ENK v SM (A Minor Suing through the Grandmother and Next Friend PWN) (Civil Appeal E094 of 2024) [2025] KEHC 11039 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11039 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CIVIL APPEAL E094 OF 2024

TW OUYA, J

JULY 24, 2025

BETWEEN

ENK ..... APPELLANT

AND

SM ..... RESPONDENT

A MINOR SUING THROUGH THE GRANDMOTHER AND NEXT FRIEND PWN

(Being an appeal from the judgment and decree of Hon P. Wechuli PM, delivered o 14th March 2024 at the Principal Magistrate's Court at Kithimani, in PMCC Suit No. 135 of 2022)

RULING

1. This is an appeal emanating from a claim based on tort of negligence following a road traffic accident. It was filed *vide* a Plaint dated 27th October 2022 where the Respondent sought special damages of Kshs. 6,690.00, general damages for pain and suffering and loss of amenities as well as costs of the suit against the Appellant.

2. The Appellant opposed the Plaint vide a statement of defence denying liability and instead pleading contributory negligence by the Respondent.

3. The matter proceeded to full hearing where the Respondent called three witnesses while two witnesses testified on behalf of the Appellant.

4. At the end of the trial, judgement was entered in favour of the Plaintiff/ Respondent against the Defendant/Appellant jointly and severally: the liability was assessed at 90:10%, general damages were assessed at Kshs.1,000,000.00 while special damages were assessed at Kshs.5,690.00 The Respondent was also awarded costs and interest.

5. Aggrieved with the entire decision of the trial court, the Appellant instituted the instant appeal on the basis that the learned magistrate erred in law and fact in:

    a. Failing to consider the evidence placed before the trial court in upholding the Respondent's version of events and relying on the testimony of a traffic police officer who was not the investigating officer as corroborative evidence to find that the Appellants culpable for the accident and therefore arrived at a wrong decision in law;

    b. Placing the blame on the Respondents despite police abstract not apportioning blame on the Appellant and that neither the Appellant nor her authorized representative/ agent were charged for any traffic offence thus arriving at a wrong decision in law;

    c. Filing to apportion a greater percentage of liability to the Respondent/ the next friend who neglected their guardianship role over the minor;

    d. Finding the Respondent was entitled to general damages of Ksh. 1,005,690.00

    e. Finding that the respondent was entitled to general damages that were too high in view of the evidence tendered and injuries she suffered. The award was too high and the same was not justified;

    f. Failing to consider the Appellant's submissions on quantum;

    g. Failing to consider awards of similar nature.

6. The Appellant prayed that the appeal be allowed and an order of stay of execution be granted. She further prayed that an order does issue reversing and setting aside the entire decision, judgment and order of Hon. P Wechuli delivered on 14th March 2024 in *Kithimani Magistrates Court PMCC/135/2022* against the Appellant and in lieu substituted with commensurate and conventional awards of a similar nature.

7. The Respondent filed a Plaint dated 23rd June 2022, the same was amended with leave of the Court and an amended Pliant filed on 27th October 2022. The Plaint was accompanied by an Authority to Act dated 23rd June 2022 pursuant to Order 32 1[2] of the *Civil Procedure Rules*, a Verifying affidavit, List of witnesses, and list of documents of even date among other documents.

8. It was the Respondents case that the Appellant was the registered owner of motor vehicle registration number KCE 994S Toyota Station Wagon. On or about 27th December 2020 at around 2.30 pm along Thika – Garissa road within Matuu township near Ndalas hotel area, the Appellant's agent so negligently and or carelessly drove, managed and or controlled motor vehicle registration number KCE 994S Toyota Station Wagon such that she permitted or caused the same to lose control, veer off the road and knock down the minor Respondent who was lawfully walking by the road side as a pedestrian, thereby causing him serious injuries.

9. The Appellant was specifically sued to be held vicariously liable for the conduct of her driver who was in control of the subject motor vehicle at the time of the accident.

