Andati v Ronald & another (Civil Appeal E047 of 2022)
[2024] KEHC 12962 (KLR) (4 October 2024) (Judgment)

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REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL APPEAL E047 OF 2022

AC BETT, J

OCTOBER 4, 2024

BETWEEN

ESTHER KULECHO ANDATI ..... APPELLANT

AND

ABISAI RONALD ..... 1ST RESPONDENT

CARMASTER (K) LIMITED ..... 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J. R. Ndururi (PM), in Kakamega Civil Suit No. 200 of 2018 dated and delivered on 21st July 2022)

JUDGMENT

Background

1. By a plaint filed on 21st June 2018, the Appellant sued the Respondents claiming special damages of Kshs. 15,000/= and general damages. According to her, on or about 25th July 2015, she was a lawful passenger aboard motor vehicle registration number KAZ 591Q Toyota Hiace owned by the 1st Respondent and registered in the name of the 2nd Respondent when the said motor vehicle was driven so recklessly, negligently or carelessly by the driver, servant, employee or agent of the Respondents that the same lost control at Handiti area along Kakamega-Webuye road. The Appellant's case was that upon losing control, the said motor vehicle caused an accident as a result of which she sustained injuries for which she suffered loss and damage. The Appellant set out the particulars of negligence and pleaded res ipsa loquitor. She stated that she suffered severe physical injuries.

2. The 2nd Respondent entered appearance and filed a defence in which it denied being the owner of motor vehicle registration number KAZ 591Q. It stated that it sold the subject motor vehicle to the 1st Respondent and therefore at the time of the accident, it had no proprietary interest over the same nor did it exercise possession or management of the same. The 2nd Respondent's defence was that it had

no control of the motor vehicle at the material time and was not the authorized insurer thereof and therefore should not be held vicariously liable for the accident.

3. In the alternative the 2nd Respondent averred that if the accident occurred as stated, which they denied, then the Appellant was the one responsible for the accident.

4. After hearing the parties and considering their submissions, the trial Magistrate dismissed the Appellant's suit against the 2nd Respondent thus giving rise to this appeal.

5. In her Memorandum of Appeal dated 8th August 2022, the Appellant urged this court to set aside the Judgment of the trial Magistrate on the following grounds:-

    1. That the learned trial Magistrate erred in law and fact by failing to make a finding on liability

    2. That the learned trial Magistrate erred in law and fact by failing to find the Respondent wholly liable for the accident.

    3. That the learned trial Magistrate erred in law and fact by allowing the Respondent to depart from its pleadings.

6. The Appellant gave evidence before the trial court in which she adopted her written statement which briefly stated that on 25th July 2015, she was involved in a road traffic accident and suffered bodily injuries and pecuniary loss whose full particulars were contained in the plaint which she stated should be read as part of her evidence-in-chief.

7. The 2nd Respondent on its part gave evidence through its General Manager who also relied on his written statement dated 11th May 2022 and testified that on 14th April 2010, the 1st Respondent had sold the subject motor vehicle to one Rakesh J. Shah who took possession of the same immediately. According to the witness, the Company handed over the motor vehicle in respect to the subject motor vehicle to the aforesaid purchaser and only became aware that the motor vehicle was still registered in its name when they were sued. In this matter.

Issues for Determination

8. Both parties filed their written submissions pursuant to directions from the court. Each one listed their issues for determination which can be summarized as follows:-

    (a) Whether the 2nd Respondent is the owner of motor vehicle registration number KAZ 591Q.

    (b) Whether the 1st Respondent is liable for the accident that occurred on 25th July 2015.

    (c) Whether the trial Magistrate should have made a finding on quantum.

The Appellant's Submissions

9. The Appellant submits that she had proved on a balance of probabilities that the subject motor vehicle belonged to the 2nd Respondent. She contends that it is trite law that proof of ownership of a motor vehicle by either a police abstract, motor vehicle search or other relevant records is sufficient in proving liability on the defendant's part in accident claims. According to her, the 1st and 2nd Respondent' s liability could be deduced from the copies of the police abstract dated 29th September 2015 which recorded the 1st Respondent as the owner of the subject motor vehicle as well as a copy from Kenya Revenue Authority (KRA) records dated 16th October 2015 which capture the 2nd Respondent as the registered owner of the motor vehicle. The Appellant relies on the cases of Francis Mutito Mwangi -vs- MM [2016] eKLR, Board of Governors of Kangubiri Girls High School & Another -vs- Jane Wanjiku

Muriithi & Another [2014] eKLR and Joel Muga Opija -vs- East African Sea Food Limited, Civil Appeal No. 309 of 2010, and Bernard Muia Kilovoo -vs- Kenya Fresh Produce Exporters [2020] eKLR among others.

