will not therefore disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. For an appellate Court to interfere, it must be demonstrated that the trial Court proceeded on wrong principles, or that it misapprehended the evidence in some material respect and so arrived at a figure which was unsupported.

19. On the mode of assessing damages, the Court of Appeal in the case of *Butter v Butter, Civil Appeal No. 43 of 1983 [1984] KLR*, held as follows.

“In awarding damages, a Court should consider the general picture of all prevailing circumstance and effect of the injuries of the claimant but some degree of is to be sought in the awards, so regard would be paid to recent awards in comparable cases in local Courts.



The fall of value of monies generally, the levelling up and down of the facts of exchange between currencies should be taken into consideration.”

20. Further, the Court of Appeal in the case of *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR stated that

“comparable injuries should attract comparable awards”.

21. Similarly, in *Simon Taveta v Mercy Mutitu Njeru Civil Appeal 26 of 2013* [2014] eKLR, the Court of Appeal observed that:

“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.”

22. From the above, it is clear that in awarding damages, some degree of uniformity must be set depending on the facts and the best guide would be to consider recent awards on comparable injuries.

23. The Appellants’ position herein is that the award of Kshs. 400,000/- as general damages was excessive. I may state that assessment of general damages is an issue of fact but, in the event that the Court assesses such damages without basis, the same becomes unlawful and, in turn, a point of law.

24. In this case, as correctly captured by the Adjudicator, the Medical Report dated 3/08/2022 prepared by Dr. Sokobe described the injuries suffered by the Respondent as “blunt trauma to the eye, dislocation of the right shoulder joint, blunt injury to the chest, back, left thigh and left knee”, which injuries the doctor classified as “moderately severe soft injuries” “from which the Respondent was recovering well”.

25. To establish comparable awards, I have perused various relatively recent authorities in which the injuries suffered were similar or close to those suffered herein. I have for instance, picked out the following:

- a. Ngugi J (as he then was), in the case of *Ndungu Dennis v Ann Wangari Ndirangu & another* [2018] eKLR, reduced an award of Kshs 300,000/- to Kshs 100,000/-.
- b. R. Nyakundi J, in the case of *JFM (minor suing through mother and next friend MWM) v JNM & Another* [2020] eKLR, increased an award of Kshs 60,000/- to Kshs 100,000/-.
- c. R. Nyakundi J, in the case of *Daniel Gatana Ndungu & Another v Harrison Angore Katana* [2020] eKLR, reduced an award of Kshs 350,000/- to Kshs 140,000.
- d. E. Maina J, in the case of *Francis Omari Ogaro v JAO (minor suing through next friend and father GOD)* [2021] eKLR, reduced an award of Kshs 230,000/- to Kshs 180,000/-.

26. From the foregoing, I find that most awards for the injuries in issue herein range at between Kshs 150,000/- and Kshs 300,000/-, of course each depending on the severity thereof. While the prevailing status of our currency and economy have to be taken into account in awarding damages, astronomical awards must also be avoided. The Court must therefore ensure that awards result in fair compensation.

27. In light of the said comparable awards and the principles referred to, I find the sum of Kshs 400,000/- for general damages as awarded by the Adjudicator to be considerably high and substantially excessive to amount to an error in principle. The same justifies interference by this Court. Accordingly, I set aside the award of Kshs 400,000/- awarded in general damages and substitute it with an award of Kshs 250,000/-.



28. I note that the special damages award of Kshs 7,250/- has not been challenged.

Final Orders

29. The upshot of my findings above is as follows:

- i. This Appeal therefore succeeds, to the extent that the award of Kshs 400,000/- under the head of general damages is reduced to Kshs 250,000/-. The rest of the awards therefore remain intact, as awarded by the trial Court.
- ii. Accordingly, the full Judgment award made in Eldoret Small Claims Court Civil Case No. E345 of 2022 on 17/03/2023 now reduces to the following computation:

Liability	100% against the Appellant
General damages	Kshs 250,000.00
Special damages	Kshs 7,250.00
Total	Kshs 257,250.00
Costs and interest	

- iii. Since the Appeal was only on one item, namely, general damages, each party shall bear his own costs thereof.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 20TH DAY OF JUNE 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

N/A for the Appellant

Mr. Matekwa h/b Mr. Mwinamo for the Respondent

Court Assistant: Edwin Lotieng

