



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mamboleo & another v Nyamari (Civil Appeal E016 of 2025)  
[2025] KEHC 16307 (KLR) (11 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16307 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL E016 OF 2025  
DKN MAGARE, J  
NOVEMBER 11, 2025**

**BETWEEN**

**GEORGE MOKUA MAMBOLEO ..... 1<sup>ST</sup> APPELLANT**

**WATU CREDIT LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CHARLES OGANDA NYAMARI ..... RESPONDENT**

**JUDGMENT**

1. The appeal arises from the Judgment and decree of Honourable C.A. Adhiambo (CM) delivered in Kisii CMCC No. E242 of 2023 on 31.10.2024 in favour of the Respondent as follows:
  - a. Liability 100%
  - b. General damages Kshs. 500,000/=
  - c. Special damages Kshs. 7.050/=
  - d. Costs of the suit and interest
2. The Appellant being aggrieved by the award lodged the Memorandum of Appeal dated 13.2.2025. The memorandum of appeal raises only one substantive issue, that is, that the learned magistrate erred in properly appraising the evidence and the law regarding the assessment of damages and so arrived at an erroneous and excessive award of damages.
3. The appeal is against the quantum of general damages only.

**Pleadings**

4. The Respondent instituted the suit in the lower court vide the plaint dated 6.4.2023 and amended on 11.9.2023 claiming damages for an accident that occurred on 21.1.2022 involving motorcycle



registration number KMFU 291Y that was negligently ridden and lost control and hit motor vehicle Registration Number KDE 483Y causing the Respondent serious bodily injuries. The Respondent set forth particulars of negligence and pleaded Ksh. 7,050/= as special damages as well as general damages and injuries as follows:

- a. Blunt trauma to the neck
  - b. Blunt trauma to the anterior chest
  - c. Contusion of the lower back
  - d. Dislocation of the right shoulder
  - e. Blunt trauma to the right foot dorsally
  - f. Fracture of the right medial malleolus
5. The Appellants filed their joint defence and denied liability while also blaming the accident on the rider of the Respondent.

### **Evidence**

6. The Respondent as Plaintiff in the lower court suit testified as PW1. He relied on his witness statement and bundle of documents dated 6.4.2023. It was his case on quantum that he suffered the pleaded injuries and experienced pains during cold times.
7. Dr. Morebu Peter Momanyi testified as PW2. He produced his medical report dated 20.6.2022. He testified that he examined the x-ray and treatment notes. The Respondent, according to him suffered fracture of the left ankle and dislocation of the shoulder. He assessed the percentage of permanent disability 30%.

### **Submissions**

8. The Appellant filed submissions dated 3.9.2025. It was the Appellant's submission that the Respondent failed to prove case. Reliance was placed on Section 107 of the *Evidence Act*.
9. It was submitted that the award of Ksh. 500,000/= was excessive. That the award ought to have been in the range of Ksh. 120,000/=-150,000/=. They cited John Wambua v Mathew Makau Mwololo & Another (2020) eKLR. They also relied on Jyoti structures limited & Another v Truphena Chepkoech Too & Another (2020) eKLR to submit that Ksh. 125,000/= was adequate compensation.
10. The Respondent filed submissions dated 8.9.2025. It was submitted that the award of Ksh. 500,000/= on general damages was commensurate to the injuries and ought to be sustained. Reliance was placed on Nyambane v Okoth [2023] KEHC 19555 (KLR) in which the Respondent was awarded Ksh. 1,000,000/= having suffered the following injuries:
- a. Multiple cut wounds on the right knee and hip
  - b. Multiple bruises on the right side of the hip
  - c. Pain and swelling on the right leg
  - d. Soft tissue injuries on the right thigh
  - e. Wet wound on the upper part of the thigh with visible suture marks; and
  - f. Fracture of the right medial malleolus



11. They also cited inter alia *Akamba Public Road Services v Abdikadir Adan Galgalo* [2016] KEHC 2339 (KLR) and submitted that a plaintiff who suffered fracture of the right leg, bine malleolus and right fibular bone was awarded Ksh. 800,000/= substituted to Ksh. 500,000/= on appeal in 2016.

### **Analysis**

12. This being a first appeal, the court should with judicious alertness re-evaluate the evidence, and consider arguments by parties and apply the law thereto, and, make its own determination of the issues in controversy.
13. Except, however, the court should give allowance to the fact that it neither saw nor heard the witnesses' testimonies. In the case of *Selle & Another vs. Associated Motor Board Company Ltd.* [1968] EA 123, the court stated as follows:

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must 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 this respect, in particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

14. Circumstances in which an appellate court will interfere with the quantum of damages awarded by a trial court were clearly laid out in the case of *Kenya Bus Services Limited vs. Jane Karambu Gituma* Civil Appeal Case No. 241 of 2000 where the Court of Appeal stated as follows:

“...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages.”

15. This appeal being on quantum only, the principles guiding this court as the first appellate court have crystalized. This is in recognition that the award of damages is discretionary. The Court of Appeal pronounced itself succinctly on the principles of disturbing awards of damages in *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2)* [1985] eKLR as follows:

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 that 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.



16. The foregoing statement had been ably elucidated by Sir Kenneth O'Connor P, in restating the Common Law Principles earlier enunciated in the case at the Privy Council, that is, *Nance v British Columbia Electric Co Ltd*, in the decision of *Henry Hilanga v Manyoka* 1961, 705, 713 at paragraph c, where the learned Judge ably pronounced himself as doth regarding disturbing quantum of damages:-

'The principles which apply under this head are not in doubt. Whether the assessment of damages be by the Judge or Jury, the Appellate Court is not justified in substituting a figure of its own for that awarded simply because it would have awarded a different figure if it had tried the case at the first instance.'