10. It is the Appellant's further submissions that Section 8 of the *Traffic Act* which specifically states, "The person in whose name a vehicle is registered shall, unless the contrary is proved be deemed to be the owner of the vehicle" implies that the burden of rebutting or disproving ownership falls on the person whose name is reflected as the owner of the motor vehicle and failure to do so would lead to a presumption that the person is indeed the owner of the vehicle.

11. As regards the 2nd Respondent's defence, the Appellant submits that law is cognizant of various forms of ownership of a motor vehicle being possessory, beneficial and registered and that where it is proved that a defendant falls within any of such categories of ownership, then such a defendant should as well be held liable for any accident claim arising from the use and operation of the vehicle. She placed reliance on the case of Nancy Ayemba Ngaira -vs- Abdi Ali [2010] eKLR and Jotham Mugolo -vs- Telkom (K) Ltd Kisumu HCC. No. 166 of 2001. She therefore submits that since the 2nd Respondent is the registered owner of the motor vehicle, then it should be held vicariously liable for the accident since despite alleging that it had sold the subject motor vehicle to a third party, the 2nd Respondent had not enjoined the third party to the proceedings. The Appellant states that it was not enough for the 2nd Respondent to testify that it had sold the subject motor vehicle and cites the following cases in support of her position:- *Al Husnain Motors Limited -vs- Rose Abondo, Kisii HCCA No. 92 of 2013* and *Leonard Mugania -vs- Jessikay Enterprises & Another, Nyeri HCCA No. 129 of 2007* where the courts found the registered owners of the motor vehicles vicariously liable for the accidents.

12. On the issue of quantum, the Appellant submits that she suffered injuries which she proved . She urged the court to award her Ksh. 500,000/= and relied on the case of Barbara Fenwick -vs- Bernard Ngigi Ndirima & Another [2000] eKLR and Samwel Martin Njoroge Kamunyu -vs- Mildred Okweya Barasa [2020] eKLR. She also prays for Kshs. 15,000/= special damages.

The 2nd Respondent's Submissions

13. The 2nd Respondent submits that the presumption of ownership envisaged under Section 8 of the *Traffic Act* is not conclusive proof of actual ownership and that the trial Magistrate properly analyzed the evidence and properly held that it was not the actual, possessory and/or beneficial owner of the subject motor vehicle at the time of the accident. It further submits that Section 8 of the *Traffic Act* only places a rebuttable presumption of ownership of a motor vehicle and where evidence is adduced to controvert and rebut the position presented by the registration documents, the court should not determine the issue of ownership of the basis of the registration documents. The 2nd Respondent cites the cases of Ramesh V. Hiran -vs- Justus Murianki & Another [2017] eKLR, Muhambi Koja -vs- Said Mbwana Abdi [2015] eKLR, Nancy Ayemba Ngaira -vs- Abdi Ali [2010] eKLR, Ignatius Makau Mutisya -vs- Reuben Musyoki Muli [2015] eKLR and Cyprian Sibwoga Mokurumi -vs- Richard Mutwol Kipyegon [2021] eKLR among others.

14. The 2nd Respondent further submits that the Appellant's case presents a unique scenario where the Appellant produced as part of her evidence a police abstract showing that one Abisai Ronald, the 1st Respondent was the actual, beneficiary and/or possessory owner of the subject motor vehicle at the time of the accident which evidence was not rebutted or controverted and hence the particulars in the police abstract remained unchallenged. It is the 2nd Respondent's case that courts have severally held that the evidence in the police abstract which goes unchallenged and uncontroverted is sufficient to rebut the presumption of ownership under Section 8 of the *Traffic Act*. It is the 2nd Respondent's

contention that the Appellant's own evidence was that the 1st Respondent was the beneficial owner of the subject motor vehicle and that the Appellant failed to establish a nexus between the evidence of ownership contained in the police abstract and that which is contained in the copy of the records and therefore she did not prove her case as there could not have been a joint ownership of the motor vehicle between the Respondents herein.

