



REPUBLIC OF KENYA



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**Komu v Ndutu (Civil Appeal E342 of 2023)  
[2025] KEHC 12800 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12800 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E342 OF 2023  
DO CHEPKWONY, J  
SEPTEMBER 3, 2025**

**BETWEEN**

**PAUL MUIGAI KOMU ..... APPELLANT**

**AND**

**STEPHEN WAMBUA NDUTU ..... RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Senior Principal Magistrate,  
Hon. J. O. Magori, delivered at Limuru on 27th July, 2023 in Civil Case No.347 of 2018)*

**JUDGMENT**

**Introduction and Background**

1. This Appeal arises from the Judgment and decree issued in Limuru SPMCC No.347 of 2018, Stephen Wambua Ndutu –vs- Paul Muigai Komu, wherein the trial Court awarded the Respondent Kshs.900,000/= in general damages, Kshs.140,380.49 in special damages, plus costs and interest.
2. The underlying claim was based on a road traffic accident that took place on 18<sup>th</sup> May, 2016 along the Nairobi-Naivasha road, involving a Motorcycle Registration No.KMCC 622W and a Motor Vehicle Registration No.KCC 416A, wherein the Respondent sustained multiple injuries, prompting him to seek compensation before the subordinate court.
3. From the record, the Respondent who was riding motorcycle, sustained various injuries. Including:- Head injury resulting to c-shaped scar on the chine and also lost the second right upper canine tooth.A three-centimetre long scar on the little finger of the right hand.Multiple scars at the front of the right knee.The injury were tails scraze causing a lot of pain, anguish and suffering.Francture of the right ulna bone.Soft tissue injury.



4. These injuries were documented in a Medical Report by Prof. Walter Jaoko dated 24<sup>th</sup> August, 2016, which not only detailed the fractures and scars but also indicated that the Respondent might require a future medical procedure (removal of the metal plate) at an estimated cost of Kshs.80,000/=.
5. After hearing the parties and considering the evidence presented before it, the trial Court made Judgment and issued the impugned award of Kshs.900,000/= in general damages.
6. Being dissatisfied with the quantum of general damages awarded, the Appellant lodged a Memorandum of Appeal dated 12<sup>th</sup> September, 2023, challenging the award of Kshs.900,000/=. This Court now undertakes to determine whether that award was justified or was founded on wrong principles or misapprehension of the evidence.

### **Facts and injuries Sustained**

7. The Memorandum of Appeal enumerates several grounds focused primarily on the contention that the general damages awarded for the Respondent are inordinately high, representing an erroneous estimate of the proper compensation. In brief, the Appellant asserts that:-
  - a. The trial Magistrate proceeded on wrong principles in awarding Kshs.900,000/= as general damages.
  - b. The trial Court failed to scrutinize and properly evaluate the evidence vis-s-vis the cited case law.
  - c. That there was no adequate justification for the sum of Kshs.900,000/= especially given that the Respondent's injuries had largely resolved; and,
  - d. That the Court failed to uphold the doctrine of precedent, thus arriving at an unreasonably high figure.
8. Since this is a first appeal, this Court is obliged to re-assess, re-analyse and re-evaluate all the evidence that was adduced before the trial Court and draw its own conclusions while bearing in mind that it neither saw nor heard the witnesses testify. In the case of *Selle & Another –vs- Associated Motor Boat Co. Ltd & Others* [1968] EA 123, the Court of Appeal explained:-

“..this Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ....is by way of retrial and ....this court must reconsider the evidence, evaluate it itself and draw its own conclusions..... It is not bound to follow the trial Judge's findings of fact if it appears .....that he has clearly failed on some point to take account of particular circumstances or probabilities...”
9. Guided by these principles, this Court will independently scrutinize the medical and documentary evidence that the parties placed before the trial Court, while according due deference to the trial Court's observations and reasoning.

### **Evidence and Submissions before the trial Court**

10. When the matter came up for hearing before the subordinate court, the parties recorded a Consent on liability at 85:15 in favour of the Respondent, thereby leaving the issue of quantum as the sole area of contention. Subsequently, parties produced the relevant documents and medical reports by Consent without calling their makers.



11. The most probative document concerning the nature of injuries Respondent sustained was the medical report prepared by Prof. Jaoko, which corroborated the claim of a fractured right ulna, notable scarring on the chin and knee, loss of one upper tooth, and a 3cm scar on the right little finger. According to the report, the plating on the Respondent's right ulna might have to be removed in the future thus incurring an additional cost of roughly Kshs.80,000/=.
12. In final submissions at trial, the Appellant urged the court to award a lower figure for general damages, citing previous decisions in which similar injuries attracted between Kshs.500,000/= and Kshs.600,000/=. The Respondent on the other hand, maintained that the injuries were grave enough to justify the higher award of Kshs.900,000/= particularly considering the permanent disfigurement and the possibility of another surgical intervention.

