



REPUBLIC OF KENYA



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**Kipchumba v Esata (Civil Appeal E111 of 2022)
[2025] KEHC 10635 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E111 OF 2022
RN NYAKUNDI, J
JULY 23, 2025**

BETWEEN

VINCENT KIPCHUMBA APPELLANT

AND

BILLINGTON MANYASI ESATA RESPONDENT

*(Being an Appeal from the Judgement/Decree of Hon. C. Menya
(SRM) delivered on 8th July 2022 in Eldoret CMCC No. 184 of 2019)*

JUDGMENT

Representation:

Kimondo Gachoka & Co. Advocates

Mwinamo Lugonzo & Co. Advocates

1. The Appeal herein arises from the Judgement and Decree in Eldoret CMCC No. 184 of 2019 Billington Manyasi Esata v Vincent Kipchumba. The Respondent instituted the parent suit vid a plaint dated 5th March 2019 claiming for General Damages, Special Damages of Kshs 8,086, costs of the suit and interest. Judgement was delivered on 15th July 2022 in favour of the Respondent against the Appellant in the following terms: -
 - a. Liability 100% in favour of the Respondent against the Appellants.
 - b. General damages Kshs. 1,000,000/=
 - c. Future Medical Expenses Kshs. 150,000/=
 - d. Special damages kshs 8,086/=
 - e. Costs of the suit and interest



2. The Appellant being dissatisfied with the judgement filed an Appeal vide a Memorandum of Appeal dated 28th July 2022 based on 10 grounds which can be summarized as follows;
 - a. The Learned Trial Magistrate erred in law and fact in the assessment of quantum by awarding Kshs. 1,000,000/= an award which was excessive and an erroneous estimate of the damages awardable.
 - b. The Learned Magistrate erred in law and misdirected herself when she failed to consider the Appellant's submissions on both points of law and facts.
 - c. The Learned Trial Magistrate erred in law and fact in failing to consider the Defendant's submissions and authorities supplied on the issue of quantum.
 - d. The Learned Trial Magistrate erred in law and fact in failing to consider the Defendant's submissions and authorities supplied on the issue of liability.
 - e. The Learned Trial Magistrate erred in fact and law in failing to consider the evidence that was tendered on liability, injuries sustained and quantum injuries sustained by the Plaintiff.
 - f. The Learned Trial Magistrate erred in law and fact in failing to pay regard to the medical report adduced by the Defendants especially on the award for future medical Expenses as Kshs. 150,000/=.
 - g. That the Learned Trial Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - h. The Learned Magistrate erred in assessing an award an award, hereunder, which was wholly erroneous estimate of loss and damages suffered by Plaintiff.
Liability – 100 against the Defendant
General Damages- Kshs. 1,000,000/=
Special Damages- Kshs. 8,086/=
Future medical expenses- Kshs. 150,000/=
Net Award Kshs 1,158,086/=
Plus, costs of the suit and interest
 - i. The Learned Magistrate erred in fact and in law in failing to consider the Appellant's submissions as tendered in the trial court on liability, General damages and Special Damages.
 - j. The Learned Trial Magistrate's exercise of discretion in assessment of liability and Quantum was injudicious.
3. The Appellant sought the following orders that:
 - a. This Appeal be allowed with costs
 - b. The Judgement delivered on 8th July 2022 by Honourable C. Menya; Senior Resident Magistrate to be set aside and the Award made therein be re-assessed.
 - c. Cost of this Appeal be borne by the Respondent.
4. The Appeal was Canvassed by way of written submissions.



Appellants Written Submissions

5. The Appellant filed his submissions dated 28th February 2024 through the firm of Kimondo Gachoka & Co. Advocates in which the Counsel on record submitted that the Appellant relies on his written submissions filed in the trial court and invited this Honourable Court to consider them.
6. On the issue of quantum of damages, the Learned Counsel submitted that on 5/11/2018 the respondent was a lawfully riding a bicycle when he was involved in an accident with motor vehicle registration number KAN 153N along Eldoret-Kitale Road. He stated that according to the plaint dated 5th March 2019, as a result of the accident, the Respondent sustained the following injury.
 - a. Head injury with Loss of consciousness for 30 seconds
 - b. Cut wound on the right parietal scalp
 - c. Bruises on both upper limbs
 - d. Fracture right femur
 - e. Bruises on both ankles
7. The Learned Counsel also submitted that according to the P3 dated 15/2/2019 and the medical report from Dr. J. Sokobe dated 15/2/2019 listed the same injuries as those that were in the plaint. Counsel submitted that the lower court awarded Kshs. 1,000,000.00 as general damages and this was inordinately high and submitted that the sum of Kshs. 400,000.00 and Kshs. 40,000.00 for future medical examination as per the Appellant's medical report dated 24/2/2020 would be sufficient. Reliance was made to the case of *Kenya Power Lighting Company limited & another v Zakayo Saitoti Naingola & another* [2008] eKLR cited in the case of *Jennifer Mathenge v Patrick Muriuki Maina* [2020] eKLR where the court held;