15. In addition, the 2nd Respondent submits that the evidence tabled point to Abisai Ronald being the special, insurable and actual owner of the subject motor vehicle and that the trial Magistrate duly appreciated the standard of proof herein and since the Appellant had adduced prima facie evidence which was rebutted and controverted, then it is illogical for the Appellant to fault the trial Magistrate. The 2nd Respondent further relies on the cases of Hellen Karimi Njeru -vs- Mohammed Ahmed Mohammed & Another [2015] eKLR and Jared Magwaro Bundi & Another -vs- Primarosa Flowers Limited [2018] eKLR.

16. The 2nd Respondent concludes its submissions by submitting that the Appellant failed to prove that the 2nd Respondent is liable for the accident because she did not prove any link tying the 2nd Respondent's alleged negligence to her injury. The 2nd Respondent did not submit on quantum.

Analysis and Determination

17. This being a first appeal, the court's duty is to re-evaluate and re-assess the evidence adduced before the trial court afresh in order to arrive at an independent conclusion bearing in mind that it did not have the opportunity to see or hear the witnesses. This was held in the case of Selle -vs- Associated Motor Boat Co. [1968] EA 123.

18. It is well settled that the standard of proof in civil cases is on a balance of probabilities where all the court needs to establish that, based on the evidence before it, it is of the view that it is more probable than not that the facts said to exist indeed exist.

19. It was the finding of the trial court that the subject motor vehicle registration number KAZ 591Q had been sold by the 2nd Respondent vide an agreement dated 14th April 2010 and that the Appellant was aware of the same. According to the trial court, by producing an agreement of sale, the 2nd Respondent had successfully rebutted the prima facie evidence from the copy of the records that established the 2nd Respondent as the registered owner of the vehicle.

20. Section 8 of the *Traffic Act* contemplates other aspects of ownership of a motor vehicle which is independent of registration. Since it predicates a rebuttable presumption as to ownership of a motor vehicle, then the record obtained from the Registrar of Motor Vehicles is not conclusive proof of ownership as the law is open to a party to disprove such ownership via other evidence controverting the position. In the premises, whereas the copy of the records is prima facie proof of ownership, the court will not rely on the records where other evidence to the contrary is produced by another party.

21. Pursuant to Section 116 of the *Evidence Act*, the burden of proving that the ownership of the subject motor vehicle had passed to a third party at the time of the accident rested upon the 2nd Respondent. The Section provides as follows:-

> "When the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

22. The Appellant initially sued both the 1st and 2nd Respondents but withdrew the suit against the 1st Respondent on 10th February 2022 when she could not trace him for service. In paragraph 4 of her plaint dated 14th June 2018, the Appellant stated:-

> "4. At all material time to this suit, the 1st Defendant was the owner of motor vehicle registration number KAZ 591Q TOYOTA HIACE."

Despite withdrawing the suit against the 1st Respondent, the Appellant never amended the plaint. The Appellant adopted the contents of the plaint as her evidence- in -chief. Upon cross-examination, she stated that the insured was shown as the 1st Respondent in the police abstract which she produced as part of her evidence. The Appellant did not enjoin the driver of the subject motor vehicle to the suit but stated that she held the "defendant wholly liable" for the accident.

23. The 2nd Respondent's witness gave evidence through its manager who relied on his witness statement and maintained that the 2nd Respondent had sold the subject motor vehicle by an agreement dated 14th April 2010 and handed over possession of the same on the date of sale. He produced sale agreement in proof of his assertion, and a copy of a policy document showing that the subject motor vehicle was at 24th March 2022, insured to one Francis Mwangi Njoroge.

24. Upon careful analysis of the evidence, it is apparent that at the material time of the accident, the insured of the motor vehicle was the 1st Respondent. This is deduced from the police abstract dated 29th September 2015. The Appellant acknowledged this as a fact and even issued a statutory notice dated 7th May 2018 addressed to the 1st Respondent's insurer. The police abstract produced by the Appellant also indicated the 1st Respondent as the owner of the subject motor vehicle. The Appellant only enjoined the 2nd Respondent because the copy of the records still bears its name as registered owner.

