



**Otieno v Kiprono (Civil Appeal E049 of 2024)
[2025] KEHC 12785 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E049 OF 2024
DK KEMEL, J
SEPTEMBER 19, 2025**

BETWEEN

RISPER ATIENO OTIENO APPELLANT

AND

JOEL BII KIPRONO RESPONDENT

(Being an appeal from the Judgment and Decree of the Hon. B. Limo (PM) in Siaya Chief Magistrate Courts in Civil Case No.E004 of 2020 delivered on 17th September 2024)

JUDGMENT

1. The Appeal arises from the Judgment and Decree of the Hon. B. Limo (PM) IN Siaya Chief Magistrate Courts in Civil Case No. E004 of 2020 delivered on 17th September 2024 wherein he awarded general damages of Kshs 300,000/ to the Appellant for pain, suffering and loss of amenities due to injuries sustained in a road traffic accident in which the parties entered into a consent on liability in the ratio of 20% :80% in favour of the Appellant.
2. The Appellant in her Complaint dated 8th September 2020, had claimed that she sustained serious injuries of vertebral bone fracture, severe back pain, severe chest pain, and loss of consciousness from an accident that occurred on or about 30th June 2018 along the Siaya-Bondo road at Malanga area. According to the Appellant, she was lawfully travelling as a passenger aboard the Respondent's motor vehicle registration number KCJ 528Y when its driver caused the motor vehicle to violently hit a dwelling house and overturn. The Appellant sought general damages, costs of the suit, and interest thereon.
3. Vide his Statement of Defence dated 14th November 2020, the Respondent denied being the registered owner and/or beneficial owner of the motor vehicle, the particulars of negligence imputed against him, and the pleaded injuries by the Appellant. The Respondent therefore prayed for the dismissal of the suit with costs.



4. In his judgment, the learned trial Magistrate only rendered himself on quantum since the parties had agreed on liability in the ratio of 80:20 in favour of the Appellant against the Respondent. On quantum, the learned trial Magistrate was guided by the decision in *Purity Wambui Murithii v Highlands Mineral Water Co. Ltd* [2015] eKLR to award the Appellant Kshs. 300,000.00 as general damages. The learned trial Magistrate indicated that the Court of Appeal, in the decision, had revised downwards an award by the High Court of Kshs. 700,000.00 to Kshs. 150,000.00.
5. Aggrieved, the Appellant has appealed vide the Memorandum of Appeal dated 13th October 2024, contending that:
 1. The learned trial magistrate erred in law and fact in failing to state the ratio decidendi.
 2. The learned trial magistrate erred in law and fact in arriving at a decision that was erroneous in the circumstances.
 3. The learned trial magistrate erred in law and fact in awarding the Appellant general damages that were inordinately low as to occasion a miscarriage of justice.
 4. The learned trial magistrate erred in law and fact in making a decision based on wrong principles of the law.
 5. The learned trial magistrate erred in law and fact in failing to appreciate and take into account the pleadings, evidence, and submissions at all in the subordinate court.
 6. The Judgment is against the weight of the evidence.
6. The Appellant prays that:
 - a. The finding that the Appellant be awarded general damages of Kshs. 300,000.00 be set aside for being inordinately low as to occasion a miscarriage of justice, and be substituted with a higher award of damages with costs in favour of the Appellant commensurate with the injuries sustained
 - b. The costs of the appeal be borne by the Respondent.
7. The appeal was canvassed by way of written submissions. Both parties duly complied.
8. I have considered the appeal in light of the evidence on record and written submissions filed on behalf of the parties herein. The issue for determination is whether the award of general damages in the sum of Kshs 300, 000/ by the trial court was low as to occasion a miscarriage of justice.
9. This being the first appellate court, its duty is to reevaluate the evidence tendered before the trial court and subject it to an independent analysis so as to arrive at its own conclusion as to whether or not to uphold the decision of the trial court. See *Selle Vs Associated motor Boat Co. Ltd* [1968] EA 123.
10. It is noted that the grounds of appeal are six in total, but both Appellant and Respondent have elected to submit only on the general damages awarded by the learned trial Magistrate. I will thus proceed to consider the issue of whether the awards by the trial court was within the acceptable range. I see no need to reproduce the evidence of the Appellant in view of the fact that the parties already entered into a consent on liability and hence my duty is to assess the injuries sustained by the Appellant and establish the award of damages that are appropriate in the circumstances.



