



**Waweru & another v Kyalo (Civil Appeal E1128 of 2023)
[2025] KEHC 14656 (KLR) (Civ) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14656 (KLR)

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

CIVIL

CIVIL APPEAL E1128 OF 2023

TW OUYA, J

OCTOBER 16, 2025

BETWEEN

BETH NJERI WAWERU 1ST APPELLANT

PETER MAINA 2ND APPELLANT

AND

ALEX KYALO RESPONDENT

(Being an appeal from the judgement of the Chief Magistrate's court at Nairobi before Honorable Rawlings Liluma Senior Resident Magistrate delivered on the 29th September 2023 in Milimani CMCC E2314 of 2022)

JUDGMENT

1. The Respondent filed a road accident claim against the Appellants for compensation following a road accident involving motor cycle registration number KMEV 537V and motor vehicle registration number KBV 245R along North Airport Road. The Respondent alleged that the motor vehicle registration number KBV 245R was so negligently and carelessly driven at a high speed that the driver of the said vehicle lost control of the motor vehicle allowing it to collide onto the motorcycle registration KMEV 537V hence causing very serious injuries.
2. The Respondent alleged that he had sustained injuries to wit fracture- frontal skull and swollen tender painful scalp and face. Therefore, the Respondent prayed for general damages for pain, suffering and loss of amenities, special damages at Kshs. 3,550 as well as costs and interests of the suit.
3. The Appellants denied the claim and in the alternative pleaded contributory negligence. Nevertheless, on 25th July 2023, the parties recorded a consent on liability in terms that judgement on liability was entered in favour of the Respondent against the Appellants in the ratio 70:30. It was also agreed that



the parties file submission on quantum and the Respondent's documents be produced without calling the makers.

4. The Respondent submitted that the court awards Kshs. 1,500,000.00 as general damages while relying on the case of Kyoga Hauliers Limited versus Philip Mahiu HCCA No. 21 of 2013. The Appellant on the other hand citing the case of Telkom Orange Kenya Limited v ISO (minor suing through next friend) 2018 eKLR and GA (Minor suing through next friend) versus Paul Muthiku (2020) eKLR submitted that an award of Kshs. 500,000.00 was sufficient as general damages.
5. The trial court in making the final award observed thus:

“Having considered the decisions above, I am of the opinion that they are as far as possible comparable to the injuries in this case. I have observed that a couple of years ago, the awards for similar injuries ranged between 500,000.00 to 1 million. It is apparent therefore that the defendants' proposal fails to take into account effects of inflation which has risen tremendously over the years and passage of time. The plaintiffs' proposal on the other hand is a bit high. I am of the opinion that Kshs. 1,100,000.00 would be sufficient in this case and I award it subject to apportionment.”
6. Aggrieved and dissatisfied with the decision of the trial court on quantum, the Appellants filed the instant appeal via a Memorandum of appeal dated 25th October 2023 urging the following grounds:
 - a. The learned magistrate erred in law and fact by failing to observe the laid down principles of law in awarding general damages;
 - b. The learned magistrate misdirected himself by ignoring the evidence before him and the defendants' submissions and authorities cited therein on the issue of general damages and thus arrived at a wrong determination;
 - c. The learned magistrate erred in law and fact in awarding general damages of kshs.1,100,000 which were excessive in circumstances.
7. The appellants prayed that the appeal be allowed with costs and the decision of the learned magistrate be set aside and the general damages be re-assessed.
8. By direction of the court the appeal was disposed through written submissions.
9. The Appellants submitted that the trial court erred in awarding the Respondent Kshs. 1,100,000.00 in general damages considering the nature of the injuries suffered which had fully healed without any permanent disability. Therefore, the amount was excessive as it was arrived at upon making a wrong determination. The appellant cited Kericho HCCC No. 56 of 2004 James Nyaboga Masogo v Kipkebe Ltd [2007] eKLR where the court observed that the award of damages is meant to compensate the plaintiff for the injuries that he has sustained. Reliance was also placed on Nakuru Civil Appeal No. 60 of 2010 Crown Foods Ltd v Emily Wangui [2011] eKLR to urge the position that an award of damages must be reasonable compensation for the loss suffered and not meant to punish the defendant.
10. The Appellant relied on the cases that he had cited while making his submissions at the trial court. Telkom Orange Kenya Limited versus ISO (minor suing through next friend) 2018 eKLR and GA (Minor suing through next friend) v Paul Muthiku (2020) eKLR.
11. Therefore, he urged that the judgment, finding and award by the trial court on general damages be set aside and substituted with an award of Kshs. 500,000.00.



