



**Tsuma & another v Odhiambo (Civil Appeal E126 of 2025)
[2025] KEHC 13489 (KLR) (Civ) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13489 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E126 OF 2025

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

AMWAYI TSUMA 1ST APPELLANT

KHOZA ZAKHELE ENOCK 2ND APPELLANT

AND

BEATRICE AKINYI ODHIAMBO RESPONDENT

(Being an appeal from the judgment and decree of Hon. Becky Cheloti Mulemia (Principal Magistrate) delivered on 31st January, 2025 in Nairobi CMCC No. E5125 of 2023)

JUDGMENT

1. The appeal subject of this judgment is on the assessment of damages. Beatrice Akinyi Odhiambo, the Respondent herein, sued Amwayi Tsuma and Khoza Zakhele Enock, the Appellants herein, in Nairobi [Milimani] Chief Magistrates Civil Suit No. E5125 of 2023 [hereinafter referred to as 'the suit'] for damages in respect of injuries she sustained from a road traffic accident that occurred on 28th October 2023. The Respondent averred that she was a lawful pedestrian walking alongside the Outering Road in Donholm within the Nairobi County when she was hit by motor vehicle registration number KCA 402X which vehicle was driven by the 1st Appellant and duly registered in the name of the 2nd Appellant.
2. The suit was opposed by the Appellants through a Statement of Defence dated 17th April 2024 who denied liability and, instead, blamed the Respondent for being a negligent pedestrian. The suit was heard by way of viva voce evidence and subsequently the trial Court rendered its judgment on 31st January 2025 in favour of the Respondent in the following terms: -
 - a. Liability in the ratio of 80:20 in favour of the plaintiff [now Respondent];



- b. Damages:
- i. General Damages Kshs.1,500,000/=;
 - ii. Special Damages Kshs.30,295/=

Kshs.1,530,295/= less Kshs.306,059/= being 20% contributory negligence

Total award of Kshs.1,224,236/=
3. The Respondent was also awarded the costs of the suit and interest.
 4. Aggrieved by the judgment, the Appellants preferred an appeal and in a Memorandum of Appeal dated 12th January 2025 preferred the following grounds: -
 1. The Learned Magistrate acted in error when she failed, as she did, to properly evaluate evidence on record thus reaching erroneous and excessive award in the decision on the issue of quantum of general damages and special damages.
 2. The Learned Magistrate acted in error when she failed ,as she did, to properly evaluate the expert evidence on record thus reaching erroneous decision on the issue of quantum of general damages payable to the Respondent and thereby arriving at a manifestly excessive award.
 3. The Learned Magistrate in erred in law and in fact by basing her decision on extraneous matters and failing to base her said decision on the facts, evidence on record and the principle of stare decisis.
 5. It was upon the above grounds that the Appellants urged this Court to allow the appeal, set aside the judgment dated 31st January 2025 and to re-assess the quantum of damages. They also prayed for costs of the appeal.
 6. Pursuant to the directions of this Court, the appeal was canvassed by way of written submissions where both parties their respective submissions. The Appellants' submissions were dated 12th April 2025 while the Respondent's submissions were dated 8th May 2025. The gist of these submissions will be ingrained in the latter part of this judgment.
 7. As the first appellate Court, this Court's duty is to revisit the evidence on the record, evaluate it and arrive at its own conclusion. The locus classicus case of *Selle and Another vs Associated Motor Boat Co. Ltd* (1968) (EA 123) need not be belaboured on this issue. Additionally, this court further appreciates the settled principle in *Mwanasokoni vs Kenya Bus Service Ltd* (1982-88)1KAR 78 and *Kiruga vs Kiruga and Another* that an appellate Court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings.
 9. Further, in respect to appeals against assessment of damages, the role of an appellate Court was discussed by the Court of Appeal in *Kemfro Africa Ltd v A. M. Lubia & Another* (1988)1 KAR 727. The Court rendered the principles guiding the Court as under: -

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 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.



[Also see Arrow Car Limited -vs- Bimomo & 2 others (2004) 2 KLR 101 and Denshire Muteti Wambua -vs- Kenya Power & Lighting Co. Ltd (2013) eKLR].

8. Returning to the appeal, the main issue for this Court's determination is whether the award in damages was excessive. The Appellants relied on a plethora of cases to demonstrate that the award in general damages by the trial Court was excessive. They submitted that an award of Kshs. 250,000/= in general damages would be sufficient and reasonable in the circumstances noting the nature of injuries sustained by the Respondent.
9. On the other hand, the Respondent vouched for the dismissal of the appeal urging this Court to affirm the impugned decision.
10. Ordinarily, a court is supposed to give a reasonable award that is neither extravagant nor oppressive while considering factors such as previous awards for similar injuries and the principles as developed by Courts over time. The Court in *Butler vs Butler* (1982) KLR 277 outlined that what constitutes a reasonable award is discretionary upon a Court and will depend on the peculiar facts of each case. The Courts in *Tayab v Kinanu* [1983] KLR 114, *West (H) & Son Ltd v Shephard* [1964] AC 326, 345) and *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR) reiterated the principle that as far as possible comparable injuries should be compensated by comparable awards putting into consideration the current prevailing economic circumstances including inflation.
11. From the record, the Respondent, was examined by one Dr. Wambugu, P.M. and a report dated 22nd April 2024 filed in Court. According to the report, the Respondent sustained fractures of the distal right and left radius bones together with blunt injuries on the right and left upper limbs. Permanent disability was assessed at 4%.
12. In comparative awards, in *Kihara & Another v Mutuku* [2022] KEHC 15626 (KLR), the High Court upheld an award of Kshs. 700,000/= in general damages where the victim had sustained a fracture of the right femur with 12% permanent incapacity. In *United Millers Limited v Wanjiku* [2023] KEHC 26808 (KLR), the Court substituted an award of Kshs. 2,000,000/= with an award of Kshs.700,000/= where the victim had sustained two fractures of the right femur and soft tissue injuries. In *Erick Mwiriki & Gideon N Mukingo v Peter Kariuki Wanjiru* [2020] eKLR, the Court reduced the award in general damages from Kshs.1,500,000 to Kshs. 800,000/= for fractures of the right radius.
13. From the above awards, further to those referred to by the parties' herein, it is apparent that, over time, Courts have generally awarded damages for injuries as those sustained by the Respondent in this matter between Kshs. 400,000 to Kshs. 800,000/= as general damages for pain, suffering and loss of amenities. In the impugned judgment, the trial Court awarded the Respondent the sum of Kshs. 1,500,000/=. Therefore, going by the above rendition, and even by considering the other blunt injuries sustained and the passage of time, the award of Kshs. 1,500,000/= was definitely and manifestly excessive. With utmost respect to the Learned Trial Magistrate, this Court will, in the circumstances of this case, interfere with the award on general damages. To this Court, an award of Kshs. 800,000/= will be fair and reasonable compensation to the Respondent.
14. Consequently, the appeal is merited and the following final orders hereby issue: -
 - (a) The appeal is hereby allowed.
 - (b) The award of Kshs. 1,500,000/= made in Nairobi [Milimani] Chief Magistrates Civil Suit No. E5125 of 2023 vide the judgment dated 31st January 2025 be and is hereby set aside and is substituted with an award of Kshs. 800,000/= [Read: Kenya Shillings Eight Hundred Thousand Only].



(c) The rest of the awards in the judgment are affirmed.

(d) Each party shall bear its own costs of the appeal.

Orders accordingly.

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

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss. Nakeel, Learned Counsel for the Applicant.

Mr. Kimaiti, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