11. The principles which guide a court in awarding damages were set out by the Court of Appeal in *Southern Engineering Company Ltd v Musingi Mutia* [1985] KLR 730, where it was held that:

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual judge, which of course has to be exercised judicially and about the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated...The difficult task of awarding monetary compensation in a case of this kind is essentially a matter of opinion, judgment, and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong, the best that can be done is to pay regard to the range and limits of current thought...”

12. The Appellant has urged this Court to find an award of Kshs. 2,000,000.00 would adequately compensate her, taking into account the fact that the injuries sustained affected her quality of life. According to the Appellant, the learned trial Magistrate failed to appreciate and take into account the pleadings, evidence, and submissions at all. The Appellant has placed reliance on the case of *Subati Flowers vs Walter Wanyonyi Wekesa*[2019]eKLR, where an award of Kshs. 1,600,000.00 as general damages for a fracture of the legs and right tibia/fibula, fracture of lumbar vertebrae (2) of the spine, and blunt injuries to the right side of the chest was awarded. Further reliance is on *David Muriungi Daniel & Another vs Martine Githongo Ndereva alias Martin Githongo Ndereva*, where the court declined to set aside an award of Kshs. 1,400,000.00, where the Plaintiff had suffered multiple injuries, including subluxation of the cervical spine at C3 to C5. The Appellant urges this Court to consider the effects of inflation and the passage of time and referred the court to the case of *Telkom Orange Limited vs S O (Minor suing through his next of Friend and Mother)* 2018 eKLR.
13. The Respondent on his part supports the interference with the award of damages but proposes the sum of Kshs. 300,000.00 be substituted with an award of Kshs. 400,000.00 subject to 20% contributory negligence. The Respondent faults the learned trial Magistrate for not placing reliance on the authorities cited by the parties and comparing them with the facts of the instant case, thus a misdirection which entitles this Court to interfere with the award. Reliance is placed on *Denshire Muteti Wambua vs Kenya Power & Lighting Co. Limited* [2013] eKLR and *Ram Gopal Gupta vs Nairobi Tea Packers Limited & 2 Others* [2017] eKLR. The Respondent had urged the trial Court to find Kshs. 400,000.00 as sufficient and placed reliance on several cases namely *Maweu vs Nguu Transport Company*[2022]KEHC 214(KLR); *Dorcas Mututho Ileve vs Muithya Lydia* [2018]eKLR and *Waroi Elly vs Catherine Mueni Mwangangi*[2020]eKLR.
14. Order 42 Rule 32 of the Civil Procedure Rules allows a party to file a cross-appeal. Rule 32 provides as follows:

“The court to which the appeal is preferred shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents although such respondents may not have filed any appeal or cross-appeal



