



**Sangany Agencies & another v Okello (Civil Appeal E021 of 2024)
[2025] KEHC 12654 (KLR) (27 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E021 OF 2024
GL NZIOKA, J
AUGUST 27, 2025**

BETWEEN

SANGANY AGENCIES & ANOTHER APPELLANT

AND

EVANS DAMSON OKELLO RESPONDENT

(Being an appeal from the decision of Hon. Eunice Kelly, Principal Magistrate delivered on 11th day of July, 2023 vide the Chief Magistrate Civil Case No. 212 of 2017, at Naivasha)

JUDGMENT

1. By a plaint dated 11th April, 2017, the plaintiff, (herein “the respondent”) sued the defendants (herein “the appellants”), jointly and severally seeking for judgment against the appellants for orders: -
 - a. Special damages of Kenya shillings 10,000;
 - b. General damages;
 - c. Costs and interest.
2. The plaintiff averred that on or about the 20th day of December, 2016, he was traveling on a motor vehicle registration number, KCB 372B, along Nakuru-Naivasha road, and on reaching Malura area or there about, the appellant’s driver, agent, servant, and/or employee, drove, controlled, and/or managed the subject motor vehicle negligently, that he lost control and got involved in an accident wherein the respondent sustained very serious injuries.
3. The respondent holds the appellants liable for the accident and tabulated the particulars of negligence attributed to the appellant’s driver at paragraph 4 of the plaint.
4. Similarly, the particulars of the injuries the respondent sustained are tabulated at paragraph 5 of the plaint as follows: -



- a. soft tissue injury on the head;
 - b. soft tissue injury on the left hand;
 - c. soft tissue injury on the left hand.
5. However, the respondent's case was opposed by the appellants vide a statement of defense dated 25th August 2017, wherein the appellants denied that the 2nd appellant was at all material time the beneficial owner of the subject motor vehicle. The appellants further denied that the accident occurred as pleaded and/or the particulars of negligence attributed to their driver or agent.
6. However, on a without prejudice basis, the appellants pleaded that if the accident occurred at all, it was solely or substantially caused by the negligence of the respondent based on the particulars of negligence tabulated at paragraph 6 of the defence. The appellants urged the trial court to dismiss the plaintiff's case with costs.
7. Be that as it were, the case proceeded to full hearing. The respondent's case was supported by his evidence, PC Josephat Makau and Dr Obed Omuyoma who produced the police abstract and medical report respectively.
8. The defendant did not call any witness and at the conclusion of the case, the trial the court ordered the parties to file submissions which they did and by a judgment dated; 11th June 2023, the trial court entered judgment in favor of the respondent as against the appellants wherein, the appellants were held jointly and severally liable 100% and the respondent awarded Kshs 180,000, being; Kshs 170,000 as general damages and 10,000 as special damages. The respondent was also awarded costs of the suit and interest from the date of the judgment.
9. However, the appellants are aggrieved by the decision of the trial court and appeals against it on the following grounds:
- a. That the learned trial Magistrate erred in law and fact when he disregarded the applicants/ appellants evidence on points of law and facts with respect to quantum based on the injuries sustained by the respondent thereby awarding the plaintiff general damages which were in inordinately high.
 - b. That the learned trial Magistrate erred in law and fact in failing to pay due regard to the submissions and authorities filed by the defendants/appellants which were instructive on the amount of quantum that is appropriate and applicable on similar injuries as the case he was deciding.
 - c. That the learned trial Magistrate erred in law and fact in finding that the respondent was entitled to general damages that were too high in view of the injuries suffered by the plaintiff.
 - d. That the learned trial Magistrate decision is unjust against the weight of evidence and was based on misguided points of fact and wrong principles of law and has thus occasioned a miscarriage of justice.
10. The appellants therefore prays that the appeal be allowed and the Honorable court be pleased to set aside the learned trial Magistrate's judgment delivered on 11th July 2023 on quantum and replace it with a reasonable compensation to the respondent and costs of the appeal be awarded to the appellants.
11. The appeal was disposed of by filing of submissions. The appellants filed submissions dated 25th October 2024 and generally reiterated the grounds of appeal, save to add that the medical report by Dr Obed dated 24th January 2017, lists the same injuries as pleaded in the plant while the P3 form dated