17. Larger sums impede service to the community as premiums for insurance rise higher and higher, and they are passed to the public in the shape of higher and higher fees for medical attention. The words of Lord Denning in *West (H) & Son Ltd (1964) A.C. 326* at page 341 on excessive awards on damages are important to replicate herein thus:

"I may add, too, that if these sums get too large, we are in danger of injuring the body politic, just as medical malpractice cases have done in the United States of America. As large sums are awarded, premiums for insurance rise higher and higher, and they are passed to the public in the shape of higher and higher fees for medical attention. By contrast we have a National Health Service. But the health authorities cannot stand huge sums without impeding their service to the community. The funds available come out of the pockets of the taxpayers. They have to be carefully husbanded and spent on essential services. They should not be dissipated in paying more than fair compensation."

18. The mid-point is that the award of general damages must not be on the runway but should be contained to be commensurate with the injuries suffered. The words of Lord Denning were reiterated by Nyarangi, JA. in *Kigaragari v Aya* [1985] eKLR thus:

"I would express firmly the opinion that awards made in this type of cases or in any other similar ones must be seen not only to be within the limits set by decided cases but also to be within what Kenya can afford. That must bear heavily upon the court. The largest application should be given to that approach. As large amounts are awarded, they are passed on to members of the public, the vast majority of whom cannot just afford the burden, in the form of increased costs for insurance cover (in the case of accident cases) or increased fees."

19. The estimate of damages is objective and this court will intervene only if the award by the lower court was inordinately high in the circumstances. In the case of *Kilda Osbourne v George Barned and Metropolitan Management Transport Holdings Ltd & another Claim No. 2005 HCV 294* being guided by the principles enunciated by both Lord Morris and Lord Devlin in *H. West & Sons Ltd v Shephard* {1963} 2 ALL ER 625 Sykes J stated as follows:

"The principles are that assessment of damages in personal injury cases has objective and subjective elements which must be taken into account. The actual injury suffered is the objective part of the assessment. The awareness of the claimant and the knowledge that he or she will have to live with this injury for quite sometime is part of the subjective portion of the assessment. The interaction between the subjective and the objective elements in light of other awards for similar injuries determines the actual award made to a particular claimant."



20. It is thus common reasoning that astronomical awards may lead to increased insurance premiums thus hurting the insurance industry as well as the economy. See the case of *H. West and Son Ltd v. Shepherd* [1964] AC.326 (supra) where it was stated that:

“...but money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation.

In the process there must be the endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.....”

21. With the above guide, if the award is inordinately high, then I will have to set it aside. If, however, it is just high but not inordinately high, I will not do so. For the appellate court to interfere with the award, it is not enough to show that the award is high or had I handled the case in the subordinate court I would have awarded a different figure.

22. There is no dispute that the Respondent suffered the following injuries:

- a. Blunt trauma to the neck
- b. Blunt trauma to the anterior chest
- c. Contusion of the lower back
- d. Dislocation of the right shoulder
- e. Blunt trauma to the right foot dorsally
- f. Fracture of the right medial malleolus

23. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages. The Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards.”

24. The principle on the award of damages is settled. In *Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another* [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
- 2) The award should be commensurable with the injuries sustained.
- 3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
- 4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
- 5) The awards should not be inordinately low or high.



25. The trial court awarded Ksh. 500,000/= in general damages without citing any authorities. The Appellant in the lower court proposed Ksh. 150,000/= as adequate compensation.
26. I have analyzed similar fact cases with regard to the fact that no single case is typically identical to the other. In *Penina Waithira Kaburu v LP* [2019] eKLR, the Court stated thus on the issue of award of general damages –
- “While no injuries occurring in different circumstances can be similar in every respect and hence the possibility of varied awards in general damages, the trial court must always make a comparative analysis of the injuries sustained and the extent of the awards made for similar injuries in previous decisions. As I have stated elsewhere, if not for anything else, the comparison is necessary for purposes of certainty and uniformity; the award, must, as far as possible, be comparable to any other award made in a previous case where the injuries for which the award are relatively similar.”
27. In *Sheikh Abdulqader Mohammed Ahmed Shallo Julius Matteo Mumo* (2018) eKLR the High Court upheld the award of Kshs 500,000/= as general damages for a claimant who suffered displaced fracture of the left clavicle, blunt object injury to the neck and left leg and bruises on the cheeks and left knee with 3% permanent partial disability and deformity.
28. In the case of *Bawani Stores Limited & another v Margaret Magiiri Gitau* [2015] eKLR, the plaintiff was awarded Kshs 450,000/= for compound fracture of the left fibula in the distal 1/3 and fracture of the left medial malleolus.
29. In *Ndwiga & another v Mukimba* (Civil Appeal E006 of 2022), where the plaintiff sustained tenderness and swelling of the left leg, fracture of tibia and fibula left leg, the court reviewed and set aside an award of Kshs 1,200,000/= on account of general damages for pain, suffering and loss of amenities and substituted the same with an award of Kshs 500,000/=.
30. Therefore, stemming from the award by the trial court of Kshs. 500,000/= in general damages, I am of the view that this was not inordinately high award.
31. There was no appeal against the award of special damages and I find no reason to disturb the award under this head. The appeal thus entirely fails.

### **Determination**

32. In the upshot, I make the following orders: -
- a. The appeal is dismissed.
  - b. The Respondent shall have costs of this appeal assessed at Kshs. 75,000/=.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2025.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

No appearance for parties

Court Assistant – Michael

