



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Owino v Omondi (Civil Appeal E062 of 2022)  
[2025] KEHC 10772 (KLR) (21 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E062 OF 2022**

**AM MUTETI, J  
JULY 21, 2025**

**BETWEEN**

**COLLINS OMONDI OWINO ..... APPELLANT**

**AND**

**ELLY OMONDI ..... RESPONDENT**

*(Appeal arises out of the decision of the Learned Honorable C.N.C Orio Principal magistrate in Winam PMCC No.135 of 2018)*

**JUDGMENT**

**Introduction**

1. The appeal arises out of the decision of the Learned Honorable C.N.C Orio Principal magistrate in Winam PMCC No.135 of 2018 in which the learned Magistrate assessed the quantum of damages at Kshs.100,000.
2. The memorandum of appeal dated 22<sup>nd</sup> June 2022 raises three (3) grounds of appeal as hereunder:
  - i. The learned magistrate erred in law and in fact in the assessment of quantum at kshs 100,000/ = (one hundred thousand Kenya shillings) which was /is inordinately low in the circumstances of the case.
  - ii. The learned magistrate erred in law by failing to rely on the guiding principles in arriving at the amount of quantum that is appropriate and applicable in the similar in juries as the case he was deciding.
  - iii. The learned magistrate exercise of discretion in assessment of quantum was injudicious
3. The only issue that this court is invited to determine is whether the learned Honorable magistrate properly exercised his judicial discretion in assessing the damages.



## Appellant's Case

4. The appellant contends that following his involvement in the accident that occurred on 27/8/2018 involving the respondents motor vehicle he suffered the following injuries as particularized in his plaint:
  - i. Severe head injury
  - ii. Injuries on the right teeth jaw- with fractured jaw
  - iii. Neck injuries
  - iv. Laceration on the right hand
  - v. Paint on the waist
  - vi. Lacerations on the left leg.
5. The appellant adduced medical evidence by way of a Discharge summary from Jaramogi Oginga Odinga Teaching and Referral Hospital and a P3 form which documents confirmed the above stated injuries.
6. A second medical report was prepared by Dr. Jenipher Kahuthu and in it the doctor stated that the appellant sustained soft tissue injuries below the left elbow with no permanent disability.
7. The appellant contends that the learned Honorable magistrate analyzed the medical reports but failed to consider comparable awards for similar injuries ordered by other courts.
8. In particular the appellant argued that the learned Magistrate failed to abide by the principal set out by the Court of Appeal in Denshire Muteti Wambua Vs Kenya Power & Lighting Co. Ltd [2013] eKLR Nairobi CACA No. 60 of 2024 where the Court of Appeal commenting on a High court decision had this to say:

“Further, we observe that the learned trial Judge failed to appreciate that in assessment of damages for personal injuries the general method of approach is that “comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases (see the decision of the court in Arrow Car Limited vs Bimomo & 20 others (2004) 2 KLR 101). Although the award of damages was at the discretion of the trial court, that discretion required to be exercised judicially. The learned trial Judge did not consider any the authorities cited by counsel for the parties so as to guide herself on the assessment of the damages. If she had done so, she probably would have seen that the award she made was not in consonance with decided cases. The award of damages by the learned trial Judge was, in our view, so inordinately low that it is a wholly erroneous estimate of the damage.
9. Counsel for the appellant further submitted that the trial court erred in failing to comment on the authority cited by them in support of their case. In support in of that argument counsel referred this court to the decision in PamGopal Vs Nairobi Tea Packers Ltd & 2 Others [2017] eKLR Nairobi CACA No. 65 of 2006.
10. The appellant thus invited this court to consider interfering with the lower court's decision clearly because the learned magistrate did not follow the established principle in assessing damages.
11. The appellant had made a case for an award in the sum of Kenya shillings 3 million in the Lower and before this court in his submissions at paragraph 23 and 25 he has prayed for conflicting figures of



Kshs.3,000,000 and Kshs. 700,000 thus leaving this court at loss as to what exactly is he expecting from this court at the end of the day.

12. The appellant however submitted that injuries of the nature he suffered would attract a comparable award of between Kshs.2,000,000 to 3,000,000.
13. The appellant did not however cite any specific case where damages in that range were awarded in his submissions.

### **Respondent's Case**

14. The respondent has urged this court to dismiss the appeal and in his view the decision of the learned Honorable Magistrate was proper, sound and was founded on the correct principles of law.
15. The respondent submitted that even though the appellant pleaded numerous injuries in his plaint, the discharge summary dated 1<sup>st</sup> September 2018 indicated that the appellant suffered mild head injury and soft tissue injuries.
16. It is on the basis of that medical evidence that the respondent urges this court not to interfere with the decision of the learned Honorable magistrate.
17. According to the respondent the initial treatment note did not mention a fracture of the right teeth jaws.

### **Analysis and Determination**

18. The duty of this court as a first appellate court is ably stated in *Kemfro Africa Ltd T/A Meru Express Service Gathogo Kanini Vs. A.M.M Lubia & Another* (1982) 1KAR 777 at page 730 Kneller J.A held:

“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 *llango v.Manyoka* [1961]EA 705 709, 713; *Lukenya Ranching and Farming Co-operatives Society Lt v. Kavoloto* (1970)EA, 414 418, 419.

In its decision in *Arrow Car Limited -vs-bimomo & 2 Others* (2004) 2KLR 101 this Court cited and applied the *Kemfro Africa Ltd* case (supra) with regard to the principles to be considered before interfering with an award of damages by a trial Judge when it held:

Estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”(See the highlighted passage at page 2 of that authority)

19. A reading of the authority reveals that it is the duty of the appellant to demonstrate that the trial court acted on the wrong principles of law in assessing damages and as a result arrived at the wrong decision by awarding a figure that was inordinately low.
20. The court is not to interfere with the exercise of judicial discretion lightly, as that would amount to substituting the lower court's discretion with that of this court which would be wrong in law.



21. This court has taken the liberty to reevaluate the medical evidence tendered before the lower court to ascertain whether the court properly applied its mind to the medical evidence presented by the appellant.
22. The discharge summary from Jaramogi Oginga Odinga Teaching & Referral Hospital clearly indicates that the appellant Collins Omondi Owino was initially diagnosed to have suffered mild head injury and soft tissue injury.
23. Further, the document indicates that the procedure done at the time was stitching and dressing.
24. It is clear from that evidence there was no mention of any fracture thus the evidence does not support the injuries pleaded by the appellant.
25. Additionally, the P3 Form does not also show any fracture and the injury is simply classified as harm. Notably, all the injuries particularized in the P3 were soft tissue injuries and a cut wound.
26. At page 4 of the Judgment the learned Honorable magistrate properly analyzed the medical evidence. I do not find that he took into account any matter that he ought not to have taken into account or that he applied the wrong principles in assessing damages.
27. Consequently, this court finds that the appeal on quantum has no merit and the same is hereby dismissed with costs.
28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF JULY 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

No appearance for Appellant

No appearance for Respondent

