

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT NAKURU**

**ELRC APPEAL NO. E036 OF 2023**  
**(Before Hon. Lady Justice Anna Ngibuini Mwaure)**

**NANCY                      WAMBUI                      WANJIKU.....**  
**.....APPELLANT**

**VERSUS**

**H YOUNG & CO (E.A) LTD.....**  
**.....RESPONDENT**

*(Being an Appeal from the Judgment and order of the Honourable Y. I Khatambi, Principal Magistrate, delivered 27<sup>th</sup> October 2023 in Naivasha Civil Suit No. 835 of 2015)*

**JUDGMENT**

1. The Appellant, being dissatisfied with the judgment and order of the Honourable Principal Y.I Khatambi, filed this appeal vide a Memorandum of Appeal dated 23<sup>rd</sup> November 2023 on the grounds that: -

*1. The learned Magistrate erred by making an award for general damages, pain, suffering and loss of amenities, which award was too low as to represent an erroneous estimate of loss damage.*

*2. The learned Magistrate erred by making an award for general damages, pain, suffering*

*and loss of amenities, which award did not take into account the aspect of inflation.*

*3. The learned Magistrate erred by making an award for general damages, pain, suffering and loss of amenities, which award did not take into account the precedent presented in court and the nature and extent of injuries.*

2. The Appellant prays that:

*a. The appeal herein be allowed*

*b. This court proceeds to reassess the award, and the award made by the lower court be enhanced to such a reasonable sum that the court may consider just*

*c. The Appellant be granted costs of the Appeal.*

3. The court directed that the appeal be disposed of by way of written submissions.

### **Appellant's submissions**

4. The Appellant submitted that she challenges the trial court's award of Kshs.180,000/= in general damages, arguing it was disproportionately low given the severity of injuries sustained, a fractured left humerus and a deep cut on the left thumb, classified as grievous harm as per Dr Obed

Omuyoma's medical report dated 11<sup>th</sup> November 2015.

5. The Appellant relied on the case of ***Odinga Jactone Ouma V Moureen Achieng Odera [2016] KEHC 2922 (KLR)***, where general damages were reduced to Kshs.180,000/= on appeal, but the Appellant contends the injuries in that case were less severe and not comparable. Instead, the Appellant cites the case of ***Raiply Woods (K) Limited V Paul Ajoko Misolo [2011] KEHC 3428 (KLR)***, where the plaintiff sustained crush injuries with permanent disability and was awarded Kshs.300,000/=, upheld by Justice Azangalala in 2011.
6. Based on the above-mentioned precedent and the nature of the Appellant's injuries, the Appellant submitted that the award should be enhanced to Kshs.500,000/=, as the initial amount was an erroneous estimate warranting appellate intervention.
7. The Respondent, on the other hand, did not file their respective written submissions as directed by this Honourable Court.

### **Analysis and determination**

8. Being the first appeal, this Honourable Court's main role is to re-evaluate, re-assess and reanalyse by examining the contents of the record, then decide whether the conclusions drawn by the learned trial Judge should be upheld or overturned, providing clear justification for either outcome. In **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR)**, the Court of Appeal relied on the case of **Kenya Ports Authority V Kuston (Kenya) Limited (2009) 2EA 212**, wherein the Court of Appeal held inter alia that: -

***“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly, that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”***

9. The issue for determination is whether the appeal before this Honourable Court is merited. **Sections 107, 108 and 109 of the Evidence Act** provide that whoever alleges must prove, and in this particular appeal, the Appellant is challenging the award given by the learned magistrate on 27<sup>th</sup> October 2023. Parties agreed on liability on a ratio of 80:20, and the injury sustained by the Appellant was a fracture on the left thumb and a deep cut wound on the left thumb, awarding the Appellant Kshs.180,000/=.

10. The court finds the Appellant's damages awarded were reasonable considering the injuries were a fractured left thumb and a deep cut wound on the left thumb.

In the case of **KIVYUVI -VS- WILLIAM K. LIMITED 2024 KELR** the High Court on Appeal upheld the decision of the trial court. In that case the Appellant had been awarded Kshs.60,000/= for injuries described as deep cut wound on the thumb. The same had been stitched.

11. The injuries herein are described as grievous harm. In the case of **RAIPLY WOODS (K) LIMITED -VS PAUL AYOKO MISOLO (2011) KEHC KLR** the injuries were much more severe than the present

case having been crush injuries with permanent disability. The plaintiff was awarded Kshs.300,000/= in 2011.

12. The court will consider the factor of inflation and enhance the award to Kshs.200,000/=.

The total award is as follows-

<b>(a) General damages</b>	-	
	<b>Kshs.200,000/=</b>	
<b>(b) Less 20% contribution</b>	-	<b>Kshs.</b>
	<b>40,000/=</b>	
<b>(c) Special damages</b>	-	<b><u>Kshs.</u></b>
	<b><u>5,250/=</u></b>	
<b>Totalling</b>		<b><u><u>Kshs.165,250/=</u></u></b>

13. Costs of the lower court and of this appeal are awarded to the Appellant.

14. Interest to accrue at 14% per annum from date of this judgment until full payment.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru  
this 3<sup>rd</sup> Day of October, 2025.**

**ANNA NGIBUINI MWAURE  
JUDGE**

## **ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**

ORIGINAL