10. While invoking the doctrine of res ipsa loquitor, the Respondent particularized the Appellant's negligence as:

    a. Driving at a speed that was dangerous and excessive in the circumstances

    b. Failing to slow down, brake, swerve and or stop so as to avoid the accident

    c. Failing to exercise due and reasonable care so as to avoid the accident

d. Driving the said motor vehicle carelessly and dangerously without any regard to the presence or pedestrians therein and especially the minor plaintiff

e. Failing to take proper look out or at all

f. Causing the accident

11. It was averred that as a result of the Appellant's negligence, the Respondent suffered injuries as follows:

a. Fracture on the right parietal bone with minimal depression

b. Generalized and diffused scalp skin tenderness

c. Very tender cut wound on the right parietal scalp skin

d. Very tender bruise wound on the left shoulder giving rise to left shoulder joint movement limitations

e. Very tender bruise wounds on the left knee

f. Very tender bruise wound below the right knee

12. The Respondent was also experiencing on and off headache as well as pain on the left shoulder joint.

13. As a result, the Respondent sought for special damages as follows:

a. Medical report at Ksh. 5,000.00

b. P3 Form at Ksh. 1,000.00

c. Copy of records at Ksh. 550.00

d. Postage at Ksh. 140.00

TotalKsh. 6,690.00

14. The Respondent also claimed general damages and witness expenses while stating that the Appellant's failure to admit liability rendered the cause of action inevitable.

15. The Appellant filed a Statement of Defence dated 30th August 2022 and amended on 10th November 2022, where she denied being the driver and the registered owner of the subject motor vehicle at all material times relevant to this suit. She also denied the occurrence of the accident subject of this suit or the fact that the Respondent was a pedestrian lawfully walking on the road at the time of the accident in question. The Appellant also denied the fact that the Respondent sustained any injuries following the accident including the particulars of negligence outlined by the Respondent.

16. Instead, the Appellant pleaded contributory negligence in that the Respondent:

a. Failed to be a prudent road user;

b. Crossed the road unaccompanied by an adult/ guardian

c. Ran across the road without prudence or a reasonable pedestrian

d. Failed to be on the look-out for vehicular traffic while crossing the road

e. Ran in the middle of the road

f. Failed to walk on the pedestrian lane

g. Crossed the road at a non-designated pedestrian crossing

h. Failed to stop walking, dive, jump, duck or in any other manner avoid the accident

i. Willy exposed himself to risk or injury which he knew or ought to have known

j. Was the author of his own misfortune

17. The Appellant, without prejudice, averred that the accident in question occurred from inevitable and unavoidable circumstances, notwithstanding the exercise of all reasonable care and skill by her driver, who was unable to avoid the accident.

18. The Appellant denied the applicability of the doctrine of res ipsa loquitor to the suit.

19. The Respondent filed a Reply to the Statement of defence dated 27th October 2022 where he reiterated the averments made in the amended Plaint.

20. At the close of pleadings, the matter was set down for hearing where both parties got to call their respective witnesses.

21. PWN testified as PW1. She stated that she is a business person and the grandmother to the Respondent. She adopted her witness statement and list of documents. She denied the allegation that the Respondent was not careful when using the road hence the accident. On cross examination, she stated that she was with the Respondent on the day of the accident, the Respondent was on the left side and the vehicle lost control and came to the right side where she was. There were no eyewitnesses at the scene. The vehicle that caused the accident escorted the Respondent to the hospital at Matuu then Thika, including paying for the medication. She clarified that the said road had neither a Zebra crossing nor a foot bridge. She reported the accident at Matuu police station on the same day while the Respondent's father, who had come home for the Christmass holidays, accompanied him to the hospital.

22. No. 118671 PC Chege of Matuu testified as PW2, he stated that he had been at Matuu for 3 years. It was her testimony that on 27th December 2020 an accident was reported *vide* OB 17 involving KCE 974J Toyota Wish along Thika – Garissa riad whereby a child had been hit by a motor vehicle. The initial report was that the vehicle lost control and hit the victim beside the road after he had crossed the road. On cross examination, he testified that the abstract on the accident was dated 13th September 2021 as it was filled 9 months after the accident. No charges were preferred as the matter was still pending under investigation. He clarified that he was not the investigation officer but was giving information recorded by the investigating officer. He clarified the error in the police abstract by stating that OB entry number 8 contained the proper details of the accident.

23. The third witness called by the Respondent was Dr. Muli Simon Kioko. He testified that he saw the Respondent for purposes of medical report or which he charged Ksh. 5,000.00. He reviewed the Respondent two days after the accident and wrote in the report that he was 13 years at the time of the accident. He formed an opinion that the Respondent was expected to heal completely from the injuries sustained. He had complaints of a headache and a fracture.