“On quantum the court in determining whether to interfere with the same or not, the court has to bear in mind the following principles on assessment of damages;

 - a. Damages should not be inordinately too high or too low.
 - b. They are meant to compensate a party, for the loss suffered but not to enrich a party, and as such they should be commensurate to the injuries suffered.
 - c. Where past decisions are taken into consideration, they should be taken as mere guides and each case depends on its own facts.
 - d. Where past awards are taken into consideration as guides an element of inflation should be taken into account as well as the purchasing power of the Kenyan Shillings, then at the time of the judgment.”
8. The Learned Counsel urged this Court to consider the following cases in deciding this appeal: *Jackson Mbaluka Mwangangi v Onesmus Nzioka & another* [2021] eKLR; *Titan Nagra v Abidnego Nyandusi Oigo* [2018] eKLR; *Reamic Investment Limited v Joaz Amenya Samuel* [2021] eKLR. It was the Learned Counsel's closing submission on this issue that the award of kshs. 400,000.00 would be sufficient and adequate compensation to the injuries sustained by the respondent together with Kshs. 40,000.000 for future medical expenses.
9. On the issue of costs, the Learned Counsel submitted that the appellant pray for costs of this Appeal based on Section 27[1] of the *Civil Procedure Act*. Counsel also submitted and urged this Honourable



court to set aside the Judgment of the trial court herein and reassess the quantum based on its submissions herein and in the trial court. It was the counsel's final submissions that the appeal herein be allowed as prayed and the Appellant be awarded costs of this Appeal.

Respondent's Written Submissions

10. The Respondent filed his submissions dated 12th October 2023 in which his counsel on record Mr. Mwinamo submitted on the issues as follows. On the issue of liability, the learned counsel submitted that the evidence of the Respondent and the police was key in determining the issue of liability in the parent suit and that the evidence of the Respondent supported by the evidence of the police officer who stated that Motor Vehicle Registration KAN 351W rammed into the bicycle from behind and hence the accident. Counsel also submitted that the evidence of the Respondent and the police was corroborated as to the circumstances that led to the accident and that Motor Vehicle Registration KAN 351W was driven without due care and attention and or carelessly and or negligently.
11. The Learned Counsel further submitted that the Respondent was lawfully riding away from the road when Motor Vehicle Registration KAN 351W knocked him from behind and had the motor vehicle not knocked down the Respondent from behind the accident would not have occurred. Counsel added that the Appellant did not call any evidence to challenge the version of the evidence given by the Respondent and the witnesses and that the version of the Respondent and his witnesses remained unchallenged and or uncontroverted on the issue of liability.
12. The learned Counsel moreover submitted that the trial Magistrate's finding on liability was supported by the evidence of the Respondent and his witnesses which supported the conclusion and finding reached by the Trial Magistrate with regard as to who is to blame for the accident and that the Respondent did establish liability against the Appellant specifically by the cogent evidence tendered at the trial of the suit.
13. On the issue of quantum, the learned counsel submitted that the Respondent sustained the following injuries: -
 - a. Head injury with loss of consciousness for 30 minutes.
 - b. Cut wound on the right parietal scalp.
 - c. Bruises on both upper limbs.
 - d. Fracture right femur.
 - e. Bruises on both ankles.
14. He submitted that the award given was reasonable and commensurate to the injuries sustained by the Respondent and that the trial court's finding on quantum is not inordinately too low or so high so as to amount to a wholly erroneous estimate and the appellate court should not interfere or disturb the award of the subordinate court. Counsel further submitted that the sum of kshs. 1,000,000/= as General Damages sufficed as just and adequate compensation to the Respondent for the injuries sustained and made reference to the following authorities: *Texcal House Service Station Ltd & Anor v Timo Kalevi Jappinen & Anor*, Nairobi HCCA No. 134 of 1998 and *Humphrey Kaingu v KPA*, Mombasa HCC No. 30 of 1993.
15. On special damages, the learned counsel submitted that the sum of kshs. 8,086 was proved by way of receipts and the same were specifically pleaded and the court was proper in awarding the sum of kshs 150,000/= as Future Medical Expenses. Counsel urged this court to uphold this amount awarded by the court as the same was supported by Dr. J.C Sokobe's Medical Legal Report.



Analysis and Determination

16. Being a first appeal, the Court relies on a number of principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“...this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

17. In the case of *Mbogo and Another v Shah* [1968] EA 93 where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

18. The instant appeal is only on quantum. The issue for determination here is whether the award of general damages of Kshs.1,000,000/= in light of the injuries stated above is inordinately high to persuade this court to interfere with it. Further to that, the court is also called to determine whether the respondent is entitled to future medical expenses and special damages. The Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”.