15. The Black's Law Dictionary (11th ed.) Bryan A Garner defines a cross-appeal as:
- ‘A proceeding undertaken to have a decision reconsidered by a higher authority, especially the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal.’
16. The Supreme Court in *Albert Chaurembo Mumba & 7 others (suing on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v. Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme)*, SC Petition No 3 of 2016; [2019] eKLR as adopted the definition follows:
- “(163) By its definition, a cross appeal is an appeal by an appellee, usually heard at the same time as the Appellant’s appeal (see Black’s Law Dictionary, 9th edition, p.113). A cross-appeal is also defined as a request filed by an appellee (Respondent) requesting that a higher court review a decision made by a lower court.”
17. I find the Respondent is urging this Court to substitute the award given by the learned trial Magistrate with a higher amount of Kshs 400, 000/ without filing a Cross-Appeal. The Respondent is ordinarily required to counter the Appellant’s appeal by supporting the decision of the trial Court. If the Respondent has a reservation with the trial court’s decision, then a Cross-Appeal has to be filed. In *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others*, SC Petition No 14 of 2014; [2014] eKLR, the Supreme Court stated:
- “ [31]....A cross-appeal is an action by a Respondent, who intends to counter an Appellant’s cause in an appeal, with the view of obtaining certain relief(s) from the Court...”
18. The Appellant submits that the general damages awarded were low, thus the need for this Court to interfere with the learned trial Magistrate’s discretion in awarding the damages. The Supreme Court in the case of *Sonko v County Assembly of Nairobi City & 11 others (Petition 11 (E008) of 2022)*, had this to say:“
- “ A first appellate court should accord deference to the trial court’s conclusions of fact and only interfere with those conclusions if it appeared to it, either that the trial court had failed to take into account any relevant facts or circumstances or based the conclusions on no evidence at all, or misapprehended the evidence, or acted on wrong principles in reaching the conclusions.”
19. In *Kenya Bus Services Limited vs. Jane Karambu Gituma Civil Appeal Case No. 241 of 2000* where the Court of Appeal stated as follows:
- “...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages.” See *Kemfro*



20. In his judgment, the learned trial Magistrate indicated that he had evaluated the medical notes produced as exhibits and authorities filed by the parties. It was the Appellant’s testimony that she still had pain all over his body. On being cross-examined, she stated that she got injured on her back and chest, and that she had not healed from the injury.
21. In the decision of Purity Wambui Murithii v Highlands Mineral Water Co. Ltd [2015] eKLR, the appellant had sustained injuries to her left elbow, pelvic region, lower back. Zachary Githui Mwaniki (PW2), an occupational therapist, gave evidence that the Appellant had sustained soft tissue injuries on her left elbow, pelvic region, and lower back and left knee; on account of the injuries to her back, the Appellant could not carry heavy things and that she has had to wear a spinal cossets to support her back. He further testified that the Appellant was still undergoing physiotherapy. The trial Court awarded the Appellant general damages of Kshs. 700,000.00, but the award was reduced by the High Court to Kshs. 150,000.00, which was upheld by the Court of Appeal.
22. The Appellant in that case seems to have suffered severe injuries than the Appellant in this appeal. The Appellant herein only stated that she still had pain on her back and hence the circumstances are not that similar as suggested. I find the Appellant’s injuries were soft tissue in nature and did not warrant general damages in excess of Kshs 300, 000/.
23. The Court of Appeal in Odinga Jacktone Ouma v Moureen Achieng Odera [2016] eKLR stated that “comparable injuries should attract comparable awards”. In Simon Taveta v Mercy Mutitu Njeru (2014) eKLR, the Court stated 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.
24. Taking into account the injuries sustained, the decision relied upon by the learned trial Magistrate, inflation, and passage of time, i find no reason to interfere with the award since the learned trial Magistrate applied the proper principles of law, and thus the award was not low at all. I find the award was quite reasonable in the circumstances and that the same did not represent an erroneous estimate of damages as to cause any miscarriage of justice.
25. In view of the foregoing observations, it is my finding that the Appellant’s appeal lacks merit. The same is dismissed. The trial court’s judgment delivered on 17th September 2024 is hereby upheld. Each party to bear their own costs of the appeal.

DATED, SIGNED, AND DELIVERED AT SIAYA THIS 19TH DAY OF SEPTEMBER 2025.

D. K. KEMEI

JUDGE

In the presence of:

Omondi for M/s Wafula.....for Appellant

M/s Barasa..... for Respondent

Okumu.....Court Assistant