24. The Appellant called two witnesses. Elizabeth Njeri Kamau, testified as DW1. She stated that she is a retired nurse. She adopted her witness statement in evidence. Onn cross examination she admitted that the driver of the motor vehicle was her daughter. She did not witness the accident.

25. Maryanne Ngomo testified as DW2, an accountant by profession, she testified that she was the one driving the subject motor vehicle on the day of the accident. She signed a witness statement with

her insurer and catered for all the medical needs of the Respondent. She further testified that the Respondent was unaccompanied and there was no zebra crossing at the place where the accident occurred. On cross examination, she denied driving off the road, the minor jumped into the road. The scene was at a market area and at a bump. She had slowed down at the bump. The vehicle remined within the road.

26. At the close of the case, both parties filed submissions and the matter was set down for judgment. The trial court apportioned liability at 90:10% in favour of the Respondent against the Appellant. The Appellant was found liable for the accident while the Respondent was faulted for failing to cross the road at a designated point.

27. On the issue of quantum, the trial court considered authorities on injuries of similar nature, inflation and the submissions of the parties and awarded general damages of Kshs.1,000,000.00 for pain and suffering and loss of amenities. The Respondent had proposed damages of Kshs. 2,000,000.00 while the Appellant had proposed damages of Kshs.100,000.00.

28. The appeal was disposed through written submissions by consent of the parties.

29. The appellant faulted the trial court for relying on hearsay evidence from the traffic police officer to impute liability against her. It was submitted that the police officer that testified as the Respondent's witnesses was neither the investigating officer nor present at the scene of the accident. Therefore, his testimony amounted to hearsay evidence. Hence, the trial court erred in using the testimony of the police officer to corroborate the evidence of the Respondent. Reliance was placed on the case of *Rottger v Karisa & Another [Suing on behalf of the estate of Said Thoya]* Civil Appeal E062 of 2023 where the testimony of a police officer who had neither investigated the case nor visited the scene of the incident was found to be unhelpful in assisting the court determine liability.

30. Further reliance was placed on the case of *PAS v George Onyango Orodi* [2020] eKLR and *Mulekye v Kovi* [Civil Appeal 27 of 2019] [2022] KEHC 3291 [KLR] to urge the position that the failure by the police officer to lay a basis for testifying on behalf of the investigating officer under Section 33 of the *Evidence Act*, rendered her testimony as hearsay and thus inadmissible.

31. Regarding the reliance on the police abstract to impute liability on the appellant, it was submitted that a police abstract is only proof that the occurrence of an accident was reported but not proof of liability. Reliance was placed on the case of *Peter Kanithi Kimunya v Aden Guyo Haro* [2014]eKLR and *Wangongu v Kithinji & 2 Others* [Civil Appeal 293 of 2023] [2024] KEHC 6272 [KLR]. Therefore, when a matter is still under investigation, the trial court ought to rely on the evidence adduced in court and not on untested police abstract as it was in the case of *Stanley Oguti Attai v Peter Chege Mbugua* [2019]eKLR.

32. The appellant faulted the trial court for apportioning her a very high liability of 90%. In this regard, it was submitted that the apportionment of liability at 90% contradicted the evidence on record as the Respondent's evidence was hearsay. Relying on the case of *HVOT [Suing as the Father and Next friend of DOT] v Musyimi* [Civil Appeal 202 of 2021 [2023] KEHC 25243 [KLR] to urge the position that the Respondent had neglected guardianship over the minor therefore since the matter was still under investigation, liability ought to have been apportioned at 50:50. See also the case of *MJ [minor suing through his father and next friend] JM & 2 Others v Swaleh O. Shabiby* [2019]eKLR.

33. On quantum, the Appellant submitted that the authority that the trial court relied on to award general damages had distinct injuries from those suffered by the Respondent. The injuries were not comparable as the Respondent suffered soft tissue injuries as was held in the case of *Omori Motors Garage Ltd v John Ochieng Otiende* [2016] eKLR

34. It was further urged that on the basis of the nature of the injuries sustained by the Respondent, the award of Ksh. 1,000,000.00 was excessive in view of the evidence tendered ad conventional awards of similar nature. Reliance was placed on the case of *Elizabeth Wamboi Gichoni v JOO [Minor suing through mother and next of friend] v AA* High Court Civil Appeal No. 5 of 2019 [2019] eKLR where frontal lacerations, cut on the head,, cut wound on the left upper eyelid and the left forehead, bruises on the left cheek, nose and left shoulder, injury on the left lateral tibia were deemed soft tissue injuries and an award of Ksh. 350,000.00 was substituted with Ksh. 180,000.00.