12. The Respondent submitted that the court ought not disturb the trial court's assessment on damages unless it is shown that in assessing the damages the trial court took into account an irrelevant factor or that the amount awarded is so inordinately high as to amount to an erroneous estimate of damages. *Kemfrom Africa Ltd t/a Meru Express Services (1976) & another vs Lubia & another* 1978 KLR 3
13. Citing *Simon Taveta v Mercy Mutitu Njeru* [2014] eKLR, the Respondent submitted that the context in which compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards in the past.
14. It was therefore the Respondent's submission that he had proved the nature of the injuries that he had sustained as a result of the accident and the same is not in dispute. The award by the trial court was therefore reasonable in all aspects as demonstrated in the well-reasoned judgment of the court.
15. Reliance was placed on the case of *Isaac Waweru Mundia v Kiilu Kakie Ndeti t/a Wikwatyo Services* [2012] eKLR in which the plaintiff was awarded Kshs. 1,000,000.00 general damages for fracture of base of skull at the mandible, coupled with multiple soft tissue injuries in 2012.
16. The Respondent also cited the case of *Gerald Ileri Harrison and 2 others v Danson Ngari* [2018] eKLR where the Plaintiff was awarded Kshs. 800,000.00 for depressed fracture of the right frontal bone at the supra orbital region with haemorrhagic contusion under the frontal robe with soft tissue injuries- swelling on the frontal scalp and right periorbital region. He also relied on the case of *Gerald Nzoia Ndonga v Susan Mukoma & Another* [2019] eKLR where an award of Kshs. 1,500,000.00 was affirmed on appeal for comparable injuries.
17. In the circumstances, the award of Kshs. 1,100,000.00 by the trial court could not be said to be erroneous to warrant interference by this honourable court.
18. This is an appeal against quantum. An appellate Court when dealing with an appeal on the assessment of damages must always be reminded of the principles for consideration as enumerated by the Court of Appeal in the case of *Kemfro Africa Limited t/a Meru Express Services, Gathogo Kanini vs. A.M.M Lubia & Another* (1982-88) 1 KAR 777. The court expressed itself clearly thus:

“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.”
19. The same principle was reinstated in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the Court of Appeal in held:

“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 respect, and so arrived at a figure which was either inordinately high or low”
20. I have perused through the medical evidence tendered in particular, the summary of the prognosis on the nature of injuries sustained by the Respondent. It is not in dispute that the Respondent sustained fracture- frontal skull and swollen tender painful scalp and face. There was no assessment on degree of incapacity.



21. I note that in the Telkom case (supra) cited by the Appellant, the court awarded damages of Kshs. 500,000.00 where the child plaintiff had primarily sustained a head injury with no permanent disability. The Respondent on the other hand has relied on Gerald Ileri Harrison & 2 others v Danson Ngari [2018] KEHC 4926 (KLR) where the Respondent who had sustained a depressed fracture of the right frontal bone at the supra orbital region with hemorrhagic contusion under the frontal robe and soft tissue injuries – swelling on the frontal scalp and right periorbital region. The appellate court substituted the award of Kshs. 2,000,000.00 with an award of Kshs. 800,000.00.
22. In a more recent case of Nyota Tissue Products v Charles Wanga Wanga & 4 Others [2020] KEHC 6207 (KLR) the appellate court substituted an award of Kshs. 1,200,000.00 with an award of Kshs. 500,000.00 where the plaintiff had sustained a head injury with open depressed frontal skull fracture.
23. On the principle of comparable awards for comparable injuries, I find that the injury herein suffered by the plaintiff being, fracture- frontal skull and swollen tender painful scalp and face as pleaded may be compensated by an award of Kshs.700,000 taking into account inflation.
24. Accordingly, I find the trial court’s award of Ksh. 1,100,000 to be inordinately high as to amount to an erroneous estimate thereof as to justify the appellate court on the principle of Butt v. Khan supra, to interfere with the trial court’s award.
25. Resultantly, this appeal partially succeeds. I hereby set aside the judgement and award of kshs. 1,100,000 delivered by the trial court on the 29th September 2023 and substitute it with an award of kshs.700,000 with interest from the date of filing suit. Each party to bear their own costs.
26. Thirty (30) days stay of execution orders to apply.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16TH DAY OF OCTOBER, 2025.

HON. T. W. OUYA

JUDGE