19. The principles under which an appellate court may interfere with an award of quantum made by a lower court were stated in *Kemfro Africa Limited T/A Meru Express Services & Gathongo Kanini v A.M. Lubia & Olive Lubia* [1982-88] I KAR 727 at page 730, Kneller J.A. stated:

“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. See *Ilango V Manyoka* [1967] E.A. 705, 709, 713; *Lukenya Ranching and Farming Cooperative Society Limited v Kalovoto* [1970] E.A. 414, 418, 419. This court follows the same principles.”

20. In the case of *Butt v Khan* 1982 -1988 1 KAR the court pronounced itself as follows:

“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 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.”

21. The injuries as highlighted in the pleadings and the medical report are:

Head injury with loss of consciousness for 30 minutes.



- Cut wound on the right parietal scalp.
- Bruises on both upper limbs.
- Fracture right femur.
- Bruises on both ankles.
22. The claim before court is for pain and suffering and loss of amenities. The key factors to consider remain to be the nature and extent of the injuries sustained, the nature and gravity of the resulting physical disability, the pain and suffering which had been endured, the loss of amenities suffered, and the extent to which the claimant's pecuniary prospects have been materially affected. In the court setting the sum of money to be awarded as compensation for damages it should as nearly as possible not enrich the claimant but to restore the victim to the position he or she was before the wrong doing by the tortfeasor
 23. In determining the appropriate quantum of general damages, this Court is guided by established precedent and the principle that comparable injuries should attract comparable awards. The assessment must be fair, reasonable, and commensurate with the injuries sustained, neither inordinately high nor low. To properly evaluate whether the trial court's award of Kshs. 1,000,000/= is justified given the Respondent's injuries, comprising head injury with loss of consciousness, cut wound on the right parietal scalp, bruises on both upper limbs, fracture of the right femur, and bruises on both ankles, it is instructive to examine awards made in cases involving similar injury patterns and circumstances
 24. In *Telkom Orange Kenya Limited v I S O minor suing through his next friend and mother J N* [2018] eKLR the respondent had sustained head injury occasioning a depressed skull, fracture of the skull, loss of consciousness, scars of the left tempo-parietal area and bruises on the left leg. The child complained of chronic headaches and had occasional blurring of vision. His doctor concluded that the child sustained serious head injuries which put him at risk of developing seizures as a long-term complication together with disfiguration resulting from the scalp and leg scars. The High Court on appeal found an award of Kshs. 950,000/= to be excessive and reduced it to Kshs. 500,000/=.
 25. In the case of *Daniel Otieno Owino & Another v Elizabeth Atieno Owour* [2020] eKLR, the Respondent had sustained head injuries with cut wounds, chest injuries, injuries to the right leg with cut wounds and a fracture, injuries to the left lower leg ankle joint and injuries on the left thigh. In its judgment delivered in May 2020, High Court reduced the award of Kshs. 600,000/= by the lower court to Kshs. 400,000/=.
 26. In *Harun Muyoma Boge v Daniel Otieno Agulo* [2015] eKLR relied on by the trial court, the Appellant sustained blunt chest injuries, cut would right wrist, deep cut would on the right foot and fracture of the tibia. He was awarded Kshs. 300,000/= as general damages.
 27. I am of the view that a sum of Kshs. 500,000/= is adequate compensation for soft tissue injuries sustained by the respondent.
 28. On future medical expenses, the Court of Appeal in the case of *Tracom Limited & Another v Hassan Mohamed Adan* [2009] eKLR stated: -

“ ...We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it. In the case of *Kenya Bus Services Ltd v Gituma* [2004] 1 EA 91, this Court, stated: -



“And as regards future medication [physiotherapy], the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as arising naturally from infringement of a person’s legal right should be pleaded.”

We understand that to mean that once the plaintiff pleads that there would be need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where the treatment will be undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think all that will be necessary to plead [if it has to be pleaded at all] is the approximate sum of money that the future medical expenses will require...”

29. The amount of award to be made for paying suffering and the loss of amenity cannot be precisely calculated. All what is expected of the court is to exercise discretion to award such an amount within the broad criteria of what is reasonable and in line with similar awards as discussed elsewhere in this judgement.
30. From the foregoing decisions and evidence I am of the considered view that the claim on general damages is on the higher side calling for this court to review it downwards as a fair and proportionate award for pain and suffering and loss of amenities. As a consequence, general damages due for the respondent is Kshs 500,000. Whereas medical expenses proven under the category of special damages is Kshs 150,000 and special damages 8.086/= As a consequence the appeal partially succeeds with costs to be shared equally between the Appellant and the Respondent. The decree holder is entitled to interests within the scope of Section 27 of the *Civil Procedure Act* with the rider that for general damages it be assessed from the time of the judgment by the trial court and for special damages from the date of the cause of action.
31. Orders accordingly.

SIGNED, DATE AND DELIVERED VIA CTS AT ELDORET THIS 23rd DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