## **Submissions of Appeal**

### **Appellant's Contentions**

13. In his written submissions dated 25<sup>th</sup> July, 2024, the Appellant reiterates that an award of Kshs.900,000/= in general damages is excessive and not proportionate to the nature of the injuries the Respondent allegedly sustained. The Appellant has made reference to decisions in case such as *Dedan Njoroge Mwangi & Another –vs- Jane Wanjiru [2020]eKLR*, where a sum of Kshs.600,000/= was awarded for a fracture of the radius and ulna plus other injuries. Similarly, in the case of *Mary Akinyo Stella –vs- Omondi Beatrix Monica [2021]eKLR*, a sum of Kshs.500,000/= was granted for a fracture of the right ulna shaft and a dislocation of the left elbow. The Appellant thus presses for a reduction of the award to a sum of Kshs.500,000/= for general damages in the present case.

### **Respondent's Contentions**

14. The Respondent's submissions dated 25<sup>th</sup> September, 2024 emphasize that the trial Court's award is neither inordinately high nor based on misapprehension of the medical evidence. The Respondent argues that given the permanent nature of some of the injuries he sustained, especially the scarring and the need for future surgery, Kshs.900,000/= remains just and within the established range of reasonable awards.

### **Analysis and Determination**

15. Having read through the trial record, re-analysed and re-assessed the evidence that was adduced before the trial Court, this Court, appreciates that it is a well settled principle that an appellate court applied wrong principles, or arrived at an inordinately high or low figure, of misapprehended the material evidence in a way that led to an erroneous estimate of damages.
16. The case of *Butt –vs- Khan[1981]KLR 349* is pivotal on this principle, where Law, stated:-  

“..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.... and so arrived at a figure which was either inordinately high or low...”



17. Similarly, courts have repeatedly observed that damages for a personal injury are meant to compensate, rather than enrich the injured party. In the case of Charles Owiwo Odeyo –vs- Appollo Justus Andabwa & Another [2017]eKLR, the Court of Appeal reiterated:-

“The assessment of damages in personal injury cases is guided by .....the award should be commensurable with the injuries sustained... previous awards for similar injuries are a mere guide, but each case must be determined on its own facts...”

18. In light of these legal principles, this Court has scrutinized the specific injuries the Respondent suffered. While the fracture of the right ulna and notable scarring are certainly serious, the question remains whether Kshs.900,000/= is so inordinately high as to warrant any interference by this Court.

19. Several comparable cases point to awards in the range of Kshs.500,000/= to Kshs.600,000/= for broadly similar fractures coupled with some level of permanent scarring. The Court has taken particular note of the decision in the case of Joseph Njuguna Gachie –vs- Jacinta Kavuu Kyengo [2019]eKLR, where a sum of Kshs.600,000/= was awarded for a fractured distal radius with an ulna dislocation. Although no two cases are perfectly identical, these authorities provide a relevant benchmark for proportionate compensation for fracture injuries and resultant scarring.

20. After comparing the Respondent’s injuries against awards in analogous decisions, the Court is persuaded that Kshs.900,000/= might be on the higher side, especially given the typical awards for similar fractures and the extent of scarring described. This Court has observed that the trial Court does not appear to have misdirected itself on the legal principles, but it did not sufficiently justify why it departed from comparable awards in a manner that effectively increased compensation to almost twice what some comparable cases have granted.

## Conclusion

21. Consequently, this Court finds that while the Respondent’s injuries were significant, the trial Court’s award of Kshs.900,000/= for general damages is excessive when measured against similar precedent. In its view, an amount of Kshs.700,000/= would more accurately reflect a fair and reasonable figure, factoring in the fracture, permanent scarring, future medical procedure and inflation.

22. Therefore, in line with the guiding authorities and the established principles on interfering with trial Court’s awards, this Court sets aside the award of Kshs.900,000/= and substitutes it with an award of Kshs.700,000/= in general damages.

## Final Orders

23. The Appeal on quantum of damages is hereby allowed in manner of the following orders:-

- a. Liability remains 8:15 in favour of the Respondent as per the Consent dated 30<sup>th</sup> March, 2021.
- b. The trial Court’s award of Kshs.900,000/= in general damages be and is hereby set aside and the same is substituted with an award of Kshs.700,000/=.
- c. The special damages remain Kshs.140,380.89 as awarded by the trial Court.
- d. Costs of this appeal shall be borne by the Appellant, but only to the extent of the adjustments occasioned by the new award.
- e. Interest on the substituted award shall run from the date of the trial Court’s Judgment until payment in full.



It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3<sup>RD</sup> DAY OF  
SEPTEMBER\_\_ 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

No appearance for and by either counsel

Court Assistant – Kinyua

