



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL APPEAL NO. E288 OF 2023**

**JAPHETH NZUMA KISU.....**  
**APPELLANT**

**VERSUS**

**BONIFACE MBUVA KITONYI.....RESPONDENT**

(Being an appeal from the judgment of Hon. A. Nyoike,  
Principal Magistrate delivered on 13/10/2023 at the Chief  
Magistrates Court in Machakos in CMCC E062 of 2022)

**JUDGMENT**

1. This is an appeal against the quantum of damages awarded to the Respondent, in the lower court, for personal injuries sustained in a motor accident which occurred along the Nairobi/Mombasa road on 16<sup>th</sup> May 202, involving him and a vehicle belonging to the Appellant.
2. A consent on liability, in favour of the Respondent against the Appellant, in the ratio 90:10, was recorded by learned Counsel for the parties and all that remained for the learned magistrate was to assess the quantum of damages.

3. According to the medical evidence adduced, the injuries sustained by the Respondent were blunt head injury, blunt chest injury, blunt injury on both shoulders, fracture of the right tibia and blunt injury on the left knee. The Respondent was admitted in hospital for seven days.

4. After considering the evidence and submissions by both sides the learned magistrate assessed and awarded damages as follows:

- **General damages for pain, suffering and loss of amenities**  
**Kshs1,000,000.00**
- **Future medical costs**  
**Kshs.100,000.00**
- **Special damages** **Kshs.**  
**27,950.00**
- **Interest at court rates**
- **Costs of the suit.**

5. Being aggrieved by the award, the Appellant preferred this appeal on grounds that:

***“a. The learned magistrate erred and misdirected herself in law, principle and facts when he misapprehended and misunderstood the applicable principles and the law in assessing quantum thereby arriving at an award that is so manifestly and inordinately high as to***

**constitute an entirely erroneous estimate of the damages in the circumstances of the case.**

**b. The award of general damages awarded to the Respondent was manifestly and inordinately excessive in the circumstances.**

**c. The learned magistrate erred by failing to consider with a fair measure the submissions of the Defendant's in writing the judgment.**

**d. The learned magistrate erred in law when the same misapprehended the principle applicable in assessment of damages in personal injuries claim thus occasioning miscarriage of justice.**

**e. The learned Trial court erred in the evaluation of evidence before it and disregarded important elements of evidence, principles and practice this reaching an award on quantum so inordinately high in the circumstances."**

6. The appeal was canvassed by way of written submissions.

### **Submissions**

7. Learned Counsel for the Appellant submitted that an award of Kshs. 500,000 would be adequate as general damages for pain and suffering while relying on the following cases; **Wainaina V Uuagacha (Civil Appeal 16 Of 2019) 2023 KEHC 26226 (KLR), Njenga & Another V Kinyanjui (Civil Appeal E117 of 2021) 120241 KEHC 3810 (KLR), Julie Akoth Onyango V Daniel Otieno Owino & Another [2020] EKLR, Justine Nyamweya Ochoki & Another V Francis Ndurya Thoya & Another [2020] EKLR, Jackline Svombua -vs- BOG**

***&Ekalakala Secondary School Embu HCCC No. 118 of 2006 UR and Kigaraari v. Aya (1982- 88)IKAR 768.***

8. For the Respondent reliance was placed on the case of **Butt Vs Khan [1981] KLR 198. Counsel** submitted that the Appellant had not demonstrated that the learned magistrate applied the wrong principle in arriving at the award. That the award is not inordinately high as to represent an erroneous estimate and this court should not interfere with it. Further reliance was placed on the following cases, **James Okongo vs Elmat Sagwe Ogega (2021) eKLR HCCA Civil Appeal No. 71 of 2019 Kisii, where the High Court awarded Kshs 900,000/= and Pestony Limited a Another vs Samuel Itonye Kagoko (2022) eKLR HCCA Civil Appeal No. 167 of 2020 Nairobi**, where the High Court awarded Kshs 800,000/= for similar injuries.
9. Relying on the case of **Gitobu Imanyara and 2 others vs Attorney General [2016] eKLR**, counsel further submitted that the Appellant did not controvert the Respondent's evidence on the severity of the injuries.

