



REPUBLIC OF KENYA



**KENYA LAW**  
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**Masita v Obiero (Civil Appeal E021 of 2024)  
[2025] KEHC 15836 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15836 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL E021 OF 2024  
JK NG'ARNG'AR, J  
NOVEMBER 5, 2025**

**BETWEEN**

**EDNAH NYANDUKO MASITA ..... APPELLANT**

**AND**

**ABEL NYAKUNDI OBIERO ..... RESPONDENT**

*(Being an appeal from the judgment and decree of the Chief Magistrate's Court at Kisii (P.K. Mutai, PM) delivered on 31st January 2024 in CMCC No. E036 of 2022)*

**JUDGMENT**

1. The respondent sued the appellant through his plaint dated 31<sup>st</sup> May 2022 on account of a road traffic accident that occurred on 23<sup>rd</sup> August 2020. He averred that on that material day, the appellant's motor vehicle registration number KCH 128S was being driven by its driver around the Nyambera stage. The respondent was a pedestrian. Suddenly, the driver of the suit vehicle managed it so carelessly, that it veered off the road and knocked the respondent down causing an accident.
2. The respondent sustained deep cut wounds on the right lower limb, chest contusion, blunt trauma to the back and bruises on both knees and limbs. For those reasons, the respondent prayed for general damages, special damages of Kshs. 11,620.00 costs of the suit and interest. The trial court in its judgment dated 31<sup>st</sup> January 2024 apportioned liability at 50:50. It then awarded general damages of Kshs. 300,000.00, special damages of Kshs. 7,900.00 costs and interest of the suit.
3. The appellant challenges the findings on quantum only. She filed her memorandum of appeal dated 26<sup>th</sup> February 2024 that raised eight grounds disputing the findings of the trial court. Essentially, he complained that the award of Kshs. 300,000.00 in general damages was inordinately high, excessive and amounted to an erroneous estimate. That the trial court failed to consider the appellant's submissions, the weight of the evidence, conventional awards and misguided itself by applying wrong principles.



For those reasons, the appellant prayed that the judgment be reassessed afresh. He further prayed for costs in this appeal and those at trial.

4. The appeal was heard on the basis of the parties' written submissions. The appellant filed her written submissions dated 4<sup>th</sup> September 2025. The appellant reproduced the injuries sustained by the respondent as a result of the accident to submit that the award given by the trial court was inordinately high. She cited several decisions to urge this court to award the sum of Kshs. 60,000.00 in the stead of the sum given by the trial court. She prayed that her appeal be allowed.
5. The respondent opposed the appeal. He filed his written submissions dated 9<sup>th</sup> September 2025. Citing several decisions, the respondent submitted that the award on quantum was consistent with precedents for similar injuries and was not too high as to warrant an interference by this court. In fact, he opined that looking at several authorities, he ought to have been awarded Kshs. 600,000.00. He prayed that this appeal be dismissed with costs.
6. I have considered the submissions, examined the record of appeal and analyzed the law. In its assessment of liability, the trial court observed the evidence from both sides of the divide to find that an accident occurred on the material date involving the suit vehicle and the respondent. The accident occurred when the respondent was crossing the road from the left to the right. This was confirmed by police officers from both parties. The court found that no caution was exercised by the respondent when crossing the road and was therefore negligent. Similarly, it was apparent that the driver of the appellant's vehicle was over speeding and could therefore not have avoided the accident. He was also negligent. Finding both parties liable for the accident, the trial court rightly apportioned liability equally.
7. The appellant is only dissatisfied with the findings on quantum. It was held in the case of Butt vs. Khan Civil Appeal No. 40 of 1997 that this court will not interfere with an award of damages expect on certain circumstances in the following terms:

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect, and so arrive at a figure which was either inordinately high or low.” See also *Kemfro Africa Ltd and Another vs A.M. Lubia & Another* (1982-1988).”
8. From the medical evidence adduced at trial, the respondent sustained soft tissue injuries. According to Dr. Morebu's report dated 9<sup>th</sup> September 2020, the respondent suffered deep cut wounds on the right lower limbs, chest contusion, blunt trauma to the back, bruises on the right knee, bruises on the left knee, bruises on the left upper limb and bruises on the right upper limb. He concluded the appellant suffered multiple severe body injuries that were in the process of healing with permanent ugly scars. The trial court considered the submissions of the parties and found that the case of *Pan paper Mills (EA) Limited & another vs. Asha Hassan* [2007] eKLR was the most relevant and applicable decision. He then awarded Kshs. 300,000.00.
9. I have looked at the said decision. In it, the respondent suffered a cut wound on the left eye, severe blunt trauma to the left shoulder, severe blunt trauma to the right leg, dislocation of the left wrist joint, severe blunt trauma to the chest, severe injuries incurred during and after the accident, laceration of the upper eyelid, bruises on the left shoulder and left side of the chest, subluxation of the left wrist, soft tissue injuries on the right thigh with closed degloving injury and cosmetic disfigurement due to swelling of the right thigh and scars on the left eyelid.



10. In my opinion, the cited decision was not comparable to the present matter before me. I say so firstly because the injuries sustained in that decision were not comparable to the present case. The injuries in the cited decision were more severe. Secondly, this was a decision rendered in 2007; fourteen years prior to this decision.
11. In the case of Joseph Mwangi Kiarie & another vs. Isaac Otieno HCCA No. 30 of 2018, an award of Kshs. 300,000.00 was reduced to Kshs.180,000.00 for soft tissue injuries. In Michael Odiwuor Obonyo vs. Clarice Odera Obunde HCCA NO. 1 OF 2020, an award of Kshs. 500,000.00 was reduced to Kshs. 200,000.00 for soft tissue injuries. Extrapolating from those more recent decisions, this court shall interfere with the award on general damages.
12. Taking into account the fact that the respondent was expected to heal from the soft tissue injuries with no permanent incapacity, as well as the current market inflation, I set aside the award of Kshs. 300,000.00 and substitute the same with an award of Kshs. 250,000.00. on special damages, I find that the same was pleaded and proved and I will therefore not interfere with that finding. I further exercise my discretion direct each party to bear its own costs of the appeal since this court has not awarded the exactitude sum as sought by the appellant.

30 days stay granted

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

.....

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

**JUDGE**

Judgement delivered in the presence of;

Siele (Court Assistant).

Munji for the Appellant

Bunde for the Respondent

