



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chiba Tim Limited & another v Ruguru (Civil Appeal E577 of 2023)  
[2025] KEHC 15380 (KLR) (Civ) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15380 (KLR)

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

**CIVIL**

**CIVIL APPEAL E577 OF 2023**

**AN ONGERI, J**

**OCTOBER 24, 2025**

**BETWEEN**

**CHIBA TIM LIMITED ..... 1<sup>ST</sup> APPELLANT**

**MARY MUTHONI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FREDRICK KARLA RUGURU ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. Rawlings Liluma (SRM)  
in Milimani CMCC No. 5415 of 2019 delivered on 31st May 2023)*

**JUDGMENT**

1. The Respondent in this appeal, Fredrick Karla Ruguru was the Plaintiff in Milimani CMCC No. 5415 of 2019 where he sued the Appellants seeking general damages for pain, suffering and loss of amenities and also special damages of Kshs. 62,234/= together with costs and interest for injuries the Respondent sustained on 9<sup>th</sup> December 2018 along the Eastern Bypass road off Kayole junction.
2. The injuries arose out of an accident that occurred on the material day involving the 1<sup>st</sup> Appellant's motor vehicle registration No. KCR 165Z and the Respondent who was a pedestrian.
3. The Respondent stated in his evidence that he was lawfully walking along the Eastern Bypass on the material day when the said motor vehicle registration No. KCR 165Z belonging to the 1<sup>st</sup> Appellant and was being driven by the 2<sup>nd</sup> Appellant was so negligently driven that it lost control and hit the Respondent.
4. The Respondent sustained the following injuries:-
  - i. Fracture of the right medial and lateral malleoli.



- ii. Dislocation of the right ankle joint.
  - iii. Swollen wound pain and tenderness of the right leg.
5. The Appellants in their defence dated 15<sup>th</sup> December 2021 denied all allegations levelled against them by the Respondent.
6. The Respondent was the sole witness who testified in the case. The Appellants did not call any witnesses but they produced the Medical Report by Doctor Wambugu dated 16<sup>th</sup> May 2022 by consent of the parties.
7. The trial court found that the Respondent's evidence was unchallenged since the Appellants did not call any witnesses.
8. The court found the Appellants 100% liable in negligence and assessed damages as follows:-
  - i. General damages for pain and suffering Kshs. 1,100,000/=
  - ii. Special damages Kshs. 62,234/=
  - Total Kshs. 1,162,234/=
9. The Appellants have appealed to this court on the following grounds:-
  - i. That the award of general damages awarded to the Respondent was manifestly and inordinately excessive in the circumstance.
  - ii. That the learned trial Magistrate erred in law and fact when the same failed to properly evaluate the medical evidence on record thus reaching erroneous decision.
  - iii. That the learned trial Magistrate erred in fact and in law in failing to appreciate the principles governing the award of damages, namely that like cases attract similar awards, and ignoring completely the Appellant's submissions.
  - iv. That the learned trial Magistrate erred in law and in fact in making an award without giving any reason for such an award thus making an award that was arbitrary, capricious and inordinately high, erroneous and which amounted to a miscarriage of justice.
10. The parties filed written submissions as follows:- the appellant submitted that the respondents injuries were initially assessed by Dr G K Mwaura whose medical report indicated the following injuries; swollen wound pain and tenderness on the right leg, fractures- right medial and lateral malleoli and dislocation right ankle joint. The respondent was re examined by Dr Wambugu who opined that the respondent recovered from his injuries.
11. The appellant submitted that the award of Kshs. 1,100,000 as general damages was excessive and urged the court to substitute it with Kshs. 400,000.
12. In support the appellant cited Savannah International Ltd v Muka (Civil Appeal 31 of 2018) [2022] KEHC 675 (KLR) (14 June 2022) (Judgement) where the plaintiff suffered a fracture of the lateral malleolus, soft tissue injuries and bruises. The High Court upheld an award of Kshs 400,000 as adequate compensation.
13. The respondent alternatively submitted that at trial the respondent confirmed that he sustained the injuries as pleaded and that he was yet to heal.
14. He also confirmed that the accident was wholly caused by the appellant's motor vehicle.