**Analysis and determination.**

10. The appeal being one touching on the quantum of damages only. this court is guided by the principle that an appellate court can only interfere with the award of the trial court, if it is demonstrated that the court acted on a wrong principle, or

that it considered an irrelevant fact or failed to consider a relevant fact or that short of that the award was so inordinately high or low as to constitute an erroneous estimate of the damage-see the case of **Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2) [1985] KECA 137 (KLR** where the court rendered itself as follows;

***“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See Ilanga v Manyoka, [1961] EA 705, 709, 713 (CA-T); Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principle.”***

11. My reading of the grounds of appeal and the submissions is that the Appellant only takes issue with the sum of Kshs.1,000,000/- awarded under the head of general damages for pain, suffering and loss of amenities. The awards under the other heads are not contested and shall not therefore be disturbed.

12. In regard to the general damages the contention is that they are inordinately high in view of the injuries suffered and should be reduced. It is instructive that the injuries are not disputed.

13. It is trite that the assessment of damages is in the discretion of the trial court. However, it is also trite that similar injuries ought to attract comparable awards, that the court must also consider the passage of time and that there can never be cases with the exact same facts and so each case should be decided on its own merits- see the case of **Mohamed Mahmoud Jabane V Highstone Butty Tongoi Olenja [1986] eKLR**, where Kneller, JA stated -

***“The reported decisions of this court and its predecessors lay down the following points, among others, for the correct approach by his court to an award of damages by a trial judge.***

- 1. Each case depends on its own facts;***
- 2. Awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body politics);***
- 3. Comparable injuries should attract comparable awards.***
- 4. Inflation should be taken into account; and***
- 5. Unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave well alone.”***

14. The question before the court is whether the award of Kshs.1,000,000/- was excessive. I have considered the cases cited by the parties. In **Wainaina V Uuagacha (Civil Appeal**

**16 Of 2019) 2023 KEHC 26226 (KLR)** where the Respondent sustained a fracture of the left distal radius and laceration and was awarded Kshs 500,000/-.

15. In the case of **Justine Nyamweya Ochoki & Another V Francis Ndurya Thoya & Another [2020] EKLR** the Respondent sustained a fracture of the chest centre bone, blunt object injury to the chest, bruises on the neck and permanent disability of 3 percent and was awarded Kshs 500,000 in 2020.

16. In **James Okongo vs Elmat Sagwe Ogega (2021) eKLR HCCA Civil Appeal No. 71 of 2019 Kisii**, where the injuries sustained were a right fracture of the tibia, fibula and femur, bruises to the face and blunt trauma to the chest and was hospitalized for three (3) months, and High Court reduced the trial court award of Kshs.1,5000,000/- as general damages and substituted it with an award of Kshs 900,000/-.

17. In **Pestony Limited a Another vs Samuel Itonye Kagoko (2022) eKLR** where the plaintiff therein suffered a fracture of the midshaft femur and permanent incapacity of 5 percent and was awarded Kshs.800, 000/-.

**18.** Having taken all the above cases into account and having considered the principles that should guide me in this appeal and noting the injuries sustained by the respondent I am not persuaded that the learned magistrate erred in arriving at the award. The learned magistrate did take into account all that

was required. The award is therefore upheld and the appeal is dismissed save that, the sums awarded shall be subject to the agreed ratio of distribution. And interest on the special damages shall be at court rates from the date of filing suit while that on general damages and future medical expenses shall be from the date of judgment in the lower court.

Orders accordingly.

**Judgment signed, dated and delivered virtually on this 25<sup>th</sup> day of September 2025.**

**E.N. MAINA**

**JUDGE**

**IN PRESENCE OF:**

Ms Sagini, Advocate for the Appellant.

Miss Mulondo, Advocate for the Respondent.

Geoffrey, Court Assistant.