



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

TAW (Minor Suing Through PAS as Next of Friend) v Mukanda & another (Civil Appeal 96 of 2022) [2025] KEHC 13911 (KLR) (30 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 96 OF 2022
REA OUGO, J
SEPTEMBER 30, 2025**

BETWEEN

TAW (MINOR SUING THROUGH PAS AS NEXT OF FRIEND) APPELLANT

AND

BEN SIMIYU MUKANDA 1ST RESPONDENT

JOSEPH MUKITANG'A 2ND RESPONDENT

(Being an appeal against the judgment and decree of Hon. A.A Odawo (SRM) delivered on 3/10/2022 in Bungoma CMCC No 381 of 2021)

JUDGMENT

1. The appellant is a 2-year-old minor who was involved in a road traffic accident on 26/11/2021. According to the plaint, he sustained the following injuries: head injuries, a painful, swollen forehead, lacerations on the left ear lobe and left side of the scalp, bruises over the right buttock, a scalp measuring 3.2 x 2.2 cm and a laceration on the left ear lobe medial side. He sought general damages, special damages, costs, and interest before the magistrate's court. The respondents failed to enter an appearance.
2. The trial court found that the defendants were 100% liable for the accident. She awarded Kshs 80,000 as general damages and Kshs 11,300/- as special damages.
3. The appellant is dissatisfied with the judgment and has lodged this instant appeal on the following grounds:
 1. The trial magistrate erred in law and fact in awarding the appellant Kshs 80,000/- on the head of pain and suffering for loss of amenities when the appellant had suffered grave injuries.



2. The trial magistrate erred in law and fact in disregarding the case laws put forth by the appellant.
 3. The trial magistrate erred in law is not giving reasons or stating which case laws she relied on in awarding the amount of Kshs 80,000/- on the head of pain and suffering and loss of amenities.
 4. The trial magistrate acted with a lot of biasness in award [sic] such amount of money considering the economic life currently.
 5. The trial magistrate erred in law in not awarding loss of earning capacity when the same is provided for in law hence arriving at a wrong decision.
 6. The trial court erred in law and fact in not awarding future medical expenses when the so provides.
 7. The trial court erred in law by not framing issues and giving reasons of her judgment hence arriving at a wrong decision.
4. The appellant, in support of the appeal, argues that the concussion [head injury] is not a soft tissue injury as it affects the brain. They cited the case of John Mwendwa Kuti & 2 Others v Ibrahim Kunyaga [2020] eKLR, where the sum of Kshs 350,000/- was awarded for serious head injury, multiple bruises on the scalp and injuries on the shoulder. In the case of Johnstone Koech v Ibrahim Abdi Maalim [2021] eKLR, the court noted that a brain concussion is a temporary injury and made an award of Kshs 250,000/- where the plaintiff sustained a brain concussion and 4 laceration injuries. In Poa Link Services Co. Ltd & Another v Sindani Boaz Bonzemo [2021] eKLR, the court awarded Kshs 350,000 for multiple soft tissue injuries. The appellant submits that an award of Ksh 850,000/- would be sufficient compensation.
 5. On future medical treatment, it was submitted that the same need not to be pleaded as it forms part of general damages. Citing the case of Thomas Nguraiya & 2 Others v David Chepsiror [2012] eKLR the appellant submits that an award of Kshs 700,000/- would be most appropriate.
 6. The respondent in their submission supports the decision of the trial magistrate in awarding Kshs 80,000/- as general damages. They called into aid the case of Civil Appeal E062 of 2021 Makami v Obong'o [Civil Appeal E062 of 2021] [2023] KEHC 922 [KLR] [18 January 2023] [Judgment] where general damages of Kshs 100,000/- awarded by the trial court was substituted with an award of Kshs 80,000/- for injuries sustained being swelling and bruises on the forehead, marked neck and chest pain and cut wound on the right elbow joint and right knee joint. Similarly, an award of Kshs was made in Civil Appeal E111 of 2021 Rege v LA [Minor suing through her father and next friend GAA] [Civil Appeal E111 of 2021] [2022] KEHC 16634 [KLR] [20 December 2022] [Judgment] where the plaintiff sustained bruises on the right hand, blunt trauma to the right hand and chest contusion].
 7. On future medical expenses, it was pleaded that the appellant failed to specifically plead and prove the same, and the trial court could not award that which was never asked.
 8. On loss of earning capacity, the respondent submitted that the appellant is still a child who is still growing, and it is not possible to tell what the future holds for him. There was no evidence that the appellant was rendered less capable of all types of employment within the Kenya Defence Forces.

Analysis And Determination

9. The assessment of damages is at the trial court's discretion, and this Court will only interfere where that discretion was exercised on wrong principles or where the award is so excessive or inadequate as to



constitute an erroneous estimate. In *Kemfro Africa Ltd v Gathogo Kanini v A.M.M Lubia & Another* where the Court held as follows:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

10. The appellant has argued that the minor sustained a brain injury, which is not the case. According to the CT scan head report, there was no skull fracture or intracranial hematoma. The CT scan findings were normal. The medical report by Dr Mulianga Ekesa noted that the child would need psychosocial support and counselling to handle his irritability. In the case of *John Mwendwa Kuti & 2 Others v Ibrahim Kunyaga* [supra], cited by the appellant, the plaintiff therein sustained a serious head injury, unlike in this case. The authorities cited by the appellant are also those of the plaintiffs who sustained multiple soft tissue injuries. In this case, the minor sustained a few soft tissue injuries: a concussion, a swollen forehead, a laceration on the left ear lobe and left side of the scalp, and bruises over the right buttock. In *Philip Musyoka Mutua v Mercy Ngina Syovo* [2018] eKLR, the court awarded Kshs 120,000/- for a plaintiff who sustained soft tissue injuries and a blunt injury to the head. Therefore, I find that the award of Kshs 80,000/- was inordinately low and award the appellant Kshs 150,000/-.
11. The appellant also claimed future medical expenses; however, there was no evidence led to support it. The Court of Appeal in the case of *Tracom Limited & Another v Hassan Mohammed Adan* [2009] eKLR stated:

“We readily agree that the claim for future medical expenses is a special claim, though within general damages and needs to be specifically pleaded and proved before a court of law can award it.”
12. The issue of loss of earning capacity was abandoned by the appellant, who made no submissions on the same.
13. In the end, the appeal is successful to the extent that the award of general damages of Kshs 80,000/- is set aside and substituted with an award of Kshs 100,000/-. The appellant is awarded ½ the costs of the appeal.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER 2025

R.E. OUGO

JUDGE

In the presence of:

Mr. Wamalwa. R -For the Appellant

Miss Nyiva -For the Respondent

Wilkister -C/A

