

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
THE CIVIL APPELLATE DIVISION
[Coram: A.C. Mrima, J.]
CIVIL APPEAL NO. E1477 OF 2024

-between-

JUSTUS MULEI MANTHI.....
APPELLANT

-versus-

PATRICK INDANGASI
MAKOKHA.....RESPONDENT

[Being an appeal on quantum of damages from the judgment and decree of Hon. H. A. Okello (RM) in Milimani Commercial Court No. E1260 of 2024 delivered on 26th November 2024]

JUDGMENT

Background

1. *Patrick Indangasi Makokha*, the Respondent herein, was involved in an accident along Kangundo road within Nairobi County. In his case before the trial Court being *Milimani Chief Magistrates Commercial Court No. E1260 of 2024* [hereinafter referred to as '**the suit**'], he pleaded that he was a pedestrian when *Justus Mulei Manthi*, the Appellant herein, negligently and recklessly drove the motor vehicle registration No. KBM 768W (hereinafter referred to as '**the motor vehicle**') thus knocking him down. He sought compensation for degloving injury on the right leg, bruises and pain on the left leg.
2. The Appellant denied both being the owner of the motor vehicle and causing the accident. It was his case that if indeed the accident occurred it was as a result of the Respondent's negligence for failing to take adequate precaution for his own safety.
3. Upon considering the evidence, the trial Court found that indeed there was an accident wholly attributable to the negligence of the Appellant. As regards quantum, the learned trial magistrate awarded Kshs. 800,000/- as general damages and Kshs.

63,550/- in special damages. The Appellant was aggrieved with the findings of the Court on quantum of general damages and preferred the instant appeal.

The Appeal:

4. Through a Memorandum of Appeal dated 15th December 2024, the Appellant urged the setting aside of the trial Court's findings on the following grounds: -
 1. *That the learned trial magistrate erred in fact and in law by awarding inordinately high general damages to the Respondent.*
 2. *That the learned trial magistrate erred in fact and in law by failing to consider the appellant's submissions and authorities on quantum hence arriving at an erroneous decision.*
 3. *That the learned trial magistrate erred in fact and in law by awarding general damages that were inordinately high to constitute a miscarriage of justice in the circumstances of the case.*
 4. *That the learned trial magistrate's judgment was wholly not supported in law by evidence tendered in court by the parties.*
5. The Appellant urged his case further through written submissions dated 19th June 2025. It was his submission that the injuries as per the medical report dated 6th February 2024 prepared by *Dr. Cyprianus Okoth Okere*, were a degloving injury on the right leg and bruises on the left leg. It was his argument that the award of Kshs. 800,000/- was excessive and the trial Court considered an irrelevant factor or left out a relevant one.
6. He referred the Court to the decision in *Jubilee Hauliers Limited & Another v Mary Waithera Wanja* [2019] eKLR, and the one in *Martin Mutuku & another -vs- SN (suing through his mother and next friend DC)* [2021] eKLR where in the former the High Court upheld an award of Kshs. 200,000/- for degloving injuries to the elbow, multiple lacerations on the right arm and soft tissue injuries on the chest, cut on the tongue and bruises on the forehead. In the latter the Court reduced an award of Kshs. 600,000/= to Kshs. 300,000/= for abrasions on the scalp, blunt

injuries to the chest, blunt injuries to the abdomen, and degloving injuries on the left foot.

7. On the foregoing, the Appellant submitted that an award of Kshs. 200,000/= was adequate compensation for the injuries sustained.

The Respondent's case:

8. *Patrick Indangasi Makokha* opposed the appeal through written submissions dated 23rd June 2025. From the outset, the Respondent, while drawing support from the Court of Appeal decision in *Simon Taveta -vs- Mercy Mutitu Njeru* (2014) eKLR, stated that it was not open for this Court to interfere with the discretion of the trial Court on general damages unless they were based on no evidence at all. He submitted that the authorities cited by the Appellant in their submissions in the trial Court were distinguishable in terms of the injuries suffered.
9. It was his case that this Court ought to consider the effects of inflation and the after effects of the accident in upholding the award of Kshs. 800,000/-. He drew support from the case of *Wycliff Lumula Mmasi -vs- Ernest Waithaka & Another* (2020) eKLR where Kshs. 700,000/- was made for extensive degloving injury on the right foot and extensive skin loss. Further reference was made to the case of *Hilltop Motors Enterprise Ltd & 2 Others -vs- Rebecca Naiga* (2017) eKLR, *Ann Rotich Kwambai & Another -vs- Amos Kiara Rotiken* (2021) eKLR and *Easy Coach Limited -vs- Emily Nyangasi* (2017) eKLR where Kshs. 500,000/-, 450,000/- and 700,000/- were awarded respectively for various degloving and soft tissue injuries.
10. In conclusion, the Respondent urged the Court not to disturb the findings of the trial court.

Analysis:

11. From the Appellant's grounds of appeal and written submissions, the only issue for determination is whether the trial court properly directed itself on quantum. The role of an appellate Court of the first instance was outlined by the Court of Appeal in ***Abok James Odera T/A A.J Odera &***

Associates -vs- John Patrick Machira t/a Machira & Co. Advocates [2013] KECA 208 (KLR), where the following was stated: -

.... This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority versus Kuston (Kenya) Limited (2009) 2 EA 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...

