



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MIGORI**  
**CIVIL APPEAL NO.129 OF 2015**

**BETWEEN**

**DANIEL NYANDIKA KIMORI ..... APPELLANT**

**AND**

**V A O (minor suing through mother**

**and next friend) M A O ..... RESPONDENT**

**(An appeal from the judgment and decree of Hon. Z. Nyakundi (PM)**

**in Rongo PMCC No.177 of 2010 dated 5<sup>th</sup> June, 2012)**

**JUDGMENT**

1. The appellant DANIEL NYANDIKA KIMORI has filed this appeal against V A O (suing through mother and next friend M A O) who obtained judgment against him and was awarded general damages of Kshs.80,000/-
2. The background to this matter is that the Respondent who was a minor travelling in motor vehicle Reg. No. KAQ 143 (owned by the appellant) sustained injuries, when the said motor vehicle was involved in a traffic accident which she blamed on the appellant's negligence.
3. The appellant denied liability and This matter falls in a serious of cases filed in the lower court where parties agreed to use PMCC No.178 of 2010 as a test case on liability. Subsequently the same files have come up for appeal with PMCC No.178 of 2010 now being HCA No.130 of 2015.
4. The facts are all similar and the only differences are the injuries sustained by the different claimants and the damages awarded.
5. I therefore adopt the judgment on liability in HCCA No.130 of 2015 *mutatis mutandis*.
6. As regards the damages awarded, the appellants counsel has submitted that the sum was awarded without any basis and is inordinately high because the respondent only suffered soft tissue injuries which had healed without any residual incapacity. He proposed that the respondent be awarded damages of Ksh. 50,000/-. The respondent's counsel argued that the sum was not inordinately high so as to warrant reduction.
7. The Respondent in her testimony, supported by medical report prepared by Dr. Ajuoga was that she

suffered soft tissue injuries to the head and chest and cerebral concussions. I am keenly aware of the position stated in the case of **BUTT versus KHAN [1981] KLR 389** which stated that

***“...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 or that he misapprehended the evidence in some material aspect, and so arrived at a figure which was inordinately high or low...”***

7. I have considered the past decisions cited by the respondent’s counsel and I am persuaded that taking into account the injuries *visa vis* the current value of the Kenyan shilling and the rate of inflation, the sum awarded of Ksh. 80,000/- was not inordinately excessive and I decline to interfere with the award.

8. Consequently the appeal is dismissed in its entirety. The appellant shall bear the costs of this appeal.

**DATED, SIGNED and DELIVERED at MIGORI this 11<sup>th</sup> day of November, 2016**

**H. A. OMONDI**

**JUDGE**