35. Also, reliance was placed on the case of *Elizabeth Wanjoi Gichoni v Benard Ouma Owuor* High Court Civil Appeal No. 3 of 2019 where mild head injury due to concussion, multiple cut wounds on the scalp, cut wound on the left lateral orbital region, blunt injury to the chest, multiple bruises on the left upper limb, bruises on the gluteal region and blunt injury on both knees was deemed severe soft tissue injuries and an award of Kshs. 300,000.00 substituted with Ksh. 175,000.00.

36. Regarding costs, the appellant submitted that it is a settled principle that though discretionary, costs follow the event to compensate the successful party for the trouble taken in prosecuting or defending the case. It was therefore submitted that costs should be awarded to the Appellant.

37. Ultimately, the Appellant urged this honourable court to set aside the entire decision of the trial court and in lieu substitute it with commensurate and conventional awards of similar nature.

38. The Respondent on the other hand submitted that the trial magistrate conclusively considered the evidence of the police officer and the authorities relied on by the parties in the trial court. Urging that contributory negligence ought not be imputed on children of tender years as strict liability is placed on the driver in accidents involving children of tender years as it was in the case of *Patrick Muli v EM [Minor suing through her mother and next friend WG* Civil Appeal No. 17 of 2019; *Macharia Elizabth v Yaba [Suing as the legal representative of the late GAG]* Civil Appeal No. 178 of 2019; and *Savannah Hardware v EOO [Suing as the representative of SO [deceased]* Civil Appeal No. 13 of 2019.

39. On the issue of quantum, the Respondent submitted the amount awarded as damages was commensurate to the nature of injuries sustained by the Respondent. reliance was placed on *James Njuguna [a minor v Fredrick Githinji Ngegwa* High Court Civil Appeal No. 2428 of 1999 where a plaintiff who had sustained head injury fracture with depressed skull fracture, bruise on the left scalp and ear and bruises on the right leg hip awarded Ksh. 1,500,000.00.

40. Also, in *Francis Gachau Ndung'u & Another v Peter Irungu Mbau*, Civil Appeal No. E002 of 2002, a plaintiff was awarded Ksh. 2,000,000.00 for sustaining concussion to the head with loss of consciousness, fracture of the skull- parietal bone, blunt injury to the chest and fracture to the lower limb- right knee joint.

41. Further reliance was placed on the case of *Samuel Ng'ang'a Kimani v Easy Coach limited* Appeal no. E029 of 2021 where the plaintiff was awarded Ksh 1,800,000.00 for sustaining bilateral temporal bone fractures of the skull, fracture of the right sphenoid, contusions in the left parietotemporal lobe, extradural haematoma of 15mm, a left temporal lobe and haemorrhage in the nasal citterns of left cerebral convexity.

42. Ultimately the Respondent urged that the trial court's finding on quantum should only be disturbed if it is satisfied that the trial court took into account an irrelevant factor or left out a relevant one, that the amount is so inordinately low or so inordinately high that it is a wholly erroneous estimate of the damages. Reliance was placed on *Lucy Waruguru v Miriam Nyambura Mwangi* Civil Appeal No. 6 of 2015.

43. The Respondent urged that the appeal be dismissed for lacking merit.

44. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and facts and come up with its own findings and conclusions. [See: Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424]. The appropriate standard of review established in cases of appeal can be stated in three complementary principles:

    i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;

    ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and

    iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

45. It is therefore the duty of this court as a first appellate court to re-evaluate the evidence and arrive at its own conclusions. In so doing the court must take into account that it had no opportunity to hear and see witnesses, and therefore must make an allowance for that. [See: *Selle & Another v Associated Motor Boat Co. Ltd & Another* [1968 [EA 123].

46. Upon considering the memorandum of appeal and the submissions thereto, the two issues that arise for determination are whether the trial court erred in apportionment of liability and whether the trial court erred in its award for damages.