25. Although the Appellant has made lengthy submissions urging the court to find the 2nd Respondent liable for the accident, her own pleadings and evidence is in favor of the 2nd Respondent's defence. While it is true that the 2nd Respondent did not stick to its pleadings and testified that it had sold the subject motor vehicle other than the one mentioned in it defence, the Appellant's evidence was already in its favour. By the close of the Appellant's case, the 2nd Respondent therefore needed to adduce moderate evidence to prove on a balance of probabilities, that the subject vehicle was no longer in its possession at the time of the accident. In the case of Muhambi Koja -vs- Said Mbwana Abdi [2015] eKLR, the Court of Appeal held as follows:-

> "In a nutshell, a police abstract report or any other form of evidence will be proof of ownership of a vehicle and will displace the registration (log) book if it is demonstrated that the person named in the registration (log) book has since transferred and divested himself of ownership to the person named in that other form of evidence."

26. The evidence before court, which was buttressed by the Appellant's evidence, was that the 2nd Respondent had divested itself of the subject vehicle before the accident. This position was clear to the Appellant at the point of filing suit and in seeking to have the court declare the 2nd Respondent as the owner of the vehicle, the Appellant is approbating and reprobating. The Appellant cannot be allowed to pick the portions of its documentary evidence that are favourable to her claim while discarding those

that are against her claim. The doctrine of reprobation and approbation was described in the English case of EVans V Bartlam (1937) 2 All ER 649 at page 652 where Lord Russel of Killowen said;

> " The doctrine of approbation and reprobation requires for its foundation inconsistency of conduct, as where a man, having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit."

27. In light of the evidence in her possession, it was not enough for the Appellant to dangle the copy of the records from the Registrar of Motor Vehicles at the court and expect the court to determine the case in her favour. It is my finding that both parties were under duty to furnish the court with evidence on facts that would persuade the court to find, on a balance of probabilities that it was more likely that the facts relating to ownership of the vehicle was in accordance with their version. In re H C minors {1996} AC 563 at 586 – Lord Nicholls stated as follows:

> " The balance of probability standard means that a Court is satisfied an event occurred, if the Court considers, that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegations, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation ....."

28. The evidence came out clearly on the Appellant's side that the subject vehicle was insured in favour of the 1st Respondent who was the beneficial owner thereof. In Jared Magwaro Bundi & Another -vs- Primarosa Flowers Limited [2018] eKLR, the Court of Appeal stated thus:-

> " ... Section 8 of the *Traffic Act* recognizes the registration book or the Registrar's extract of the record as prima facie evidence of title to a vehicle and the persons in whose name the vehicle is registered is presumed to be the owner thereof unless the contrary is proved. The burden is discharged if, on a balance of probabilities, it is shown that as a matter of fact the vehicle had been transferred but not yet registered, to a de facto owner, a beneficial owner or a possessory owner. Such an owner though not registered for practical purposes may be more relevant than that in whose name the vehicle is registered."

29. Being guided by the above authority, I find that the police abstract demonstrated that the 1st Respondent was the de facto owner of the subject motor vehicle at the time of the accident while the demand letter sent to the 1st Respondent's insurer demonstrated that the 1st Respondent was a beneficial owner of the same. Since the 2nd Respondent's evidence was that it was no longer in actual possession of the vehicle as they handed it over to the purchaser immediately upon executing a sale of the same, the sum total of the evidence is that the 2nd Respondent was not the owner of the subject vehicle at the material time. It may be as well that after it sold the motor vehicle to Rakesh J. Shah, the said Rakesh later sold off the vehicle. As the 1st Respondent did not participate in in the proceedings, the 2nd Respondent assertion in its defence was never controverted. The court is also persuaded by a case cited by both parties: Nancy Ayiemba Ngaira -vs- Abdi Ali [2010] eKLR where Ojwang J (as he then was) observed as follows:-

> " There is no doubt that the registration certificate obtained There is no doubt from the Registrar of motor vehicles will show the name of the registered owner of a motor vehicle.

> But the indication thus shown on the certificate is not final proof that the sole owner is the person whose name is shown. Section 8 of the *Traffic Act* is fully cognizant of the fact that a different person, or different other persons, may be the de facto owners of the motor vehicle – and so the Act has an opening for any evidence in proof of such differing ownership to be given. And in judicial practice, concepts have arisen to describe such alternative forms of ownership: actual ownership; beneficial ownership; possessory ownership. A person who enjoys any of such other categories ownership, may for practical purposes, be much more relevant than the person whose name appears in the certificate of registration; and in the instant case at the trial level, it had been pleaded that there was such alternative kind of ownership. Indeed, the evidence adduced in the form of the Police Abstract, showed on a balance of probabilities, that 1st defendant was one of the owners of the matatu in question."