12. As the appeal is on quantum of damages, the guiding principle in the award of general damages by a trial Court was set out by the Court of Appeal in **Kemfro Africa Ltd t/a Meru Express & Another -vs- A. M. Lubia and Another** [1982-1988] KAR, where it was observed that the trial Court exercises discretion and such can only be interfered with on appeal where the trial Court considered an irrelevant factor or left out a relevant. The discretion can also be interfered with if the award is inordinately high or low as to represent an erroneous estimate.
13. On the facts of the case, the Respondent was the sole witness. It was is evidence that he suffered degloving injury on the right leg, bruises on the left leg and that he was experiencing pain on the left leg. On cross-examination, he referred to the Police Abstract and claimed that he went to the hospital. He testified that he had a fracture but agreed that the medical report did not indicate as such. He conceded that it was a degloving injury on right leg and bruises.
14. This Court has keenly perused the Medical Report which was produced as Exhibit 4. It indicated that the Respondent suffered shoulder pain and had tenderness. He also had degloving injury at the left radius leg with friction abrasion. There is also the

Discharge Summary from Jumuia Hospital Huruma which indicated that the Respondent was hospitalized for the injuries. The Medical Report was produced in evidence indicated that the Respondent was physically examined and it was ascertained that he had a degloving scar on right upper and lower leg and a bruise scar on the left lower leg. The Doctor formed the opinion that the Respondent sustained a degloving injury of the right leg and bruises on the left leg. It was the award on those injuries that elicited the appeal.

15. To determine the propriety of the damages, the general guidance is for a Court to compare the instant injuries with previous awards on like injuries and to endeavour a careful balance between reasonable compensation for the injuries sustained on one hand and, on the other hand, not to cripple the insurance industry which is mainly behind the payment of the eventual compensation in a bid to sustain the country's economy.
16. On that score, a look at previous some like decisions follows. In **Jubilee Hauliers LTD & Vipul Patel -vs- Mary Waithera Wanja** (2016) eKLR, the Court upheld an award Kshs. of Kshs. 200,000/- for degloving injuries to the right elbow, multiple lacerations on the right arm, and soft tissue injuries on the chest; Cut wound on the tongue and bruises on the forehead. The injuries were classified as grievous harm. In **Martin Mutuku -vs- Simon Mathenge** (2018) eKLR, the injuries suffered were abrasions on the scalp, blunt injuries to the chest, blunt injuries on the abdomen and degloving injuries on the left foot. At the trial Court, the Respondent had been awarded Kshs. 600,000/-. On appeal, the Court, upon considering comparable injuries revised the award downward to Kshs. 300,000/-. Similarly, in **Annet Noti Jefwa Kayaa -vs- David Njau Kungu & Another** (2017) eKLR, the High Court upheld an award of Kshs 250,000/- for degloving injury of right leg and lower ankle, cut wound of the scalp, cut wound of the left elbow and a fracture of the left arm. In **Easy Coach Limited v Emily Nyangasi [2017]** eKLR, the Court upheld an award of Kshs.700,000/ for soft tissue injuries and degloving injuries to the right hand and right leg. In **Geoffrey Mariga -vs- Dennis Nyaata Maosa** (2022) KLR, the appellate Court awarded

general damages of Kshs 400,000/- for a deep cut wound on the frontal region, 3rd left rib fracture, 4th left rib fracture, bruises on the right hand, bruises on the left hand, degloving injury on the right leg and deep cut wound on the left ankle. On appeal, the Court reduced the award to Kshs. 250,000/=. Finally, in **Matunda (Fruits) Bus Services Limited -vs- Owino** (Civil Appeal 105 of 2019) [2025] KEHC 5177 (KLR) the Court reduced damages from Kshs.700,000/- to Kshs. 427,500/- for degloving injury of the right leg and soft tissue injuries of the chest, lower back and forehead.

17. Flowing from the foregoing comparison, it is evident that even for considerably more serious injuries, Courts have been making awards in the range of Kshs. 200,000/= and Kshs. 400,000/= between 2016 and 2025. The said awards are much lower than what the Respondent herein was awarded herein. As such, in order to uphold consistency, comparability and predictability, and even on considering the aspect of inflation, the award of Kshs. 800,000/= ought to be, respectfully so, interfered with. And, to that end, the appeal is merited.

Disposition:

18. Deriving from the foregoing, the following final orders hereby issue: -

[a] The appeal is allowed and the award of Kshs. 800,000/- awarded by the trial Court in Milimani Chief Magistrates Commercial Court No. E1260 of 2024 is hereby substituted with an award of Kshs. 450,000/-.

[b] For avoidance of doubt, the rest of the awards made by the trial Court are hereby affirmed.

[c] Each party to bear its own costs of the appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 12th day of November, 2025.

A. C. MRIMA
JUDGE

Judgment virtually delivered in the presence of:

Mr. Kamau Muriuki, Learned Counsel for the Appellant.

Miss Nyanchera, Learned Counsel for the Respondent.

Michael/Amina - Court Assistants.