47. It was alleged that the trial court relied on hearsay evidence of the police officer, who was neither at the scene nor the investigating officer, to apportion liability on the Appellant. Evidently, from the trial court proceedings, PW2 did not witness the accident. He testified on behalf of the investigation officer who also did not witness the accident. The question that crops up is whether his evidence could be said to be conclusive as to the occurrence if the accident and who was to blame for the same? I think not.

48. PW2 was not at the scene at the time of the occurrence of the accident and therefore cannot be said to be an eyewitness. I therefore find that his opinion alone cannot be conclusive as to who was to blame for the accident nor can it be said to be binding to the court as such evidence is but an opinion which the court is mandated to test and accept or reject for various reasons.

49. It appears that DW1 and PW1 were the only eye witnesses to the accident, other than the Victim, who did not testify in the proceedings. In any case, the police abstract produced in court demonstrated that the matter was still under investigation. In the absence of the testimony of any other eye witness, this court must look into the totality of the circumstances to determine liability.

50. The question I ask myself is whether contributory negligence is justifiable in the circumstances of this case? In response I find the explanation given by the court in the case of *Jackson Appellant v Murray and Another* 2015 UKSC 5 relevant in the following language:

> "…….Either he did not look to the left before proceeding across the road, or having done so, she failed to identify and react sensibly to the presence of the defender's car in close proximity. On either scenario, the overwhelmingly greater cause of this unhappy accident was the movement of the pursuer into the path of the defendants car at a time when it was impossible for him to avoid collision"

> One has therefore, in my opinion, a situation in which the pursuer bears responsibility for having committed an act of reckless folly, and the defendant bears responsibility for having failed to tie reasonable care for the safety of a person such as the pursuer whom might commit an act of reckless folly. In that situation, I consider that a very large proportion of the overall responsibility rest upon the perpetrator of the act."

51. This same guideline was given by Lord Drumond Young. His Lordship noted that it had bee said in *Porter v Strathclycle Regional Council* 1991 where he held as follows in relation to apportionment that:

> " [1] In the first place, we are of opinion that insufficient regard was had to the circumstances of the pursuer. The pursuer was only 13 at the time of the accident. While at 13 she was old enough to understand the dangers of traffic, a 13 year-old will not necessarily have the same level of judgment and selfcontrol as an adult. Moreover, in assessing whether it was safe to cross, she was required to take account of the defender's car approaching at a fair speed, 50 mph, in very poor light conditions with its headlights on. The assessment of speed in those circumstances is far from easy even for an adult, and even more so for a 13 year-old."
>
> [4] "In the fourth place, the causative potency of the parties' actings must be taken into account. Two factors are relevant in this connection. First, in apportioning responsibility account must be taken not only of the relative blameworthiness of the parties but also the causative potency of their acts. As is pointed out in *Eagle [v Chambers* [2003] EWCA Civ 1107; [2004] RTR 115] and *Smith [v Chief Constable Nottinghamshire* Page 7 Police [2012] EWCA Civ 161; [2012] RTR 294], a car is potentially a dangerous weapon, and accordingly the attribution of causative potency to the driver must be greater than that to the pedestrian. Secondly, the Lord Ordinary held that the pursuer would have escaped the accident had she had an additional 1.12 seconds available. That suggests that the defender's excessive speed was causally significant."

52. I note that the minor was 13 years old at the time of the accident. The question that therefore arises is whether given his age, he could be found liable for the accident. In the case of *Gough v Thorne* [1966] WLR 1387 and submitted that Lord Denning stated that:

> " A very young child cannot be guilty of contributory negligence. An older child may be. But it depends on the circumstances. A judge should only find a child guilty of contributory negligence if he or she is of such an age as to be expected to take precautions for his or her own safety and then he or she is only to be found guilty if blame is attached to him or her. A child has not the road sense of his or her elder. He or she is not to be found guilty unless he or she is blameworthy."

53. In *Njau v MW [Minor suing through mother and next friend HMM* [Civil Appeal E032 of 2021] [2023] KEHC 1060 [KLR], liability was apportioned to a 13year old at 10 % when the court addressed itself thus:

> " I have considered the age of the minor at the time of the accident and her witness statement where she acknowledges that she saw the suit motor vehicle on the verge of overtaking another vehicle. It is my considered view that at the age of thirteen years she had the presence

> of mind to recognize the danger posed by the oncoming vehicles. It is on this ground that I choose to interfere with the award on liability. I set aside the same and apportion 10% liability on the part of the plaintiff."