30. The second issue is whether the 2nd Respondent should be held liable for the accident. Having established that the 2nd Respondent was not the actual, beneficial, or possessory owner of the subject vehicle, the court has to determine whether it should be held liable for the accident. In Statpack Industries -vs- James Mbithi Munyao [2005] eKLR, the court stated that:-

> " Coming now to the more important issue of "causation", it is trite law that the burden of proof of any fact or allegation is on the Plaintiff. He must prove a causal link between someone's negligence and his injury. The Plaintiff must adduce evidence from which, on a balance of probability, a connection between the two may be drawn. Not every injury is necessarily a result of someone's negligence. An injury per se is not sufficient to hold someone liable for the same."

31. The burden lay on the Appellant to establish a nexus between the 2nd Respondent and the driver of the subject motor vehicle for the 2nd Respondent to be held vicariously liable. This was held in the case of Beatrice William Muthoka & Another (Both suing as legal representatives of the Estate of William Muthoka Yumbia (Deceased) -vs- Agility Logistics Limited [2020] eKLR where the Court stated as follows:-

> " Vicarious liability imposes liability on employers for the wrongful acts of their employees as such an employer will be held liable for torts committed while an employee is conducting their duties. It is not in contention that the driver of the motor vehicle was in fact an employee of the respondent and evidence has been adduced to that effect. Then it stands to reason that we should interrogate the principles or elements required for this tort to hold. In the case of Yewens v Noakes {1880} 6 QBD 530 Bramwell LJ stated that: -
>
> > "...a servant is a person who is subject to the command of his master as to the manner in which he shall do his work."

Further, in the case of Joel v Morison [1834] EWHC KB J39 it was held that: -

> " The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master's implied commands, when driving on his master's business, he will make his master liable; but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable."

32. The Appellant did not plead vicarious liability against the 2nd Respondent. Neither did she enjoin the driver of the subject vehicle to the suit. From her conduct and testimony, she was aware that the 2nd

Respondent no longer had any interest in the vehicle despite being its registered owner. On 19th May 2022, at the close of the defence case, the Appellant's advocate stated:-

> " ... I have just realized that we did not make a request for judgment against the 1st defendant. We shall regularize the matter ..."

The Appellant also enjoined the 1st Respondent to this appeal. This shows that the Appellant was aware that the 2nd Respondent was not in the picture when the accident occurred. All the evidence points to the fact that the driver of the subject motor vehicle was not at the command of the 2nd Respondent. He was neither its employee nor its agent. He was not operating the motor vehicle for the benefit of the 2nd Respondent and the later could therefore not be held responsible for his actions.

33. I have considered the cases cited by the Appellant and I do find that most of them are in support of the 2nd Respondent's case. Since the claim of ownership of the subject vehicle was rebutted by the evidence of both parties, then the 2nd Respondent cannot be held liable for the acts of the driver of the said vehicle for the driver was neither his agent nor servant.

Assessment of Damages

34. As regards assessment of damages, it is now well settled that a trial court is obligated to assess damages regardless of its finding on liability. In Lei Masaku -vs- Kalpama Builders Ltd [2014] eKLR the Court noted as follows:-

> " It has been held time and again by the Court of Appeal that the court of first instance must assess damages even if it finds that liability has not been established. To have casually dismissed the suit and failed to address that issue of damages in this case is a serious indictment on the part of the trial court. Both the trial court and this court must assess damages as they are not courts of last resort. Their decisions are appealable and the Appellate Court needs to know the view by the court of first instance on the issue of quantum. To the extent that the trial court failed to assess damages, its judgment was a serious flaw and cannot stand. It therefore behoves this court to assess quantum."

35. Being guided by the above precedent, this court finds that it has a duty to assess quantum notwithstanding the fact that the judgement on liability does not favour the Appellant.

36. The Appellant suffered soft tissue injuries which was stated as a cut wound to the right eye, bruises to both legs and bruised right thigh. The injuries were confirmed by production of treatment notes and a medical report dated 16th October 2015 made by Dr. Charles Andai. According to Dr. Andai, the Appellant sustained the injuries from which she was expected to fully recover. On physical examination, she had a 3cm long scar on the right eye- brow.