15. The appellant never called any witness and the evidence that was tendered was not controverted and as such the trial court was justified in awarding 100% liability on the part of the appellant.
16. The respondent confirmed that he suffered injuries as indicated by the appellant and that the trial court and the award of Kshs. 1,100,000 awarded by the trial court was reasonable in the circumstances.
17. In support the respondent cited *Samwel Mwangi Kamau v Joseph M Kimemia & another* [2004] KEHC 1340 (KLR) where the plaintiff was awarded general damages of Kshs. 1,000,000 for
  - (i) Head injury – As a result of the head injury the Plaintiff has a paralysis of the left upper limb due to intra cranial haemorrhage and depressed fracture of the left temporal bone. It in the assessment of the Doctor this was a permanent disability.
  - (ii) Fracture of the right tibia and fibula which had malunited resulting in a permanent deformity. According to his prognosis the Plaintiff would be unable to walk for long distances.
  - (iii) Laceration and bruises on the forehead and right hand which had healed but left prominent scars.
18. This being a first appeal, the duty of this court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusions, while bearing in mind that the trial court had the advantage of hearing and observing the witnesses.
19. The issues for determination in this appeal are as follows:-
  - i. Whether the trial court was right in finding the Appellants 100% liable.
  - ii. Whether the assessment of damages was proper.
20. On the issue of liability, the record reveals that the Respondent's testimony regarding how the accident occurred was unchallenged.
21. The Appellants, despite having the opportunity, did not call any evidence to controvert the Respondent's account that the 1st Appellant's motor vehicle, driven by the 2nd Appellant, lost control and hit him as he was walking.
22. In the face of uncontroverted evidence, a trial court is entitled to accept it as proof on a balance of probabilities.
23. The learned trial magistrate was therefore correct in finding the Appellants wholly liable for the accident. This ground of appeal fails.
24. The central thrust of this appeal, however, lies in the challenge to the quantum of general damages awarded.
25. The principles upon which an appellate court will interfere with an award of damages are well settled. It will do so only where the award is so inordinately high or low as to represent an entirely erroneous estimate, or where the trial court acted on wrong principles or misapprehended the evidence.
26. The court must be guided by the principle of uniformity and consistency, ensuring that awards for comparable injuries are not unduly disparate.
27. The Respondent sustained a fracture of the right medial and lateral malleoli and a dislocation of the right ankle joint.



28. The medical report by Dr. Wambugu, which was produced by consent, noted that the Respondent had recovered from these injuries.
29. The Appellants have urged this court to substitute the award of Kshs. 1,100,000 with Kshs. 400,000, relying on the case of Savannah International Ltd v Muka [2022] eKLR.
30. In that case, the plaintiff suffered a fracture of the lateral malleolus, soft tissue injuries and bruises. The High Court, on appeal, found an award of Kshs. 400,000 to be adequate compensation.
31. The injuries in the Savannah case (supra) are indeed comparable, involving a fracture to the ankle region, and provide a sound benchmark.
32. The Respondent, in seeking to uphold the trial court's award, cited Samwel Mwangi Kamau v Joseph M Kimemia & another [2004] eKLR where an award of Kshs. 1,000,000 was upheld.
33. However, with respect, the injuries in that case were far more severe and debilitating. The plaintiff had suffered a head injury leading to paralysis of a limb, a permanent disability, and a malunited fracture of the tibia and fibula resulting in a permanent deformity.
34. The injuries in the present case, while serious, were not of the same catastrophic nature and had resolved without evidence of permanent disability as per the consent medical report.
35. Having re-evaluated the evidence and the cited authorities, this court finds that the award of Kshs. 1,100,000 for the injuries sustained was manifestly excessive and represented an erroneous estimate of damages.
36. The learned trial magistrate, with respect, failed to properly apply the principle of consistency with awards for similar injuries. The authorities demonstrate that for fractures involving the malleoli, awards in the range of Kshs. 400,000 are more commensurate.
37. However, considering inflationary trends and effluxion of time, an award of Kshs. 700,000 is reasonable in the circumstances of this case.
38. This award is deemed to be fair and commensurate with the injuries sustained.
39. Consequently, the award for general damages is set aside and substituted with an award of Kshs. 700,000.
40. As for special damages, the award of Kshs. 62,234 was specifically pleaded and proved through the production of receipts and was not contested in this appeal. That award is therefore upheld.
41. In the final analysis, the appeal on liability is dismissed. The appeal on quantum succeeds. The judgment of the trial court is varied as follows:
  - (i) General damages for pain, suffering and loss of amenities: Kshs. 700,000/=
  - (ii) Special damages: Kshs. 62,234/=
  - (iii) The total sum of Kshs. 762,234/= shall attract interest at court rates from the date of the judgment in the subordinate court.
  - (iv) The Respondent shall have the costs of the suit in the subordinate court.
42. Since the appeal partially succeeded, each party shall bear its own costs of the same.
43. Orders.



DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025 VIRTUALLY VIA MICROSOFT TEAMS AT VOI.

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

.....for Appellants

.....for Respondent