54. In the instant case, the trial court apportioned liability of 10% to the Respondent. I see no reason to disturb this finding as the trial court's exercise of discretion was informed by the fact that the Respondent failed to cross the road at a designated point.

55. On quantum of damages, it is a general rule that an appellate court should not interfere with quantum of damages unless the award is so high or inordinately low or founded on wrong principles. This is the principle enunciated in *Rook v Rairrie* [1941] 1 All ER 297. It was echoed with approval in *Butt v Khan* [1981] KLR 349 when it held as per Law, JA that:

> " An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low."

56. The Court of Appeal observed in *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR 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."

57. There is no medium of exchange of happiness. In my experience I also find no market for quantifying expectation of life. What courts do in exercising discretion in assessing both pecuniary and non-pecuniary damages is a philosophical and policy exercise based on precedence and is therefore more than legal or logical dichotomy. More often than not in determining the amount of compensation for pain and suffering the court has a duty to consider psychological, traumatic, loss of amenities as an approach incorporated in the final quantification of the claimant's diminution in quality of life.

58. The main contention raised concerning the general damages in particular, is that the same is inordinately high and was awarded on the basis of wrong principles and without proper consideration of the evidence on record as well as comparable awards made.

59. I have looked at the authorities relied on by the Appellant while urging that general damages should be assessed at Kshs. 200,000.00 were not comparable to the injuries herein. The authorities cited only dealt with soft tissue injuries whereas the medical report of Dr. Muli shows that the Respondent also suffered a fracture on the right parietal bone with minimum depression. On the other hand, the authorities cited by the Respondent represent awards that are quite high as the victims therein had sustained more severe injuries than those sustained by the Respondent herein.

60. In the case of *Security Group Kenya Limited v Ramadhan* [Civil Appeal E024 of 2022] [2024] KEHC 9922 [KLR] [29 July 2024] where the Plaintiff had sustained bruises on both knees, swelling on both legs, fractured left wrist joint and chest tenderness, the High Court affirmed the award of damages of Ksh. 500,000.00 by the trial court.

61. In *Peris Mwikali Mutua v Peter Munyao Kimata* [2008] eKLR, the respondent therein sustained pain and tenderness of the left hip joint, marked swelling and severe tenderness of the left forearm, bruises on the left forearm and a fracture of the ulna and radius [colles fracture] of the left distal forearm. The appellate court upheld the award of Kshs 450,000/= that was awarded by the trial court therein.

62. In *Issa Transporters Limited v Chengo Panga Tsama* [2019] eKLR, the respondent therein sustained a fracture of the colles on the left wrist and deep cut wound on the left side of the forehead. Both the High Court and the Court of Appeal appellate court upheld the award of Kshs 350,000 that was awarded as general damages.

63. In *Maina v Kahunga & Another* [2023] KEHC 606 [KLR], the appellant therein sustained colles fracture of the left wrist joint, blunt injuries to the left thigh leading to soft tissue injuries. The court enhanced the trial court's award of Kshs 100,000 to Kshs 300,000.

64. Taking into account the injuries that the Respondent herein sustained vis- a- vis the damages in comparable cases and the inflationary trends, this court comes to the firm conclusion that the sum of Kshs 1,000,000 general damages was high warranting interference by this court.

65. The court therefore deems it necessary to disturb the said award of Kshs. 1000,000.00, by substituting it with a more reasonable award in the sum of Kshs. 500,000.00

66. The upshot of the matter is that the appeal partially succeeds to the extent that the trial court finding on general damages is set aside and substituted with an award of Kshs. 500,000.00

67. The Final orders will now read thus:

    i. The trial court finding on general damages is set aside and substituted with an award of kshs. 500,000.00

    ii. The finding on liability of 90:10 is upheld.

    iii. The finding on special damages of kshs.5,690 by the trial court is upheld

    iv. Each party will bear their costs on this appeal

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH JULY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....Ms Onwonga HB Muhoro

For Respondent.....Ms Omari HB Ms Mutunga

Court Assistant.....brian