37. In assessing quantum, the court is guided by well-established principles that are echoed in past decisions. In the case of Charles Oriwo Odeyo -vs- Apolo Justus Andabwa & Another [2017] eKLR, the Court stated that in assessing damages in a personal injury claim the court is guided by the following principles:-

> " 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
>
> 2) The award should be commensurable with the injuries sustained.

3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

5) The awards should not be inordinately low or high (See Boniface Waiti & another Vs Michael Kariuki Kamau (2007) eKLR."

38. In her submissions, the Appellant urged the court to make an award of Kshs. 400,000/= and placed reliance on the case of Barbara Fenwick -vs- Bernard Ngigi Ndirima & Another [2000] eKLR and Samwel Martin Njoroge Kamunyu -vs- Mildred Okweya Barasa [2020] eKLR where the Courts awarded Kshs. 500,000/= and Kshs. 300,000/= respectively.

39. On its part, the 2nd Respondent never submitted on quantum.

40. This court has taken note of the nature and extent of the injuries suffered by the Appellant. The same were predicted to completely heal within a year. The court takes into account the fact that the Appellant sustained a scar on the eyebrow which would aesthetically not be pleasing for a woman. The court is further mindful of the applicable legal principles that guide the court in such matters. In the case of Mutua Kaluku -vs- Muthini Kiluto [2018] eKLR, the Court stated:-

> " I am guided by the legal principles that apply to an award of damages in such circumstances, which are that a sum should be awarded which is in its nature of a conventional award, in the sense that awards for comparable injuries should be comparable, and the amount of the award is influenced by the amounts of awards in previous cases in which the injuries appear to have been comparable, and is adjusted in light of the fall in the value of money since such awards were made. See in this regard Kemp & Kemp on The Quantum of Damages, Volume 1 paragraphs 1-003. In my view to be comparable, the previous cases must have been made at the time or close to the time the injuries were suffered by a claimant, hence the provision for adjustment."

41. I have read the cases cited by the Appellant in support of her case. In the Barbara Fenwick case (supra) the plaintiff suffered multiple injures as follows:- a cut above the left eye, fracture to both the superior and interior pubic ramii on the left side, trochanteric fracture, fracture to both tibia and fibula, and cuts on the dorsum of both feet. In the second case of Samwel Martin Njoroge Kamunyu (supra), the plaintiff sustained 2 deep cut wounds on the forehead horizontally, bruises and lacerations on the right cheek, blunt injury to the shoulder and chest, blunt injury to the pelvis, and deep cut wounds to the right and left legs. Clearly, the injuries in the two cases cited by the Appellant were far more extensive and serious than the injuries sustained by the Appellant herein.

42. Taking into account the trite law that comparable injuries should attract comparable damages, (See Stanley Maore -vs- Geoffrey Mwenda [2004] eKLR), I find the following cases more relevant to this case:-

(a) George Mugo & Another -vs- AKM (Minor suing through next friend and mother of AMK [2018] eKLR where the Respondent was awarded general damages of Kshs. 90,000/= for the following injuries:-Blunt injury left shoulderBlunt chest injury anteriorBruises of left wrist regionBlunt injury left hand

(b) James Kwanya Rege -vs- LA (Minor suing through her father and next friend GAA) [2022] KEHC 16634 (KLR) where the Respondent was awarded Kshs. 80,000/= for the following injuries:-Bruises on the right handBlunt trauma to the right handChest contusion

(c) In the case of Nyambati Nyaswabu Erick -vs- Toyota Kenya Limited & 2 others [2019] eKLR, an award of Kshs. 90,000/= was made for the following injuries:-Deep cut on the scalp extending to the maxillary areaBlunt injury to the left side of the chestContusions to both legs and to the back

43. I have reviewed the above case law and taken into consideration the prevailing economic conditions and inflationary trends. I assess the general damages at Kshs. 80,000/=.

44. Since the Court has affirmed the trial court's finding on liability, the appeal is hereby dismissed with costs to the 2nd Respondent.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 4TH DAY OF OCTOBER 2024.

A.C. BETT

JUDGE

In the presence of:

Mr. Abok for Appellant

Ms. Sheunda for the Respondent

C/A: Polycap