- 20th January 2017, indicates that the respondent sustained bruises on the forehead, elbow, left knee and the ankle.
12. The appellants submitted that the amount of Kshs 170,000 awarded as general damages is too high and proposed that the court substitutes that figure with an amount of Kshs 100, 000. The appellants relied on the cases of: -
 - a. Ibrahim Wanguru Muthui and 2 Others versus Toyota Kenya Limited and 2 Others (2019) eKLR;
 - b. Ndungu Dennis versus Ann Wangari Ndirangu & Another (2018) eKLR
 - c. Eva Karemi and 5 Others versus Koskei Kieng & Another (2022) eKLR.
 13. The respondent filed submissions dated; 16th October 2024, and argued that the appeal has no merit in that the trial court was well guided in awarding Kshs 170,000 as general damages.
 14. The respondent referred the court to the injuries pleaded by the plaintiff in the plaint dated; 29th October 2016 and submitted that the trial Magistrate took account the nature of the injuries that the respondent sustained.
 15. The respondent referred to the case of; Charles Oriwa Odeyo versus Apollo Justus & Another (2017) eKLR which deal with the factors that should be take into account when awarding damages which include; but are not limited to the fact that, an award of damages is not meant to enrich the victim but compensate such victim for the injuries sustained.
 16. That it must be commensurate with the injuries sustained and that previous awards in similar injuries are a mere guide and that each case be treated on his own facts. Further previous awards to be taken into account to maintain the stability of awards but factors such as inflation should be taken into account. Finally, that the awards should not be inordinately too low or too high.
 17. The court was referred the record of appeal at page 79, where the learned trial Magistrate accurately assessed the nature of the injuries the respondent sustained and awarded him Kshs 170,000. The court was further urged to consider the decisions in the following cases where the victims suffered similar injuries as sustained by the respondent:
 - a. Jyon Structure Ltd & Another vs Trphena Chepkoech Too & Another (2020) eKLR
 - b. Fred Barasa Matayo versus and Channan Agricultural Contractors (2013) eKLR.
 - c. Ufra Motors Bazaar & Another vs Kibe (Civil Appeal 39 of 2021) 2023 KEHC
 18. The court was urged to find that the appeal has no merit and uphold the decision of the trial court. The respondent also filed further submissions dated 18th November 2024 and averred that the appellants have introduced authorities on quantum not referred to in the submissions in the trial court which amounts to new evidence that should be discarded.
 19. At the conclusion of formal arguments by the parties, I note that the role of the first appellant is to re-evaluate the evidence afresh and arrive at its own conclusion, as stated by the Court of Appeal in the case of; Selle & Another v Associated Motor Boat Co. Ltd. & Others (1968) EA 123,
 20. The court in the afore case stated that: -

“I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by



the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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 account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."

21. Pursuant to aforesaid I note, the key principles on assessment of damages are; first, restitutio in integrum: that is to put the injured party in the position they would have been in had the injury or loss not occurred. Secondly, evidentiary basis: the court relies on evidence, including expert reports; medical reports, and payment receipts, to determine the amount of damages. Thirdly, precedent: the courts refer to past decisions for guidance when assessing general damages for similar injuries, although this is not a strict rule and finally, inflation: the court considers the time of the awards to account for the impact of inflation on the value of money.
22. In the instant matter, I have considered the injuries the respondent has pleaded at paragraph 5 of the plaint, that he suffered soft tissue injury to the head, left hand, and the left leg.
23. In support of the injuries sustained, the respondent produced a medical report prepared by Dr. Obed Omuyoma dated; 27 January 2017, in which the doctor states that he referred to the medical card from Naivasha County Referral Hospital, dated 29th December 2016, and the P3 form filled at the same hospital on 22nd January 2017.
24. The doctor confirmed that the plaintiff sustained the injuries as pleaded in the plaint and according to the doctor, the plaintiff was taken to Naivasha County Referral Hospital where he was put on oral analgesics and oral antibiotics. Further, he is fully healed bruises on the forehead, left region of the head, left hand and left elbow, left knee joint extending to the left ankle.
25. The doctor formed that the opinion that indeed the respondent was involved in the subject road accident, sustained the injuries sustained, and in his opinion the degree of injury is harm.
26. In addition, the respondent produced a P3 form that was filled on the 29th January 2016 and according to the doctor, the respondent sustained bruises on; the forehead, left upper limb and the left elbow joint, left knee joint extending to the right ankle.
27. That the injuries were three weeks old as at the time of examination and may have been caused by a blunt object and classified the same as harm.
28. Basically those were the main documents that the respondent produced. The appellants did not produce any evidence in relation to injuries that the respondent sustained.
29. I have also considered the submissions tendered by the parties, in the trial court and the reasons the trial court advanced in awarding the damages. I note that the trial magistrate analysed the evidence and authorities on quantum and indicated those cited by the respondent were in relation to severe injuries as compared what the respondent sustained and those cited by the appellants were of less severe injuries.
30. Having considered the subject authorities, I concur having with the finding of the trial court.
31. Be that as it were, I find that the respondent suffered soft tissue injuries, was treated and discharged on painkillers and antibiotics. The injuries were classified as harm.



32. In my considered opinion a sum of Kshs 170,000 was on the higher side. The appellants have now proposed a sum of Kshs 120,000 as opposed to Kshs 50, 00 proposed in the trial court. That figure is relatively reasonable.
33. However, considering the period the case has been in court and in the interest of justice the respondent be awarded slightly more money and therefore I set aside the award of Kshs 170,000 general damages and substitute it with a sum of Kshs 120, 000, in favour of the respondent. The decretal sum will attract interest from the date of judgment in the trial court. The rest of the judgment remains. Costs of the appeal be borne by each party.
34. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 27TH DAY OF AUGUST, 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

No appearance for the Appellant

Mr Mboga for the Respondent

Mr Komen; Court Assistant

