



REPUBLIC OF KENYA



KENYA LAW
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**Kenpoly Manufacturers Ltd v Yegon (Civil Appeal E036 of 2023)
[2025] KEHC 13948 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13948 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E036 OF 2023
JK NG'ARNG'AR, J
OCTOBER 7, 2025**

BETWEEN

KENPOLY MANUFACTURERS LTD APPELLANT

AND

ZACAHARIA KIBET YEGON RESPONDENT

(Being an Appeal from the Judgment of Senior Principal Magistrate, Kiniale L. at the Senior Principal Magistrate's Court at Bomet, Civil Suit Number E046 of 2022)

JUDGMENT

1. In the trial court, the Respondent [then Plaintiff] sued the Appellants [then Defendants] for general and special damages that arose out of a road traffic accident that occurred on 24th January 2022.
2. The trial court conducted a hearing where the Respondent called two witnesses before closing her case. The Appellants closed their case without calling any witnesses.
3. In its Judgement dated 8th May 2023, the trial court awarded the Respondent general damages of Kshs 2,500,000/=, special damages of Kshs 306,970/= and future medical expenses of Kshs 300,000/=
4. Being aggrieved with the Judgment of the trial court, the Appellant filed its Memorandum of Appeal dated 13th June 2023 appealing against the award on general damages which it termed as excessive.
5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Kiilu & Another v. Republic [2005]1 KLR 174.
6. From the evidence on record, it was an undisputed fact that the Respondent suffered the following injuries: -



- i. Right femur fracture
- ii. Left femur fracture
- iii. Compound left tibia fracture
- iv. Head injury
- v. Bilateral radio-ulna fractures
- vi. Blunt trauma to the back
- vii. Chest contusion
- viii. Bruises on the face.

Appellant's submissions

7. Through its written submissions dated 13th July 2025, the Appellant submitted that the Respondent's injuries were supported by the Medical Report from Dr. Morebu who assessed disability at 50%. That however, a second Medical Report by Dr. Malik assessed the Respondent's disability at 10% noting that the injuries had fairly healed.
8. It was the Appellant's submission that the award of Kshs 2,500,000/= was excessive and proposed an award of Kshs 1,600,000/=. It relied on *Mary Pamela Oyioma v Yess Holdings Limited* [2011] eKLR, *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* [2013] eKLR, *Hussein Dairy Limited & another v Asha Moteo Athman & 3 others* [2021] eKLR, *Opeth & another v Musa* [2024] KEHC 10530 [KLR] et.al.

Respondent's submissions

9. Through his written submissions dated 3rd July 2025, the Respondent submitted that the award on general damages was reasonable and the trial court applied correct principles and properly assessed the quantum. Reliance was placed on *Telkom Orange Kenya Limited v I S O [minor suing through his next friend and mother J N]* [2018] eKLR.
10. It was the Respondent's submission that the trial court factored the diminishing value of the Kenyan Shilling and ballooning inflation rates while assessing general damages.
11. I have gone through and carefully considered the trial court record, the Appellants' written submissions dated 13th July 2025 and Respondent's written submissions dated 3rd July 2025. The singular issue for my determination was whether the award of general damages was excessive.
12. As earlier stated, the nature of the Respondent's injuries was undisputed. The particulars of the injuries have also been captured earlier in this Judgement.
13. It is trite law that for this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See *Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko* [2006] KECA 130 [KLR].
14. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. In addition to the Respondent's authorities, I have found the following cases quite helpful in terms of comparison: -



I. In *Otieno v South Sioux Farms Ltd* [2023] KEHC 21083 [KLR], the Appellant suffered compound right tibia fracture, compound right fibula fracture, left ulna fracture, left radius fracture, chest contusion and blunt trauma to the back. The court set aside the award of Kshs 950,000/= and substituted it with an award of Kshs 3,000,000/=.

II. In *Joshua Ouma Ouko v Raymond Olendo* [2021] KEHC 13651 [KLR], the appellant was awarded Kshs 3,000,000/= for a fracture of the right femur [comminuted], fracture of the right ulna, right maxillary sinusitis, fracture of the left radius and contusion on the neck.

15. I have considered the authorities above and the nature of the injury suffered by the Appellant and I find that the Kshs 2,500,000/= awarded as general damages by the trial court was not excessive and was commensurate to the injuries sustained. I am therefore not persuaded that this is one of the cases that this court can interfere with the trial court's verdict on quantum.
16. Flowing from the above, I am not persuaded that the trial court applied the wrong principles and/or arrived at a figure that is inordinately high.
17. In the end, the Memorandum of Appeal dated 13th June 2023 is not merited and is consequently dismissed. Each party shall bear their own costs of this appeal.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 7TH DAY OF OCTOBER, 2025.

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Hon. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan [Court Assistants].

Ms Soi for the Appellant

Chilwatso for the Respondent

