



**Ayaro v Karundu (Civil Appeal E111 of 2024)  
[2025] KEHC 15925 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15925 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL E111 OF 2024  
JK NG'ARNG'AR, J  
NOVEMBER 5, 2025**

**BETWEEN**

**ERICK AYARO ..... APPELLANT**

**AND**

**HOSEA OKEMWA KARUNDU ..... RESPONDENT**

*(Being an appeal on from the judgment and decree of Hon. P.C Biwott  
(SRM) Dated 21/2/2024 in Ogembo in CMCC NO. E369 OF 2022)*

**JUDGMENT**

1. Vide plaint dated 30/11/2022, the respondent filed the suit before the lower court on grounds that on 3/8/2022, he was walking off the road in Kiamokama Tea Buying Centre when the appellant's driver negligently drove motor vehicle registration number KDJ 681B (herein after the subject motor vehicle) and it lost control, sped off the road and brutally hit him and he sustained injuries.
2. The appellant filed a statement of defence dated 24/1/2023 denying liability and blamed the respondent for the accident and sought orders that the suit be dismissed with costs.
3. The matter proceeded for hearing and both parties called their witnesses. Vide judgment delivered on 21/2/2024, the trial court entered liability at 80:15 in favour of the claimant as against the respondent as consented by the parties and awarded the respondent Kshs. 21,970/= for special damages and Kshs. 400,000/= for quantum.
4. The appellant was dissatisfied with that judgment and filed the memorandum of appeal dated 21/6/2024 on the issue of quantum only.



## The Appeal

5. The grounds of the appeal were that the award was excessive and was arrived at without taking into consideration the evidence, submissions and principles of assessment of damages. The appellant sought orders that the trial court's award on quantum be set aside.
6. The appeal proceeded by way of submissions. The appellant's were dated 4/12/2025 whereas the respondent's were dated 8/9/2025.

## Analysis and Determination

7. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions see Court of Appeal for East Africa in Peters –vs- Sunday Post Limited [1958] EA 424.
8. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of Kemfro Africa Limited t/a “Meru Express Services (1976)” & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR where the court held that: -

“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.”

## Whether the award of Kshs. 400,000/= for general damages was inordinately high or low.

9. The issue for consideration is whether the trial court erred in awarding Kshs. 400,000/= for general damages. This Court is called to assess whether the award was inordinately high or low. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards. This position finds support in the case of Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR where the Court of Appeal held: -

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in

10. I take note of the P3 form issued on 15/9/2022, treatment notes from KTRH and the medical report dated 12/9/2022. The respondent sustained injuries including; - scalp contusion, teeth avulsion, chest contusion and abdominal contusions.
11. In assessing whether the award was inordinately high or low, I rely on the following cases: -  
Paul Kipsang Koech & Another vs Titus Osule Osore [2013] eKLR where the plaintiff was awarded Kshs. 200,000/- in general damages for a bruised lower lip cheek elbow and left knee, fracture of the right upper lateral incisor tooth, loosening of the right upper canine tooth, loosening of the right upper medial incisor tooth and blunt injury to the neck and abdomen.



Kuria & another v Kamau (Civil Appeal 330of2023) [2024]KEHC10411(KLR) where the plaintiff sustained avulsion and fracture of tooth, bruises on the upper lip, loss of a tooth in the upper jaw and bruised scars on the upper jaw. The award of Kshs. 500,000/= was found to be inordinately high and was replaced with one for Kshs. 350,000/=.

Manji v Khasiani (Civil Appeal 114of2018) [2022]KEHC10242(KLR) (18May2022) an award for Kshs. 700,000/= for damages was reduced to Kshs. 300,000/= where the plaintiff had suffered a cut wound on the forehead, avulsion of the two 1<sup>st</sup> upper incisor teeth, cut wound on the upper lip, blunt injury to the neck, blunt injury to the chest, blunt injury to both arms and bruises and blunt injury to the left knee.

12. In the instant case, the learned trial magistrate in arriving at the award of Kshs. 400,000/- considered the nature of injuries sustained and the authorities cited by both parties. Taking into consideration that comparable injuries ought to attract comparable awards, it is my considered view that the sum of Kshs. 400,000/- is inordinately high for the injuries sustained by the respondent. As such, it warrants this court's interference with the trial court's finding on the award of general damages.
13. It is therefore my considered view that Kshs. 300,000/- would be reasonable compensation as general damages for pain, suffering and loss of amenities.
14. The upshot is that the appeal is found to be merited and the same is allowed.
15. Each party to bear their own costs.

**JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**J.K.NG'ARNG'AR**

**JUDGE**

In the presence of:

Siele:CA

N/A for the appellant

Maronga for the respondent

